# IPC Section 128: Public servant voluntarily allowing prisoner of State or war to escape.

## IPC Section 128: Public Servant Voluntarily Allowing Prisoner of State or War to Escape  
  
Section 128 of the Indian Penal Code, 1860, addresses the grave offense of a public servant deliberately facilitating the escape of a prisoner of state or war. This section underscores the importance of securely holding individuals deemed threats to national security and maintaining the integrity of the state's custodial responsibilities. By criminalizing such acts, it seeks to deter public servants from compromising national security and ensure the effective administration of justice.  
  
\*\*The Text of Section 128:\*\*  
  
> "Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."  
  
\*\*Dissecting the Elements of the Offense:\*\*  
  
1. \*\*"Whoever, being a public servant…"\*\*: This element limits the application of this section to individuals holding a public office. The definition of "public servant" is provided in Section 21 of the IPC and includes government officials, judges, police officers, members of the armed forces, and anyone entrusted with public duties. This stipulation emphasizes the special responsibility entrusted to public servants concerning the security and custody of state prisoners and prisoners of war.  
  
2. \*\*“…having the custody of any State prisoner or prisoner of war…”\*\*: This element specifies the nature of the prisoner whose escape is facilitated. "State prisoner" refers to an individual detained for reasons related to national security or public order, often without a formal charge or trial. The exact definition of "State prisoner" may vary depending on specific laws and circumstances. "Prisoner of war" refers to individuals captured during armed conflict, typically enemy combatants or civilians associated with the enemy forces. The public servant must have been officially assigned the responsibility of guarding and confining the prisoner. Mere proximity or incidental contact with the prisoner doesn't establish custody.  
  
3. \*\*“…voluntarily allows such prisoner to escape…”\*\*: This is the \*mens rea\* or the mental element of the offense. The term “voluntarily” signifies an intentional and conscious act on the part of the public servant to facilitate the prisoner's escape. It implies a deliberate disregard for their duty and a conscious decision to aid the prisoner in regaining freedom. Negligence, recklessness, or inadvertent acts leading to an escape would not fall under this section. The prosecution must prove that the public servant actively assisted or facilitated the escape, whether directly or indirectly, through actions such as unlocking the cell, leaving a gate open, providing false information, or creating a diversion. Mere inaction or failure to prevent an escape, without the element of deliberate facilitation, may constitute a different offense, such as dereliction of duty, but not under Section 128.  
  
4. \*\*“…from any place in which such prisoner is confined…”\*\*: This element emphasizes that the escape must occur from a designated place of confinement, whether a prison, detention center, military camp, or any other location where the prisoner is officially held. An escape facilitated during transit or outside the designated confinement area might attract different legal provisions.  
  
\*\*Punishment:\*\*  
  
The offense under Section 128 carries a severe penalty: imprisonment for life or imprisonment for up to ten years and a fine. The severity of the punishment reflects the gravity of the offense and the potential consequences of allowing a state prisoner or prisoner of war to escape. This could compromise national security, endanger public safety, disrupt international relations, and undermine the administration of justice.  
  
\*\*Illustrative Examples:\*\*  
  
\* A prison warden, sympathetic to a state prisoner's cause, deliberately leaves the prisoner's cell unlocked, allowing them to escape. This constitutes an offense under Section 128.  
  
\* A military officer, tasked with guarding prisoners of war, intentionally provides them with false information about patrol schedules, facilitating their escape. This falls under Section 128.  
  
\* A police officer, responsible for escorting a state prisoner, stages a fake accident, creating a distraction that allows the prisoner to flee. This would be punishable under Section 128.  
  
\*\*Distinction from Other Offenses:\*\*  
  
It is crucial to distinguish Section 128 from other related offenses, such as aiding and abetting escape (Section 222 IPC) and harboring an offender (Section 212 IPC). While these sections also deal with assisting offenders, Section 128 specifically applies to public servants facilitating the escape of \*state prisoners and prisoners of war\*. The specific nature of these prisoners and the breach of trust by a public servant make this offense distinct and subject to harsher penalties.  
  
\*\*Conclusion:\*\*  
  
Section 128 of the IPC serves as a crucial safeguard against breaches of national security and the integrity of the state's custodial system. By imposing severe penalties on public servants who voluntarily allow state prisoners or prisoners of war to escape, the law reinforces the importance of their duty and acts as a deterrent against any compromise of national interests. The strict interpretation of this section emphasizes that such acts of betrayal are viewed with the utmost seriousness and will be met with the full force of the law.