CHAPTER VII

CONCLUSIONS

(Chapters I to VII)

1. The Supreme Court interpreted section 124-A of the Penal Code as an offence against the public order and held that the section is constitutional.

2. Section 295-A of the Penal Code makes an insult to religion or religious beliefs of a class of persons an offence if offered with deliberate and malicious intention of outraging the feelings of that class. The Supreme Court held that the criteria prescribed in the section sufficiently imply that it is an offence intended to be enacted as one against the public order and therefore it does not give rise to a question of unconstitutionality.

3. Although the Supreme Court has not expressly stated, it has adopted the principle of integral interpretation. The text of the enactment in question and the constitutional provisions are read together and the former is modified to the extent necessary by the text of the latter. Applying the same principle to the text of section 153-A of the Penal Code and of sections 2 and 3(2) of the Criminal Law Amendment Act, 1961, the provisions may be sustained as constitutional.

4. It appears that the omission of the words "of the Indian Citizens" in the newly enacted section 153-A of the Penal Code qualifying the racial, language and religious groups and castes and communities amongst whom promotion or attempt at hatred or enmity is made criminal, is only casual and not deliberate. To place the matter beyond doubt, it is desirable to amend the section by inserting the qualifying words "Indian citizens" after the word "communities" in both clauses of the section.

5. Omission of the explanation to section 153-A does not make any material difference because enmity or hatred are being construed as serious types of provocations and truthfulness and good faith are defences in generality of cases under the Penal Code. When the section is construed in the light of public order as a reasonable restriction on the freedom of speech, the omission of the explanation does not seem to make material difference.

6. Section 2 of the Criminal Law Amendment Act, 1961, makes publication by any means whatsoever, of the matter questioning the territorial integrity or frontiers of India prejudicial to the safety or security of India, a crime. Conscious possession with a view to circulating sometime in the future is not a crime. It may also be made a crime.

7. On a notification being made under section 3(1) of the Criminal Law Amendment Act, 1961, publication of the reports of the type mentioned in section 3(2) become punishable. But the Government is not vested with the power to revoke, modify or alter the notification. This is only a casual omission. Therefore, section 3(1) of the Act may be amended so as to rectify the defect.

8. The method of integral interpretation adopted by the Supreme Court relieves the courts of the task of declaring laws unconstitutional, wherever possible. But from the point of criminal law, a difficulty will arise. The law to be applied in each case is to be ascertained from different sources. Magistrates of the lower rank will certainly find it difficult to ascertain and enforce the law in individual cases. This is an undesirable result. A time, therefore, may come when the relevant offences in the Penal Code have to be redefined and a new classification may have to be made in the light of the constitutional provisions. This is only a possibility.