# CONFLICTING INTERESTS: A NEED TO REVISE VALUES

The recent spate of crimes in our Republic makes one reflect on the effectiveness of our criminal laws and the efficacy of the machinery for the enforcement of these. There is no doubt that the Republic's police force is highly effective but perhaps inadequately staffed to meet the rise in the crime rate (which crime rate could in part be attributed to the rising cost in living, an effect of a world-wide inflationary trend, coupled with the reluctance of some elements of our society to channel their energies into an honest hard day's work).

While harsher sentences may or may not be a deterrent to criminals or would be criminals, it is suggested that perhaps another remedy lies in amendment of some provisions of the Criminal Procedure Code [1] and the Evidence Act,[2] to allow firstly, greater powers of investigation and detention to the police, and secondly to pose greater difficulty for an accused person from being acquitted on a technicality.

In England recently the Criminal Law Revision Committee said "that strict and formal rules of evidence, however illogically they may have worked in some cases, may have been necessary in order to give accused persons at least some protection, however inadequate against injustice. But with changed conditions they no longer serve as a useful purpose but on the contrary have become a hindrance rather than a help to justice. There has also been a good deal of feeling in the committee and elsewhere that the law of evidence should now be less tender to criminals generally".[3]

The Criminal Law Revision Committee's Report on the rules of evidence follows upon a good deal of public pressure for changes in in the law on the grounds that it is too easy at the moment for criminals to escape conviction and that as penalties become less severe so it is less necessary to balance the odds so much in the defendant's favour. The committee themselves believe that the criminals have had it too easy and that in the interests of a true verdict more evidence should be admitted in court. It is right to extend admissibility as far as is possible, the Report says, without the risk of injustice to the accused. The qualification needs to be stressed. Changes can be justified only if they can be made without removing any proper safeguards for the innocent.

1. Singapore Statutes, Rev. Ed. 1970, Cap. 113 (hereinafter referred to as the Code).
2. Singapore Statutes, Rev. Ed. 1970, Cap. 5 (hereinafter referred to as the Act).
3. Eleventh Report on Evidence (General) 1972, Cmnd. 4991 p. 12, para. 11.

In this article it is proposed to consider specifically two provisions of the Committee's proposals for reform in the law of evidence. The first relates to a suspect's or an accused's right of silence and the second relates to the law on confessions.

## I. THE RIGHT TO SILENCE

For the sake of clarity and completeness it might be useful to have in mind:

*(a)* the historical reason for the growth of the rule relating to the privilege against self-incrimination, and the rationales for the rule,

*(b)* the state of the present law in so far as it relates to the right of the suspect not to answer questions at a pre-trial stage, and the right of the accused not to testify at his trial,

*(c)* the proposals of the Criminal Law Revision Committee, and

*(d)* the state of the law in Singapore and to consider, whether the committee's proposals might not equally be introduced into the Republic.

### *(a) Historical Perspective and the Rationales*

The privilege of the right to silence (by which is meant the right not to answer police questions during the pre-trial stage, and the right not to testify at the trial) is a derivative of the privilege against self-incrimination. Historically this privilege is traceable to a revulsion against the practice of the Star Chamber, which privilege in turn led to the backlash barring of the accused giving evidence on his own behalf. Cross[4] writes that the privilege had a profound effect on the drafting of the Criminal Evidence Act, 1898, as can be seen from the preservation in the Act of the accused's right to make unsworn statements from the dock and the provision forbidding the prosecution from commenting on the accused's failure to testify. Perhaps the best summary of the rationale for the privilege can be found in the words of Goldberg J. in *Murphy* v. *Waterfront Commissioners*, where he said:

> ...the privilege is based on our unwillingness to subject those suspected of crime to the cruel trilemma of self accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self incrimination statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates a fair state-individual balance by requiring the government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load; our respect for the inviolability of the human personality and of the right of each individual to a private enclave where he may lead a private life; our distrust of self-deprecatory statements and our realisation that the privilege while sometimes a shelter to the guilty is often a protection to the innocent.[5]

4. "The Right to Silence and the Presumption of Innocence — Sacred Cows or Safeguards of Liberty?" (1970) 11 J.S.P.T.L. 66.

5. 378 U.S. 52, at 55.

Along the same lines, Wigmore[6] wrote, that the privilege against self incrimination, protects the innocent defendant from convicting himself by a bad performance on the witness stand; avoids burdening the court with false testimony; it encourages third party witnesses to appear and testify for removing the fear that they might be compelled to incriminate themselves; the rule is a recognition of the practical limits of governmental power — namely since truthful self incriminating answers cannot be compelled, why try; it prevents procedures of the kinds used by the infamous Star Chamber; the rule preserves respect for the legal process by avoiding situations which are likely to degenerate into undignified, uncivilised and regrettable scenes; it spurs the prosecutor to do a complete and competent independent investigation; it prevents inhumane treatment of the individual and it contributes towards a fair state-individual balance by requiring the government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load.

*(b) The Law in England*

It is the law at present that no suspect commits an offence by refusing to answer questions put to him by the police. The Judges' Rules, in particular Rule II and Rule III (a) are a recognition of this right of the suspect/individual. Rule II requires that the police should administer a caution to the accused when he has evidence that would afford reasonable grounds for suspecting that the person has committed an offence; Rule III (a) requires another caution to be administered when a suspect is charged with or informed that he may be prosecuted for an offence.

Upon being cautioned, no inference of guilt can be inferred from his silence. In *R.* v. *Naylor*,[7] the Court of Criminal Appeal, in quashing the conviction of the accused said: "We do not think that the words of the caution can properly be construed in the sense that the prisoner remains silent after being cautioned at his peril and may find his silence made a strong point against him at his trial. In our view the words mean what they say, and a prisoner is entitled to reply to the caution that he does not wish to say anything".[8] Again in *R.* v. *Hoare*,[9] the court quashed a conviction for robbery on a ground of misdirection because the jury were "never expressly told that a man is entitled to stand on his rights and say nothing, that he was entitled to keep back for reasons which he might think good the nature and details of his defence".[10] Further, on the authority of *R.* v. *Hall*,[11] it is possible to say that if a man be under no obligation to speak, remaining silent when accused ought not to be construed in the ordinary circumstances

6. *Wigmore on Evidence*, vol. VIII (McNaughten Revision), pp. 250-318.
7. [1933] 1 K.B. 685.
8. *Ibid.,* at 687.
9. [1966] 1 W.L.R. 762.
10. *Ibid.,* at 766.
11. [1971] 55 Cr. App. Rep. 108.

as an acknowledgement of the truth of the accusation. It ought not to be so construed because of the possibility that it was an exercise of his legal right not to speak. At the trial stage the state of the existing law is to be found in section 1(a) of the Criminal Evidence Act, 1898, which provides:

> a person so charged shall not be called as a witness in pursuance of this Act except upon his own application.

Further, section 1(b) provides that the prosecution is not to comment on the accused's failure to give evidence. The court, however, has power to comment. In *Waugh* v. *The King*,[12] Lord Oaksey said:

> It is true that it is a matter for the judge's discretion whether he shall comment on the fact that a prisoner has not given evidence; but the very fact that the prosecution are not permitted to comment on that fact shows how careful a judge should be in making such comment.

It was laid down by Lord Parker in *R.* v. *Bathurst*[13] that the nature of the comment should be "the accused is not bound to give evidence, that he can sit back and see if the prosecution have proved their case, and that while the jury have been deprived of the opportunity of hearing his story tested in cross-examination, the one thing that they must not do is to assume that he is guilty because he has not gone into the witness box". The convictions of the accused persons in *Waugh* v. *The King*,[14] *R.* v. *Pratt*,[15] and *R.* v. *Mutch*[16] were quashed because the effect of the judges' comments in those cases was plainly to suggest to the jury that they could draw inferences of guilt because the accused had elected not to give evidence.

### *(c) The Proposals of the Criminal Law Revision Committee*[17]

The proposed changes are to be found in clauses 1(1) and 5(3) of the committee's draft bill which is appended to the report.

Clause 1(1) provides:

> Where in any proceedings, against a person for an offence evidence is given that the accused,
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> (a) at any time before he is charged with an offence on being questioned by a police officer trying to discover whether or by whom an offence has been committed, failed to mention any fact relied on in his defence in those proceedings or
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> (b) on being charged with the offence or officially informed that he might be prosecuted for it failed to mention any such fact,
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> being a fact which in the circumstances existing at the time he would reasonably have been expected to mention when questioned, charged or informed, the court in determining whether to commit the accused or whether there is a case to answer and in determining guilt may draw such inferences from

12. [1950] A.C. 203, at 211-212.
13. [1968] 2 W.L.R. 1092.
14. [1950] A.C. 203.
15. [1971] Cr. L.R. 234.
16. [1973] 1 All E.R. 178.
17. Eleventh Report in Evidence (General) 1972, Cmnd. 4991.

the failure as appear proper; and the failure may on the basis of such inferences be treated as or capable of amounting to corroboration of any evidence given against the accused in relation to which the failure is material.'

Clause 5(3) provides:

If the accused,

(a) after being called to give evidence ... refuses to be sworn or

(b) having been sworn without good cause refuses to answer any question, the court or jury in determining whether the accused is guilty of the offence charged may draw such inferences from his refusal as appear proper; and the refusal may on the basis of such inferences be treated as or as capable of amounting to corroboration of any evidence given against the accused.

It is possible to see that in respect of clauses 1(1) and 5(3) the committee adopted the views expressed (albeit to some extent more restrictive) by Cross [18] in his address to the Society of Public Teachers of Law. It is therefore possible to surmise the underlying views of the committee thus:

(a) ideally, all evidence which is relevant should be admissible;

(b) silence on the part of the suspect/accused is a piece of circumstantial evidence;

(c) therefore, the fact of such silence is admissible in evidence as to the issue rather than merely as to credit;

(d) similarly, omission to mention a fact relied on subsequently in his defence at the trial "which fact in the circumstances existing then he could reasonably have been expected to mention when questioned, charged or informed" is also a relevant piece of circumstantial evidence and relevant as to issue;

(e) admissibility of this piece of evidence will not unfairly prejudice the accused for firstly, he will be informed of the consequences of remaining silent and therefore the risks; secondly, he can at his trial explain away his silence or omission; thirdly, the burden remains on the prosecution to prove beyond reasonable doubt that he is guilty of the offence charged.

The committee's proposals have not, however, been whole-heartedly endorsed. Sir Brian KcKenna[19] feels that the proposed changes put pressure on the suspect to disclose his defence before trial and that clause 1(1) gives "some kind of statutory sanction to the practice of police questioning".

Lord Devlin [20] attacks the proposal on the ground "that it is one thing to withdraw concessions and another to deprive an accused of his rights". He feels that the proposals deprive the accused not of concessions but of rights. His arguments would be more readily acceptable in the United States of America. The Fifth Amendment of the

18. See fn. 4, above.

19. "Criminal Law Revision Committee's Eleventh Report: Some Comments" [1972] Cr. L.R. 605.

20. Sunday Times, 2nd July, 1972.

American Constitution provides, "No person ... shall be compelled in any criminal case to be a witness against himself," and in *Miranda* v. *Arizona,* Chief Justice Earl Warren said:

> The historical development of the privilege is one which groped for the proper scope of governmental power over the citizen. As a noble principle often transcends its origins the privilege has come rightly to be recognised in part as an individual's substantive right, a right to a private enclave where he may lead a private life. That right is the hallmark of our democracy. To respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labours, rather than by the cruel simple expedient of compelling it from his own moutth.[21]

In respect of the argument that if a person were innocent he had nothing to fear, Devlin[22] remarks that this is to take a too simple view of innocence and guilt. His main attack against the proposals is that it is unfair to defend oneself without the assistance of counsel at a trial; *a fortiori,* when one has to present one's case at a police station without the aid of counsel and at any hour of the day. In respect of police methods and investigations, he laments that the prime object of the police is to secure convictions, and their methods are not always scrupulous.

It is my submission that there is much to be said for the views of the committee. The proposals, if adopted, can result in a greater detection of crimes and conviction of accused persons. It is important also, at this stage, to remind ourselves of a statement of the committee cited above. The committee said "that it is right to extend admissibility as far as is possible without the risk of injustice to the accused". Two safeguards should therefore be inserted into the proposals, namely one, that a suspect or an accused person should not be questioned without his being entitled to request the presence of a counsel, or secondly, that all interrogations be tape-recorded.[23]

*(d) The Law in Singapore*

Section 120(3) of the Criminal Procedure Code provides:

> In criminal trials the accused shall be a competent witness in his own behalf and may give evidence in the same manner and with the like effect and consequences as any other witness,...

Proviso (b) to section 121(5) of the Code provides that a statement made by an accused person may not be admissible against him (in the discretion of the court)[24] if the statement was "not made and recorded

21. 384 U.S. 436 (1965), at p. 460. See also Dworkin, "Taking Rights Seriously" in *Is Law Dead* (ed. by E. Rostow), p. 168.

22. Sunday Times, 2nd July, 1972.

23. This proposal is not without practical difficulties. See G. Williams, "Questioning by the Police: Some Practical Considerations" [1960] Cr. L.R. 325. One solution however would be to make all the Officers Commanding (Crime) of the Republic's police stations directly answerable for any abuse of the proposed procedures.

24. An amendment (Act 12/66) became necessary rendering to the court a discretion in the light of the provision then existing (Act 18/60) and its application in *Public Prosecutor* v. *Ibrahim b. Mastari* (Emergency Criminal Case No. 5 of 1965, unreported).

substantially in compliance with the provisions of the rules set out in Schedule E". Rules 2, 3 and 6 of the Schedule require that a caution be administered to a suspect/accused person when he is to be charged, or in custody or when formally charged. Rule 7 provides, however that "a statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely be reason of no caution having been given, but in such a case he shall be cautioned as soon as possible".

As in England, the prosecution cannot therefore compel the accused to testify, but unlike the position in England, it would appear that neither the prosecution nor the court may comment on the accused not wanting to testify. Another similarity is that as in England non-compliance with the provisions of Schedule E of the Code will not render inadmissible a statement made by the accused. The differences between the laws are not so wide, more so in the light of recent amendments to the Code.[25] It is therefore submitted that the committee's proposals contained in clauses 1(1) and 5(3) of the draft Bill be adopted in Singapore albeit with some modifications in favour of the accused, namely that he be allowed a right to counsel whenever he is being questioned or secondly, that the interrogations be tape-recorded.

## II. CONFESSION

### *(a) The Law in England*

In *Ibrahim* v. *R.,* Lord Summer succinctly summed up the common law when he said:

> It has long been established as a positive rule of English law that no statement by an accused person is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in that it has not been obtained by him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.[26]

This common law rule has now been extended to read:

> That no statement by an accused person is admissible in evidence against him unless it is shown by the prosecution that it has not been obtained from him by fear of prejudice or hope of advantage exercised or held out by a person in authority or by oppression.[27]

At common law, before a confession may be admissible, the prosecution would have to establish —

(a) that it was voluntarily made,

(b) that it was not made as a result or in consequence of any inducement, threat or promise exercised or held out by a person in authority,

(c) that it was not made in consequence of oppressive treatment of the accused.

**That the confession be voluntary**

The rationales offered for this rule are, firstly that there is the possibility that if the confession was involuntarily made, it would be

25. See sections 371A and 371B, Act 12 of 1972.

26. [1914] A.C. 599, at 609.

27. See Principle (e) in the introduction to the Judges' Rules 1964. Also *R.* v. *Prager* (1971) 56 Cr. App. Rep. 151, at 160-161.

untrue (the 'reliability' principle) and secondly, that improper police methods must be discouraged (the 'disciplinary' principle). In *Ibrahim* v. *R.,*[28] the accused, a private in the Afghan army stationed in Canton killed his officer. A few minutes after the incident when he was questioned by his commanding officer as to why he did it, he said, "He has been abusing me. Without doubt I killed him".[29] The court held the statement to have been voluntarily made and admissible.

**The inducement**

It is the rule at common law that anything suggesting that the outcome of a confession might be some beneficial result in connection with the prosecution will render it inadmissible. Further the inducement threat or promise need not relate to the prosecution. In *Commissioner of Customs and Excise* v. *Harz and Power,*[30] customs officers threatened the accused with prosecution if he did not answer their questions. Thinking thereby that he had to answer the questions put to him, the accused subsequently made incriminating admissions. In the House of Lords, it was argued, *inter alia,* that if the threat or promise related to the charge or contemplated charge then it was not admissible, but if it related to something else the statement was admissible. Lord Reid said:

> This distinction does appear in some, but by no means all modern text books and it has a very curious history ... One suggested justification of this rule appears to be that the tendency to exclude confessions which followed on some vague threat or inducement had been carried much too far, and that the formula set out in many text books afford a useful and time-honoured way of limiting this tendency. The common law however should proceed by the rational development of principles ... That the alleged rule or formula is illogical and unreasonable I have no doubt. Suppose that a daughter is accused of shoplifting and later her mother is detected in a similar offence, perhaps at a different branch, where the mother is brought before the manager of the shop. He might induce her to confess by telling her that she must tell him the truth and it will be worse for her if she does not; or the inducement might be that, if she will tell the truth he will drop proceedings against the daughter. Obviously the latter would in most cases be far the more powerful inducement and far the more likely to lead to an untrue confession; but if this rule were right, the former inducement would make the confession inadmissible, and the latter would not. The law of England cannot be so ridiculous as that.[31]

It was also held in this case that in deciding on the voluntariness of a confession, the court is at pains to hold that even the most gentle threat or slight inducement will taint a confession.[32] In *R.* v. *Richards,*[33] a police officer said to the accused during questioning that "it would be better if you made a statement and tell me exactly what happened". The accused then made a confession. The court held that whatever may be the nature of the inducement so made and however trivial it may be to an average man, the inducement in the present case rendered the confession inadmissible.

28. [1914] A.C. 599.
29. *Ibid.,* at p. 608.
30. [1967] 1 All E.R. 177.
31. *Ibid.,* at p. 182.
32. See *R.* v. *Smith* [1959] 2 All E.R. 193, at 195. *Deokinanan* v. *The Queen* [1969] 1 A.C. 20
33. [1967] 1 All E.R. 829.

**Person in authority**

A person in authority is reckoned to be "anyone whom the prisoner might reasonably suppose to be capable of influencing the course of the prosecution." In *R.* v. *Wilson,*[34] the owner of a house that had been burgled, approached the appellant and offered a reward for information. According to the owner, the appellant then told him that he was responsible and would return the valuables burgled for £500. At the trial of the appellants the trial judge overruled objections to the admissibility of the oral statements made by the appellant to the owner of the house. On appeal, the court held that the owner of the property stolen, being a loser and a person most interested in the matter, clearly came within the principle as a person who could properly be said to be a person in authority.

In *R.* v. *Cleary,*[35] the accused was charged with murder. In response to a statement from his father the accused made a confession. The father had said, "Put your cards on the table and tell them the lot. If you did not hit him they can't hang you". The court held that although the inducement was made by a person not in authority, if in fact it was made in the presence of persons in authority, then the position is the same as if those persons in authority had made it themselves unless they had taken steps to dissent from it.

*(b) The Proposals of the Criminal Law Revision Committee* [36]

The committee's proposals are contained in clause 2 of their draft Bill. Clause 2 provides:

> 2(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by the accused, it is represented to the court that the confession was or may have been made in consequence of oppressive treatment of the accused or in consequence of any threat or inducement, the court shall not allow the confession to be given in evidence by the prosecution ... except in so far as the prosecution proves to the court beyond reasonable doubt that the confession ...
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> (a) was not obtained by oppressive treatment of the accused; and
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> (b) was not made in consequence of any threat or inducement of a sort likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the accused in consequence thereof.
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> (6) In this section "confession" includes any statement wholly or partly adverse to the accused, whether made to a person in authority or not and whether made in words or otherwise.

The proposals if adopted would remove the requirement that the inducement should emanate from a person in authority, and secondly to relax the test relating to inducements. The test proposed is not whether there was an inducement, but whether the statement was made in consequence of a threat or inducement of a sort likely in the circumstances existing at the time to render unreliable any confession

34. [1967] 2 Q.B. 402.

35. [1964] 48 Cr. App. Rep. 116.

36. Eleventh Report on Evidence (General) 1972, Cmnd. 4991.

which might be made by the accused in consequence thereof. The criterion for determining whether the inducement proffered would render a confession inadmissible is an objective one.[37] This is a deliberate attempt to get around decisions in *R.* v. *Northan,*[38] *R.* v. *Cleary*[39] and *R.* v. *Smith,*[40] and to prevent accused persons from being acquitted on a technicality.

*(c) The Law in Singapore*

Section 17(2) defines 'confession' and sections 24-30 sets out the law relating to the admissibility of confessions. In addition section 121(5) of the Code and Schedule E to the Code are also relevant to this topic. Before the amendment in 1973 to section 121(5) of the Code, it was possible to argue that sections 25 and 26 of the Act had been rendered redundant, and that in consequence some rearranging of the sections in the Act became necessary. Section 26 however avoids being redundant if it is to be construed as referring to the situation where an accused whilst in police custody makes a confession to a person other than a police officer. But it becomes difficult to see the rationale of the section if it is construed in this fashion. In fact there is case law negativing such a construction. In *Deokinanan* v. *Queen,*[41] the appellant and two others went up river in a boat to purchase timber. Only the appellant returned from the trip with the story of an explosion on board the boat, in consequence of which his companions were feared to have drowned. Subsequently, the boat was found intact, and the bodies of his companions with severe wounds were also found. The appellant was charged with murder. A close friend of the appellant was placed in the lock-up by the police in the hope that he would get information from the appellant as to whether he was responsible for the deaths of his companions and additionally to discover the whereabouts of the money which was intended to be used for the purchase of timber. Whilst they were sharing the same cell, the appellant told his friend that he had killed the two other men and had hidden the money in a particular place. At the trial, the appellant objected that his confession was induced by a promise to help him held out by a witness with the knowledge and consent of the person in authority and therefore was not made voluntarily. The Privy Council in rejecting this argument held, that the mere fact that a person might be a witness for the prosecution did not make him a person in authority.

Act 21 of 1973 amends section 121(5) of the Code, by substituting "sergeant" for "inspector" and leaves unamended the provision in section 25 of the Act. In a previous article,[42] the writer noted that "under section 121(5) a confession made to a police officer of or above the

37. Id. para. 65 at pp. 43-44.

38. [1968] 52 Cr. App. Rep. 97.

39. [1964] 48 Cr. App. Rep. 116.

40. [1959] 2 Q.B. 35.

41. [1969] 1 A.C. 20.

42. "Anomalies in the Law on Confessions" [1974] 2 M.L.J. xliv, at xlv.

rank of sergeant is admissible whereas under section 25, a confession made to a police officer below the rank of inspector is inadmissible", Reference to "inspector" in section 25 of the Act will have to be substituted to read "sergeant" to avoid an inconsistency in the law. This may not be necessary. In the light of section 121 (5) it is suggested that section 25 be repealed *in toto*. Another provision that ought to be repealed in toto would be section 29 of the Act. As presently worded it tends to bring the law and its enforcement into disrepute.

The main sections relating to the admissibility of confessions are section 24 and section 121(5) of the Code. Section 24 reads:

> A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Under the section, before a confession may be admissible, the prosecution would have to establish:

(a) that it was voluntarily made,

(b) that it was not made as a result of or in consequence of any inducement, threat or promise, having reference to the charge, exercised or held out by a person in authority,

(c) that it was not made as a result of an inducement, threat or promise sufficient in the court's opinion to give the accused grounds which would appear to him reasonable for supposing that by making it he would be gaining an advantage.

It is therefore apparent that section 24 is worded almost similar to the rule at common law. But there is one major difference. Under the section, the inducement, threat or promise must have "reference to the charge". This requirement has been criticised as being "illogical", "unreasonable" and "ridiculous" by Lord Reid as long ago as 1967,[43] and it is to be lamented that until today no attempt has been made to remove this "ridiculous" requirement from the section. Once this requirement is removed, then the section reflects the common law, and the criticisms against the common law apply; and to safeguard against an accused person from being acquitted on a technical ground, it is submitted that the Criminal Law Revision Committee's proposals as contained in clause 2 of the draft Bill be adopted.

If the proposals referred to in this article are adopted, it becomes necessary to amend section 121 (5) of the Code and Schedule E to the Code. Proviso (a) to section 121 (5) would have to be amended in the same way as section 24. The phrase "having reference to the charge" should be deleted and the test should no longer be a subjective test but an objective test namely, firstly to inquire whether or not there was an inducement threat or promise and secondly to consider whether the

43. [1967] 1 All E.E. 177, at 182.

confession was made in consequence of that inducement, threat or promise. Proviso (b) to section 121 (5) should also be deleted. If the proposals in respect of a suspect's or an accused's right to silence are adopted, then there is a need instead to caution the individual that his silence could be used against him instead of the present law that he is entitled to remain silent.

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