

Official Secrets Act, 1923

19 of 1923

[2nd April, 1923]

CONTENTS

1. Short title, extent and application
2. Definitions
3. Penalties for spying
4. Communications with foreign agents to be evidence of commission of certain offences
5. Wrongful communication, etc., of information
6. Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents
7. Interfering with officers of the police or members of the Armed Forces of the Union
8. Duty of giving information as to commission of offences
9. Attempts, incitements, etc
10. Penalty for harbouring spies
11. Search warrants
12. a [Provisions of section 337 of Act 5 of 1898 to apply to offences under sections 3, 5 and 7
13. Restriction on trial of offences
14. Exclusion of public from proceedings
15. Offences by companies
16. Repeals

Official Secrets Act, 1923

19 of 1923

[2nd April, 1923]

"The position in regard to the protection of official secrets in India is briefly as follows. The provisions of the law which are now in force are: (a) An Act of the Legislature in India - The Official Secrets Act, 1889, as amended by the Indian Official Secrets (Amendment) Act, 1904; and (b) A Statute of Parliament - the Official Secrets Act, 1911 (1 and 2 George V C. 28). The provisions of the British Statute have as a result of experience gained during the War, been considerably modified by the enactment of the Official Secrets Act, 1920 (10 and 11 Geo. V. C. 75), but the latter Statute

does not apply to British India. \It has, for some time past, been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 is in force in India difficulties arise in applying it because of the use in it of English common law terms and so on. For these reasons it is desirable that there should be a single consolidated Act applicable to Indian conditions and the desirability of this has been emphasised by the passing of the British Act of 1920 which has considerably amended the Act of 1911, but is not applicable to India. The provisions of the British Act of 1911 are more effective, particularly in the matter of the protection of military secrets than the Indian enactments, and they have been further strengthened by the enactment of the amending statute of 1920, which is based on experience gained during the War. It is considered desirable, therefore, that the law in India should be assimilated to that in force in the United Kingdom and the object of this Bill is to consolidate the provisions of the British Acts of 1911 and 1920 and to enact them in a form suitable for India. \As this Bill is a purely consolidating measure, it is not necessary to deal with the clauses in detail, but it may be mentioned that it is proposed to omit provisions on the lines of Ss. 4 and 5 of the Act of 1920, as it is considered that the matters dealt with in these sections are sufficiently covered by the provisions of the Telegraph Act, 1885, and the Indian Post Office Act, 1898. \If this Bill is passed it will not be necessary to retain the Indian Acts, and provision is, therefore, made in clause 15 for their repeal." -Gazette of India, 1922, Part V, p. 210. Amending Act 24 of 1967 :- The protection of official secrets is regulated by the Indian Official Secrets Act, 1923. Except for a few minor amendments made in 1951, the Act has remained unmodified since it was enacted more than forty years ago. In view of the changed circumstances after the attainment of independence and the wide variety of unscrupulous methods which anti-national elements have of late been adopting to secure their ends, it has become necessary to amend the Act suitably to remove certain shortcomings and to make it more effective. 2. The following are the main features of the Bill :- (1) It is proposed to widen the scope of Ss. 3 and 5 of the Act by bringing within their ambit cases of secret official codes, etc., the disclosure of which is likely to affect the sovereignty and integrity of India, security of the State and friendly relations with foreign States. (2) In a prosecution for an offence of spying under S. 3 of the Act, it is necessary to prove that the accused acted for a purpose prejudicial

to the safety or interests of the State. In certain cases of spying, however, where the offence is punishable with imprisonment for a term which may extend to fourteen years, it has been provided that it would not be necessary to prove that the accused was guilty of any particular act tending to show such a purpose, if from the circumstances of the case or the conduct of the accused or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State. It is considered that this special rule of evidence should be made applicable to all offences of spying punishable under the section and it is proposed to amend the section suitably for this purpose. (3) In the context of problems of internal and external security which the country faces at present, it is necessary to make offences under the Act cognizable and non-bailable and to enhance the maximum penalties prescribed for certain offences. It is, therefore, proposed to enhance the punishments for the Offences suitably while ensuring, at the same time, that all offence's under the Act become cognizable and non-bailable. (4) Considerable difficulty is experienced in proving offences under the Act, as very often direct evidence is not available unless one of the participants in the transaction comes forward to give such evidence. Accordingly, it is proposed to make the provisions of S.337 of Code of Criminal Procedure, 1973 (Tender of pardon to accomplice) applicable to offences under Ss. 3, 5 and 7 of the Act as also to attempts and abetments of such offences. 3. The Bill seeks to achieve the above objects - Gazette of India, 23-6-1967, Pt. II, Section 2, Extra, p. 513.

1. Short title, extent and application :-

(1) This Act may be called The Indian Official Secrets Act, 1923.

(2) It extends to the whole of India and applies also to servants of the Government and to citizens of India outside India.]

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(1) any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government: ¹[* * * * *]

(2) expressions referring to communicating or receiving include any

communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to, obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen;

(5) 'munitions of war' includes the whole or any part of any ship, sub-marine, aircraft, tank or similar engine, arms and ammunitions, torpedo, or mine intended or adopted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

(6) "Office under ²[Government]" includes any office or employment in or under any department of the Government ³[* * * *];

(7) "photograph" includes an undeveloped film or plate;

(8) "prohibited place" means -

(a) any work of defence, arsenal, naval, military or air force establishment or station, mine or minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, ⁴[Government], any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(b) any place not belonging to ⁴[Government] where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, ⁴[Government], or otherwise on behalf of ⁴[Government];

(c) any place belonging to or used for the purpose of ⁴government] which is for the time being declared by the ⁹[Central Government], by notification in the Official Gazette¹⁰, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of ⁴[Government], which is for the time being declared by the ⁴[Central Government], by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality :

"Clause 2 (8).- The definition of 'prohibited place' has been restricted with a view to applying it, in respect of telegraphs and telephones, only to military telegraphs and telephones and in respect of factories and dock-yards only to those factories and dockyards which, besides belonging to or being occupied by or on behalf of Government, are also used for any of the purposes mentioned in the last part of the definition. In the interests of the public we have provided that a place notified under (c) of (d) as a prohibited place until a copy of the notification in English and in the vernacular of the locality is affixed thereto," -S.C.R.

(9) "sketch" includes any photograph or other mode of representing any place or thing; and ¹³[* * * *]

(10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of Superintendent of Police are for the purposes of this Act conferred by the ¹⁴[Central Government] ¹⁵ [* * * *]

1. Clause (1a) which was inserted by A.O., 1937, was omitted by A.C.A.O., 1948 (23-3-1948).

2. Substituted for the words 'His Majesty' by A.L.O., 1950.

3. Words, 'or of the Government of the United Kingdom or of any

British possession' omitted by Act 23 of 1967, S. 3(15-8-1967).

4. Substituted for the words 'His Majesty' by A.L.O. 1950.

9. Substituted for the words 'Governor-General in Council' by A.O. 1937 (1-4-1937).

10. For such notification entrusting to Government of Orissa functions under clauses (c) and (d), see S.O. 1284. published in Gazette of India, 1963, Pt. II, S. 3 (ii), page 1448 and for such notification in respect of the Governments of Andhra Pradesh, Tamil Nadu, Maharashtra, Gujarat, Madhya Pradesh, Uttar Pradesh, Mysore, Kerala and Rajasthan, see S.O. 1285. by A.L.O., 1937.

13. Sub-section (9A) which was inserted by A.L.O., 1950. was omitted by the Part B States (Laws) Act, 1951 (III of 1951), S.3 and Schedule 1-4-1951).

14. Substituted for the words 'Governor-General in Council' by A.O. 1937 (1-4-1937).

15. The words 'or by any Local Government' were omitted by A.O., 1937 (1-4-1937).

3. Penalties for spying :-

(1) If any person for any purpose prejudicial to the safety or interests of the State -

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass words, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy ¹[or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States]; he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of ²[Government] or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section ³[* * * *] it shall not be necessary to show that the accused

person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass- word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or nterests of the State, such sketch, plan, model, article, note, document ⁴ [information, code or pass-word shall be presumed to have been made,] obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

Sub-section (1).- "Offences under this section cover a very wide field and many of them even in their most aggravated form would not merit the maximum penalty provided by the clause. We have, therefore, introduced two separate maxima, retaining the maximum of fourteen yrs for the,graver offences specified by us and introducing a maximum of three years for other offences under the section. The line of distinction, which we have laid down, is approximately the line between what we may call civil secrets on the one hand and secrets of defence on the other. For the same reason, we have removed the minimum penalty of three years altogether," Sub-section (2).- "We have limited the application of the provisions of the first part of this sub-clause, which facilitates proof of a purpose prejudicial to the safety or interests of the State to prosecutions for the graver class of offences for which we have retained the maximum penalty of fourteen years under sub-clause (1); and in respect of those offences for which a special presumption was introduced in the second part of this sub-clause, we have limited the operations of that presumption by providing that it shall not be raised by the mere fact of the accused having improperly made, obtained, etc., a document of the nature covered by the sub-clause." -S.C.R.

1. Inserted by the Official Secrets (Amendment) Act, 1967 (24 of 1967), S. 4 (15-8-1967).

2. Substituted for the words 'His Majesty' by A.L.O., 1950.

3. Words 'with imprisonment for a term which may extend to fourteen years' were omitted by the Official Secret'(Amendment) Act, 1967 (24 of 1967), S. 4(b) (15-8-1967).

4. Substituted for the words "or information shall be presumed to

have been made" by the Official Secret'(Amendment) Act, 1967

4. Communications with foreign agents to be evidence of commission of certain offences :-

(1) In any proceedings against a person for an offence under section 3 , the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without ¹[India], shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provisions,-

(a) a person may be presumed to have been in communication with a-foreign agent if -

(i) he has, either within or without ¹[India], visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without ¹[India], the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without ¹[India], prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without ¹[India], committed,or attempted to commit, such an act in the interests of a foreign power;

¹ [India] in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which foreign agent resides,or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent .

1. Substituted for the words 'the States' by Part B States (Laws)

Act, 1951 (3 of 1951), S.3 and Schedule (1-4- 1951).

5. Wrongful communication, etc., of information :-

" ¹(1) If any person having in his possession or control any secret official code or pass-word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, ¹[or which is likely to assist, directly, or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of the Act] or which has been entrusted in confidence to him by any person holding office under ³[Government], or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under ²[Government], or as a person who holds or has held a contract made on behalf of ²[Government], or as a person who is or has been employed under a person who holds or has held such an office on contract -

(a) wilfully communicates the code or pass-word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses the information in the possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State: or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass-word or information; he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass-word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass-word, sketch, plan,

model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war. communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

⁶ [(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

Sub-section (1).- "In (a) we have inserted the word wilfully as we do not think that negligent communication should be punishable except to the extent to which it is punishable under (d). We have made a similar insertion in (c) for the same purpose. We have also inserted the words 'or in a Court of Justice' in order to protect public officers who have used their discretion under S.124 of the Indian Evidence Act."- S.C.R.

1. In its application during the proclamation of emergency and for a period of six months thereafter sub-sections (1) and (4) of S. 5 read as follows :- (1) If any person having in his possession or control any secret official code or pass-word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which relates to or is used in. a protected area as defined in the rules made under the Defence of India Act, 1971. or relates to anything in such area, or which is likely to assist, directly or indirectly, an enemy as defined in the Defence of India Act, 1971, or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of the Act or which has been entrusted in confidence to him by any person holding office under Government or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held acontract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office on contract- (a) wilfully communicates the code or pass-word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it; or (b) uses the information in the possession for the benefit of any foreign

power or any other manner prejudicial to the safety of the State; or (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass-word or information; he shall be guilty of an offence under this section. (4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or if such offence is committed with intent to assist any country committing external aggression against India or to wage war against India, with death or imprisonment for life or imprisonment for a term which may extend to ten years and shall, in either case, also be liable to fine.- See Defence and Internal Security of India Act, 1971 (42 of 1971), S. 6 (1) (a) and (b) respectively, 3. Substituted for the words 'His Majesty' by A.L.O. 1950. 6. Substituted for former sub-section (4) by the Official Secrets (Amendment) Act, 1967 (24 of 1967), Section 5 (10-7-1968).

6. Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents :-

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State-

(a) uses or wears, without lawful authority, any naval, military, air force police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police or official pass, permit, certificate, licence or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under ¹[Government], or to be or not to be a person to whom an official

document or secret official code or pass-word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass-word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military or air force authority appointed by or acting under the authority of ¹[Government], or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeit die, seal or stamp: he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State-

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof: or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass-word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass-word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid; he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to ³[three years], or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs or ¹[Government], or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section ⁵ [* * * *]

Sub-section (1).- "We consider that the ordinary penal law provides a sufficient penalty for most, if not for all of the offences created by this clause and we accordingly think that the penalty provided by this clause should only be enforceable where the safety of the State is affected. We have therefore struck out the words 'or interest' in sub-clauses (1), (2) and (4)." Sub-section (2).- "We consider that in respect of all the offences created by sub-clause (2) it should be necessary for the prosecution to prove that the acts complained of were done for a purpose prejudicial to the safety of the State. For the insertion of the word "wilfully" compare note on clause 5(1)." Sub-section (4).- "The redrafting of this sub-clause is mainly consequential on the changes made in sub-clauses (1) and (2) of this clause, but we have thought it right following the principle which we laid down when considering clause 3 to restrict the operation of this sub-clause, which facilitates the proof of a purpose prejudicial to the safety of the State. to prosecutions for the graver offences under this clause."- S.C.R.

1. Substituted for the words 'His Majesty' by A.L.O.. 1950.
3. Substituted for the words 'two years' by the Official Secrets (Amendment) Act, 1967 (24 of 1967), section 6 (15- 8-1967).
5. Words 'with imprisonment for a term which may extend to fourteen years,' omitted by by the Official Secret'(Amendment) Act, 1967.

7. Interfering with officers of the police or members of the Armed Forces of the Union :-

(1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of ¹ [the Armed Forces of the Union] engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section he shall be punishable with imprisonment which may extend to [three years] or with fine, or with both.

1. Substituted for the words 'His Majesty's forces' by A.L.O., 1950 (26-1-1950).

8. Duty of giving information as to commission of offences

:-

(1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of ¹ [the Armed Forces of the Union] engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to [three years,] or with fine, or with both.

1. Substituted for the words "His Majesty's forces" by A.L.O. 1950 (26-1-1950).

9. Attempts, incitements, etc :-

Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

10. Penalty for harbouring spies :-

(1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be

guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to ¹ [three years,] or with fine, or with both.

1. Substituted for the words one year by the Official Secrets (Amendment) Act, 1967 (24 of 1967), section 9 (15-8- 1967).

11. Search warrants :-

(1) If a Presidency Magistrate, Magistrate of the first class or Sub-Divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document or anything of a like nature or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place, or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police officer under subsection (2) he shall, as soon as may be, report such action in a presidency-town to the Chief Presidency Magistrate, and outside such town to the District or Sub-Divisional Magistrate.

12. a [Provisions of section 337 of Act 5 of 1898 to apply to offences under sections 3, 5 and 7 :-

The provisions of S.337 of Code of Criminal Procedure, 1973, shall apply in relation to an offence punishable under section 3 or under section 5 or under section 7 or under any of the said sections 3 , S.5 of the Code of Criminal Procedure, 1898 and S.7 of the Code of

Criminal Procedure, 1898 read with section 9 as they apply in relation to an offence punishable with imprisonment for a term which may extend to seven years.]

13. Restriction on trial of offences :-

(1) No Court other than that of a Magistrate of the first class specially empowered in this behalf by the ¹[appropriate Government], which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from the [appropriate Government] ² [* * *] or some officer empowered by the [appropriate Government] in this behalf: [* * * * *]

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in [India] in which the offender may be found.

[(5) In this section, the appropriate Government means-

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.]

"The Committee have proposed no change in this clause, but as Mr. Neogy has intimated that he proposes to dissent on the ground that all offences under the Act should be triable only by a Court of Session, the Committee think it right to express their views in favour of retaining the clause as it stands. Under the Official Secrets Act, 1889, all Magistrates of the first class were authorized to try offences under the Act, while under the Bill it is provided that the only Magistrates who may try cases shall be those described in sub-el. (1) of this clause. Mr. Neogy relies on sub-sec. (3) of S.10 of the Official Secrets Act, 1911 in which it is laid down that an offence under that Act shall not be tried by any Court outside the United Kingdom which has no jurisdiction to try, crimes which

involve the greatest punishment allowed by law. As the Bill stands read with the second schedule to the Code of Criminal Procedure, 1973, the graver offences punishable under section 3 with imprisonment up to fourteen years will be triable only by the Court of Session; and the Committee are of opinion that the other offences under the Act can properly be tried by Magistrates of the rank named in sub-clause (1).- S.C.R.

1. Substituted for the words 'Local Government' by A.O., 1937(1-4-1937).

2. The words 'the Local Government' were omitted, by A.O., 1937.

14. Exclusion of public from proceedings :-

In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

15. Offences by companies :-

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible, to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this Sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or as is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be

proceeded against and punished accordingly,

16. Repeals :-

Repealed by the Repealing Act, 1927 (12 of 1927), Sec. 2 and Schedule.]