

# APPENDICES



# Appendix I

## PRESS COUNCIL OF INDIA RECOMMENDATIONS FOR AMENDING S. 5

The Press Council widely circulated amongst the associations of journalists the present study on "Official Secrecy and the Press" prepared by the Indian Law Institute. The views contained in the study and also the views received by the Council from the journalists were examined by the Council at its various meetings. The final recommendations of the Council as emerging therefrom have been drafted in the form of draft amendment of section 5. The Council recommends that the present section 5 of the Official Secrets Act may be replaced by the following :

### S. 5 *Wrongful communication, etc. of information.*—

(1) if any person having an "official secret" in his possession in whatever manner obtained, whether by virtue of holding or having held official position, or by virtue of a contract with the government, or receiving the information in confidence from a person holding office in the government—

- (a) communicates to any person or uses the "official secret"; or
- (b) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the "official secret"; or
- (c) wilfully fails to return the "official secret" when it is his duty to return it;

he shall be guilty of an offence under this section.

(2) Nothing shall be an offence under the section if it predominantly and substantially subserves public interest, unless the communication or use of the "official secret" is made for the benefit of any foreign power or in any manner prejudicial to the safety of the State.

(3) Any person voluntarily receiving any "official secret" knowing or having reasonable ground to believe at the time when he receives the "official secret" that it is communicated in contravention of this Act shall be guilty of an offence under this section.

(4) For the purposes of this section "official secret" means—

Any secret code, pass word, any sketch, plan, model, article, note, document, including documents regarding proceedings, decisions, minutes of the Union or State Cabinet, or information, which relates to or is used in a prohibited place or relates to anything in such a place, or which relates to any government department;

Provided it is of the nature concerning—

- (a) Defence or security of the nation;
- (b) Foreign relations;
- (c) Monetary policy, foreign exchange policy, economic plans and policies, commercial or financial information, where premature disclosure may harm the national interest or provide opportunities for unfair financial gains to private interests;
- (d) Information which is (i) likely to be helpful in the commission of offences; (ii) likely to be helpful in facilitating an escape from legal custody or to be prejudicial to prison security; or (iii) likely to impede the prevention or detection of offences or the apprehension or prosecution of offenders;
- (e) Private information given to the government in confidence;
- (f) Trade secrets.

(5) No person shall be prosecuted under this section without the sanction of a committee consisting of the Attorney-General of India, a person nominated by the Chairman of the Press Council of India and a person nominated by the Chairman of the Bar Council of India, unless the charge against the person is that he communicated or used the "official secret" for the benefit of a foreign power or in a manner prejudicial to the safety of the State.

(6) 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.

## Appendix II

### OFFICIAL SECRETS ACT, 1923

#### *Section 5: Wrongful communications, etc., of information.*

5. (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 place, 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 this 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 a contract 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 or 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 his 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.

(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.

## Appendix III

### SECURITY OF OFFICIAL INFORMATION AND DOCUMENT

*(Reproduced from the Central Secretariat Manual of Office Procedure (Seventh Edition), 1977, pp. 58-59.*

87. *Unauthorised communication of official information.*—Unless authorised by general or specific orders, no official will communicate to another official or a non-official, any information or document which has come into his possession in the course of his official duties.

88. *Treatment of classified papers.*—The provisions contained in this manual apply primarily to unclassified papers. In handling classified papers, the official concerned will have to exercise special care and follow the provisions of “Departmental Security Instructions” issued by the Ministry of Home Affairs. Since, according to these instructions, classified papers (other than confidential) are expected to be handled either by officers themselves or in sections designated as secret or top secret, it is essential that in sections not so designated :

- (1) a separate set of registers and other records (*e. g.* dak register, section diary, file register, file movement register, precedent book, index slips, various arrears and disposal statements) is maintained for such papers by section officer himself; and
- (2) the recording of such files and their review is also undertaken by him personally.

89. *Confidential character of notes.*—(1) The notes portion of a file referred by a department to another will be treated as confidential and will not be referred to any authority outside the secretariat and attached offices without the general or specific consent of the department to which the file belongs.

(2) Where the general consent has been obtained under sub-para (1) above, such consent will not be construed to apply to classified files or to files in which the officer to whom the file is supposed to be referred or shown, is personally affected or in which his official conduct is under consideration.

90. *Communication of information to the press.*—(1) Official information to the press and other news media, *i. e.* radio and television, will normally be communicated through the Press Information Bureau.

(2) Only ministers, secretaries and other officers specially authorised in this behalf may give information or be accessible to the representatives of the press. Any other official, if approached by a representative of the press, will direct him to the Press Information Bureau.

(3) Whenever it is proposed to release an official information to the press, or to hold a press conference or press briefing, or to give publicity to an official report, resolution or any other publication, the department concerned will consult the accredited Information Officer in advance.

(4) Detailed procedure in respect of matters mentioned in this para, as laid down by the Ministry of Information and Broadcasting, should be followed.

91. *Use of restrictive classification for printed reports etc.*—(1) The restrictive classification “For official use only” will not be assigned to any printed report, pamphlet or compilation unless it contains information which it would not be desirable in the public interest to disclose. In doubtful cases, the test that may be usefully applied is whether the publication, whose circulation it is proposed to restrict to official use only, is such that the minister would be justified in refusing to lay it before the Parliament.

(2) No official publication will be marked “For official use only” except with the prior approval of the branch officer, who will obtain the orders of the Secretary or Minister in doubtful cases.