

- (1) by words (spoken or written), or by visible representation,
- (2) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards,
- (3) the Government established by law in India (**section 124A**).

It should be noted that—

- (1) 'Disaffection' includes disloyalty and feeling of enmity (*ibid.*, **Explanation 1**).
- (2) Comments expressing disapprobation of the measures of Government to obtain their alteration, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ibid.*, **Explanation 2**).
- (3) Comments expressing disapprobation of the administrative actions of Government, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ibid.*, **Explanation 3**).

Under the [Constitution](#), criticism of the Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press unless it is such as to undermine the security of or tend to overthrow the Government. This section is not *ultra vires* the [Constitution](#).

Anyone who uses in any way words or printed matter for the purpose of exciting disaffection, be he the writer of those words or not, is liable. Publication of some kind is necessary. The successful exciting of feelings of disaffection is placed on the same footing as the unsuccessful attempt to excite them.

The law does not excuse the publication in newspapers of seditious writing copied from other papers. The editor of a paper is liable for seditious letters appearing in the paper.

Leading cases:—*R v Bal Gangadhar Tilak. R v Jogendra Chandra Bose (or Bangobasi case). Romesh Thappar. Kedar Nath.*

IV. Waging war against a Power at peace with the Government of India.

1. Waging, attempting to wage, or abetting the waging of such war against the Government of any Asiatic Power at peace with the Government of India (**section 125**).
2. Committing, or preparing to commit, depredation on the territories of any Power at peace with the Government of India (**section 126**).
3. Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in the two last preceding sections (**section 127**).

V. Permitting or aiding the escape of a State prisoner.

1. Public servant voluntarily allowing a prisoner of State or war, in his custody, to escape (**section 128**).
2. Public servant negligently suffering a prisoner of State or war in his custody, to escape (**section 129**).
3. Aiding the escape, or rescuing, or attempting to rescue or harbouring, or concealing or resisting the recapture, of such prisoner (**section 130**).

Army, Navy & Air Force offences. Chapter VII.

No person, subject to Articles of War, is subject to punishment under this Code for any offence relating to the Army, Navy and Air Force defined in this Chapter (**section 139**).

This Chapter is framed in order that persons, not military, who abet a breach of military discipline, should not be liable under the military penal law but under the Code.

The following offences relating to the Army, Navy and Air Force find place in the Code:—

1. Abetting mutiny, or attempting to seduce any officer, soldier, sailor, or airman, from his allegiance or duty (**section 131**).
2. Abetment of mutiny, if mutiny is committed in consequence (**section 132**).
3. Abetment of an assault by an officer, soldier, sailor or airman, on his superior officer, when in the execution of his office (**section 133**).
4. Abetment of such an assault if the assault is committed (**section 134**).
5. Abetment of the desertion of an officer, soldier, sailor, or airman (**section 135**).
6. Knowingly harbouring deserter (**section 136**).
7. Concealment of deserter from Army, Navy or Air Force of the Government of India concealed on board a merchant vessel through negligence of master or person in charge of the vessel though he is ignorant of such concealment (**section 137**).
8. Abetment of act of insubordination by an officer, soldier, sailor, or airman, the act abetted being actually committed in consequence of the abetment (**section 138**).
9. Wearing the garb, or carrying any token resembling any garb or token used by a soldier, sailor or airman with the intention that it may be believed that the wearer is a soldier, sailor or airman (**section 140**). The gist of the offence is the intention of the accused. Merely wearing a soldier's dress without the specific intention is no offence, e.g., actors put on soldier's garb while acting on the stage.

There are six sections in the Code dealing with false personation—

1. Personation of a soldier (**section 140**).
2. Personation of a public servant (**section 170**).
3. Wearing the garb or carrying the token used by a public servant (**section 171**).
4. Personation of a voter at an election (**section 171D**).
5. Personation for the purpose of an act or proceeding in a suit or prosecution (**section 205**).
6. Personation of a juror or assessor (**section 229**).

Public tranquillity. Chapter VIII.

Offences against public tranquillity hold a middle place between the State offences on the one hand and crimes against person and property on the other. They are four:

- I. Unlawful Assembly. different
- II. Rioting.
- III. Promoting enmity between classes.
- IV. Affray.

Unlawful assembly.

I. An 'unlawful assembly' is an assembly of five or more persons, if their common object is

1. To overawe by criminal force—
 - (a) the Central or any State Government, or
 - (b) the Parliament, or
 - (c) the Legislature of any State, or
 - (d) any public servant in the exercise of his lawful power.
2. To resist the execution of law or legal process.
3. To commit mischief, criminal trespass, or other offences.
4. By criminal force—
 - (a) to take or obtain possession of any property, or
 - (b) to deprive any person of any incorporeal right, or
 - (c) to enforce any right or supposed right.
5. By criminal force to compel any person—
 - (a) to do what he is not legally bound to do, or
 - (b) to omit what he is legally entitled to do (**section 141**).

[Six months, or fine, or both. If armed with a deadly weapon, two years, or fine, or both (**sections 143, 144**).]

The assembly must consist of five or more persons. It is immaterial whether the common object is in their minds when they come together, or whether it occurs to them afterwards. There must be some present and immediate purpose of carrying into effect the common object. A meeting for deliberation only is not an unlawful assembly. Persons maintaining their own right or supposed right against the aggression of other people do not commit this offence. Common object means same or similar object; it is not necessary to have a preconcert or prior meeting of minds.

An assembly not unlawful when it assembled may subsequently become an unlawful one (**section 143, Explanation**). Illegal acts of one or two members do not change the lawful character of an assembly. Similarly, a lawful assembly does not become unlawful merely because the members know that their assembly would be opposed and a breach of the peace would be committed.

Whoever, being aware of facts which render an assembly an unlawful one, intentionally joins it, or continues in it, is a member of that assembly (**section 142**). Persons may have associated themselves with a mob from perfectly innocent motives, but if the

mob becomes an unlawful assembly, and they take part in its proceedings, they will be liable. Every such member is deemed guilty of an offence committed in prosecution of the common object. There must be nexus between the common object and the offence committed.

Leading case:—Allauddin Mia.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the said assembly, is guilty of that offence (**section 149**). This section prevents the accused from putting forth the defence that he did not with his own hand commit the offence committed in prosecution of the common object. Common object does not mean common intention. All will be guilty of any offence done in prosecution of the common object, though there was no common intention to commit the offence as a means to the end. But members of an unlawful assembly may have a community of object only up to a certain point and beyond that they may differ in their objects.

Leading cases:—R v Sabedali; Dalip Singh; Khudiram; Mushakhan; Beatty v Gillbanks.

The common object may develop at the spot itself.

Leading case:—Vithal Bhimshah Kali.

Other cognate offences—

1. Joining an unlawful assembly armed with a deadly weapon (**section 144**).
2. Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (**section 145**).
3. Hiring of persons to join an unlawful assembly (**section 150**).
4. Harboursing persons hired for an unlawful assembly (**section 157**).
5. Being hired to take part in an unlawful assembly (**section 158**).

Persons, who are engaged or hired to do any of the acts which make an assembly unlawful, are likewise punished (*ibid*).

Riot.

II. When (1) force of violence is used, (2) by an unlawful assembly or by any member thereof, (3) in prosecution of the common object, every member is guilty of rioting (section 146). [Two years or fine, or both. If armed with a deadly weapon, Three years, or fine, or both (section 148).]

Riot is an unlawful assembly in a particular state of activity. To constitute the offence of rioting it must be proved:

- (1) that the accused, being five or more in number, formed an unlawful assembly;
 - (2) that they were animated by a common unlawful object;
 - (3) that force or violence was used by the unlawful assembly or any member of it;
- and

- (4) that such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting even if force is used by a member of it. If persons lawfully assembled for any purpose suddenly quarrel they do not commit riot.

Other cognate offences—

1. Rioting with deadly weapons (**section 148**).
2. Hiring or conniving at hiring of persons to join unlawful assembly (**section. 150**).
3. Assaulting or obstructing a public servant in the suppression of a riot (**section. 152**).
4. Malignantly or wantonly giving provocation with intent to cause riot (**section. 153**).

Liability of persons who provide space

Liability of persons who own, occupy, or have an interest in land, is governed by the following provisions:

(1) The owner, or any person having or claiming an interest in land upon which an unlawful assembly is held, or riot is committed, is punishable with Rs. 1,000 fine, if he or his agent (a) knowing of the offence do not give the earliest notice thereof at the nearest police station; or (b) believing the offence likely to be committed do not use any lawful means to prevent it; or (c) in the event of the offence taking place do not use all lawful means to disperse the unlawful assembly or suppress the riot (**section 154**).

(2) Where a riot is committed on behalf of a person who is the owner or occupier of land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which caused the riot, such person is liable to a fine, if he or his agent having reason to believe that the riot is likely to be committed, or the unlawful assembly causing the riot is likely to be held, fails to use all lawful means for preventing the riot, or for suppressing and dispersing the same (**section 155**).

Under similar circumstances, the agent or manager is punishable likewise (**section 156**).

Promoting enmity, etc.

III. (a) Promoting disharmony or enmity or hatred or ill-will between different religious, racial, language, caste or community groups on grounds of religion, race, language, caste or community, or

(b) Committing act which is prejudicial to the maintenance of harmony or disturbing public tranquillity,

by words or signs, or visible representations, or otherwise [Three years, or fine, or both].

(c) Committing offence as stated in paras (a) and (b) in a place of worship or in any assembly engaged in religious worship or ceremonies (**section 153A**). [Five years and fine].

(d) Knowingly carrying arms in any procession or organizing, or holding taking part in ant mass drill mort mass training with (**section 153AA**) [Six months and fine.]

Leading cases:—**Babu Rao Patel. Varsha Publications Pvt Ltd. Nand Kishore Singh. Chandanmal Chopra.**

Affray.

IV. When (1) two or more persons, (2) by fighting in a public place, (3) disturb the public peace, they commit an affray (**section 159**). [One month or Rs. 100, or both (**section 160**).]

The word 'affray' is derived from the French word *affraier*, to terrify. An 'affray' is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. 'Public place' is a place where the public go, no matter whether they have a right to go or not. No quarrelsome or threatening words will amount to an affray.

An 'affray' differs from a 'riot'.

- (1) An affray cannot be committed in a private place, a riot can be.
- (2) An affray is committed by *two or more* persons, a riot by *five or more*.
- (3) A riot is more severely punishable than an affray.

Persons other than the actual rioters are punishable in respect of riot in the following cases:—

- (1) Owner or occupier of land on which an unlawful assembly is held (**section 154**).
- (2) The person for whose benefit a riot is committed (**section 155**).
- (3) The agent of owner or occupier for whose benefit a riot is committed (**section 156**).
- (4) One who knowingly harbours, in any house or premises under his control, any persons being or about to be hired or employed as members of an unlawful assembly (**section 157**).
- (5) One who is engaged, or hired, or offers to be hired, to do or assist in doing any of the acts specified in s. 141, as making an assembly unlawful (**section 158**).

Offences by or relating to public servants. Chapter IX.

Chapter IX deals with offences by or relating to public servants. They are as follows:—

Note: Sections 161 to 165A have been repealed by the [Prevention of Corruption Act](#) (vide, amendment of 1988).

- 1. Whoever being, or expecting to be, a public servant
 - (i) accepts or obtains, or agrees to accept, or attempts to obtain, any *gratification other than legal remuneration*,
 - (ii) as a reward for
 - (a) doing or forbearing to do any official act, or
 - (b) showing or forbearing to show favour or disfavour to any person in

the exercise of his official functions, or

- (c) rendering or attempting to render any service or dis-service to any person, with the Central or any State Government or Parliament or the Legislature of any State, or a public servant,

is guilty of taking illegal gratification (**section 161**). [Three years, or fine or both.] It is essential that the gratification should be obtained "as a motive or reward".

Leading cases:—Mahesh. Maha Singh. R S Nayak v A R Antulay.

2. Taking a gratification in order by corrupt or illegal means to influence a public servant (**section 162**). [Three years, or fine or both.]
3. Taking a gratification for the exercise of personal influence with a public servant (**section 163**). [One year's simple imprisonment, or fine, or both.]
4. Public servant abetting either of the two last mentioned offences (**section 164**).
5. Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant (**section 165**).
6. Abetting a public servant in committing an offence under section 161 or section 165 (**section 165A**).
7. Public servant knowingly disobeying law with intent to cause injury to any person (**section 166**).
9. Public servant disobeying direction under law (**section 166A**).
10. Punishment for non-treatment of victim (**166B**).
8. Public servant framing or translating a document in a way which he knows or believes to be incorrect, intending to cause injury to any person (**section 167**).
9. Public servant unlawfully engaging in trade (**section 168**).
10. Public servant unlawfully buying or bidding for property (**section 169**).
11. Personating a public servant, and doing or attempting to do an act in such assumed character under colour of office (**section 170**).
12. Wearing a garb or carrying a token used by a public servant with fraudulent intent (**section 171**).

Offences relating to elections. Chapter IXA.

Chapter IXA deals with offences relating to elections. It seeks to make punishable, under the ordinary penal law, bribing, undue influence, and personation, and certain other malpractices at elections. It applies to membership of any public body where the law prescribes a method of election. Persons guilty of malpractices are debarred from holding positions of public responsibility for a specified period. The following are deemed to be offences under this chapter:—

1. Giving or accepting gratification with the object of exercising any electoral right (**section 171B**). Gratification includes treating, i.e., giving of food, drink, entertainment or provisions (**section 171E**).

2. Interfering with the free exercise of any electoral right (clause 1), threatening any candidate or voter, or any person in whom he is interested, with injury of any kind; or inducing any candidate or voter to believe that he or any person in whom he is interested will become an object of Divine displeasure or of spiritual censure (clause 2) (**section 171C**).

Something more than a mere act of canvassing would be necessary: *Charan Lal Sahu v Giani Zail Singh*.

3. Personation at an election (**section 171D**).

4. Publishing false statements in relation to the personal character or conduct of any candidate (**section 171G**).

5. Illegal payments in connection with an election (**section 171H**).

6. Failure to keep election accounts (**section 171I**).

Contempt of the authority of public servants. Chapter X.

Chapter X deals with contempt of the lawful authority of public servants. It contains those provisions which are intended to enforce obedience to the lawful authority of public servants.

The following provisions relate to wilful omission or evasion of the performance of a public duty:—

1. Absconding to avoid service of a summons, notice, order or other proceeding from a public servant (**section 172**).

'Absconding' here means simply hiding. The section does not speak of a warrant.

2. Preventing service of summons or other proceeding, or removing the same from any place to which it is lawfully affixed, or preventing the making of any proclamation under due authority of publication thereof (**section 173**).

3. Non-attendance, in obedience to a summons, notice, order, or proclamation proceeding from a public servant in person or by agent, or having attended, departing before it is lawful to depart (**section 174**).

4. Non-appearance in response to a proclamation under **section 82** of Act 2 of 1974 (**section 174A**)

[Failure by person released on bail or bond to appear in court is an offence under **section 229A**.]

The attendance must be in a place in India. The summons should be specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when the attendance is required. A verbal order is quite sufficient. Mere affixing of summons to a house is not enough; personal service must be attempted.

4. Intentional omission to produce or deliver up any document to a public servant by person legally bound to produce such document (**section 175**).

5. Intentional omission to give, or furnish, at the time and in the manner aforesaid by law, any notice or information to a public servant (**section 176**).

6. Section 202, though not appearing in this Chapter, punishes intentional omission to give information of offence by person bound to inform.

7. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (**section 187**).

A person refusing to give true information to a public servant will be liable under the following circumstances:—

1. Refusing on oath or affirmation to state the truth when required by a public servant legally competent to require it (**section 178**).

The penalty of the section would not be attracted where the refusal to take oath would be justifiable: *Kiran Bedi and Inder Singh v Commission of Inquiry*.

2. Refusing by a person *legally bound* to state the truth, to answer any question, demanded of him by a public servant authorized to question (**section 179**).

A person examined under **section 161** of Cr PC is now legally bound to state the truth.

Leading case:—Nandini Sathpathy.

3. Refusing to sign any statement made by the party when required by a public servant legally competent to require that he shall sign it (**section 180**).

A person giving false information to a public servant is liable in the following cases:—

1. Furnishing, as true, information which the person furnishing same, being legally bound to furnish, knows or has reason to believe to be false [six months simple imprisonment, Rs. 1,000 fine]. If the information respects the commission of an offence, or prevention of it, or the apprehension of an offender—two years' imprisonment or fine (**section 177**).

2. False statement on oath to a public servant, or person authorised to administer oath, by a person legally bound to state the truth on the subject in question (**section 181**).

This section refers to cases in which the false statements are made to any public servant in proceedings *other than judicial*. Section 191 refers to judicial proceedings.

3. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit to do anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person (**section 182**).

4. Section 203, though not appearing in this chapter, punishes the giving of false information respecting an offence.

The following provisions deal with obstructing or disobeying a public servant:—

1. Resistance to the taking of property by the lawful authority of a public servant (**section 183**).

2. Obstructing the sale of property offered for sale by the lawful authority of a public servant (**section 184**).

3. Illegal purchase or bid for property, offered for sale by the authority of a public servant, on account of any person, whether himself or any other, who is under a legal incapacity to purchase that property at such sale, or bid for such property not intending to perform the obligation thereby, incurred (**section 185**).

4. Obstructing a public servant in the discharge of his public functions (**section 186**).

5. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (**section 187**).

6. Knowingly disobeying an order 'promulgated by a public servant lawfully empowered to promulgate it' (**section 188**). [If such disobedience tends to cause obstruction or injury to any person lawfully employed, then the punishment is simple imprisonment for one month, or Rs. 200 fine, or both. If it causes riot or affray, or danger to human life, health or safety, then with imprisonment of either description for six months, or Rs. 1,000 fine, or both].

For violation of a curfew order under [section 144 Cr PC, 1973](#), only a prosecution under [section 188, IPC, 1860](#), can be launched in an appropriate case but no "shoot to kill" order is justified merely on that account.

Three things are necessary—

- (1) A *lawful* order promulgated by a public servant,
- (2) *knowledge* of the order and disobedience of it, and
- (3) the adverse result that is likely to follow from such disobedience.

Disobedience *per se* of an order promulgated under [section 144 Cr PC, 1973](#), is not an offence and that it is necessary to prove that the disobedience would have tended to have certain results mentioned in [section 188 IPC, 1860](#).

Leading cases:—Saroj Hazra. Jayantilal.

7. Threat of injury to a public servant, or to any person in whom such public servant is believed to be interested in order to induce such public servant to do or refrain from doing an official act (**section 189**).

8. Threat of injury to induce any person to refrain from applying for protection to a public servant (**section 190**).

Chapter XI treats offences relating to false evidence and public justice.

A person is said to give 'false evidence', if he

False evidence. Chapter XI.

- (1) being legally bound by an oath, or by an express provision of law to state the truth; or
- (2) being bound by law to make a declaration upon any subject;
- (3) makes any statement which is false; and