

COMMENT—

This section is intended to punish those persons who hire themselves out as members of an unlawful assembly or assist any such members. It is divided into to two parts. Higher penalty is awarded where the accused is armed with a deadly weapon.

THE INDIAN PENAL CODE

CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

[s 159] Affray.

When two or more persons¹, by fighting in a public place,² disturb the public peace,³ they are said to "commit an affray".

COMMENT—

The offence of affray in essence consists of the following ingredients—

- (a) fighting by two or more persons,
- (b) the fighting must take place in a public place

- (c) such fighting must also result in disturbance of the public peace. Only if such ingredients are satisfied, an offence of affray can be said to have occasioned for which the persons causing the same would be responsible. In a prosecution under [section 159, IPC, 1860](#), there must be positive evidence of public peace having been disturbed which would mean that, by the action of the accused the even tempo of life of the public was disturbed resulting in affecting the peace and tranquillity of the locality.²¹⁷

²¹⁷. *Gadadhar Guru v State of Orissa*, [1989 Cr LJ 2080](#).

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- (6) Being hired to take part in an unlawful assembly (section 158).

II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

[s 160] Punishment for committing affray.

Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

COMMENT—

Affray.—The word 'affray' is derived from the French word *affraier*, to terrify, and in a legal sense it is taken for a public offence to the terror of the people. The essence of the offence consists in the terror it is likely to cause to the public. The [Criminal Procedure Code, 1973](#) has now made it a cognizable offence.

[s 160.1] Ingredients.—

This section requires three things—

1. Two or more persons must fight.
2. They must fight in a public place.
3. They must disturb the public peace.

The first basic ingredient of [section 159, IPC, 1860](#), is fighting between two or more persons. The next ingredient is that the fighting should have been in public place and the last ingredient is that the fighting should have disturbed public peace.^{218.}

1. 'Two or more persons'.—An affray requires two persons at the least. An unlawful assembly requires five. The offence of Affray is a fight, i.e., a bilateral act, in which two parties participate and it will not amount to an affray when the party who is assaulted submits to the assault without resistance. Again, there must be a definite disturbance of the public peace due to the fight in the public place to make the offence affray.^{219.}

2. 'Fighting in a public place'.—'Public place' is a place where the public go, no matter whether they have a right to go or not. Many shows are exhibited to the public on private property, yet they are frequented by the public—the public go there.^{220.}

The expression 'Fighting' in [section 159, IPC, 1860](#), is used in its ordinary sense and it means a combat or quarrel involving exchange of some force or violence, if not blows. Mere verbal quarrel or vulgarly abusing sans violence cannot be construed as fighting which contemplates bilateral use of violence by two competing parties. Even if there is no exchange of blows, there should be exchange of some violence between the two contending parties before it can be said that the parties are fighting. If one person uses violence against another and the other person merely remains passive, it cannot be said that there is a fighting, so also, if neither person uses violence against the other but both the persons indulge in verbal abuses, it does not amount to fighting.^{221.} Mere causing inconvenience to the public is not sufficient.^{222.}

3. 'Disturb the public peace'.—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. Mere causing public inconvenience is not enough.^{223.} Before a conviction can be entered under [section 160, IPC, 1860](#), there must be a clear finding by the court that the place of occurrence was a public place. If there is no such finding the accused persons must be acquitted.^{224.}

[s 160.2] Affray and riot.—An affray differs from a riot.

- (1) An affray cannot be committed in a private place, a riot can be.
- (2) An affray can be committed by *two* or more persons, a riot, by *five* or more.

[s 160.3] Affray and assault.—An affray differs from an assault.—

- (1) The former must be committed in a public place; the latter may take place anywhere.

- (2) The former is regarded as an offence against the public peace; the latter, against the person of an individual. An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because it *affrighteth* and *maketh* men afraid.

218. *K Ranganna s/o K Narasappa v State*, [2010 Cr LJ 1275](#) (AP).

219. *C Subbarayudu v State of AP*, [1996 Cr LJ 1472](#) (AP).

220. *Wellard v State*, [\(1884\) 14 QBD 63](#), 66, 67.

221. *Mangam Chinna Subbarayudu v State*, SHO, Nandyal Town PS, 1975 All LT, vol 34, p 332.

222. *C Subbarayudu v State of AP*, [1996 Cr LJ 1472](#) (AP).

223. *Podan*, [\(1962\) 1 Cr LJ 339](#). See also *C Subbarayudu v State of AP*, [1996 Cr LJ 1472](#) (AP); and *Mahant Kaushalya Das v State of Madras*, [AIR 1966 SC 22](#) [LNIND 1965 SC 169] : [1966 Cr LJ 66](#).

224. *Re Thommeni Nadar*, [1974 Cr LJ 1116](#) (Mad). *Gadadhar Guru v State of Orissa*, [1989 Cr LJ 2080](#) (Ori), no positive evidence of disturbance of public peace or annoyance to public though there was a fight between two groups.

THE INDIAN PENAL CODE

CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

This chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them.

Deletion of provisions.—Sections 161–165A stand omitted by the [Prevention of Corruption Act, 1988, section 31](#) (w.e.f. 9 September 1988).

The relevant portion from the Statement of Objects and Reasons appended to the [Prevention of Corruption Act, 1988](#) relating to the omission of [sections 161 to 165A](#) of [Indian Penal Code, 1860 \(IPC, 1860\)](#) is given below:

3. The Bill *inter alia*, envisages widening the scope of the definition of the expression

"public servant", incorporation of offences under sections 161–165A of the [Indian Penal Code](#), enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

Sections 161 to 165-A.— Repealed by the Prevention of Corruption Act (Act 49 of 1988), section 31 (w.e.f. 9 September 1988).

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

[s 166] Public servant, disobeying law, with intent to cause injury to any person.

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

ILLUSTRATION

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

COMMENT—

Disobedience of law by public servant.—The offence under this section consists in a wilful departure from the direction of the law, intending to cause injury to any person. Mere breach of departmental rules will not bring a public servant within the purview of this section.

[s 166.1] Ingredients.—

- (i) The accused was a public servant at the relevant time;
- (ii) There was a direction of law as to how such public servant should conduct himself;
- (iii) The accused had disobeyed such direction;
- (iv) By such disobedience he had intended to cause or knew it would likely cause injury to any person.

The indispensable ingredient of the offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under [sections 167 and 219 of IPC, 1860](#) the pivotal ingredient is the same as for the offence under [section 166 of IPC, 1860](#).¹ If in carrying out the direction of law the accused gave information which according to the complainant was untrue, that by itself cannot attract the offence punishable under [section 166 IPC, 1860](#) unless it is shown that the replies given by the accused were untrue.² Where an investigating officer recorded his satisfaction in writing that the search of a particular premises was necessary because disputed documents might be found there, his entry into such premises was held to be not in disobedience of law and therefore, he could not be prosecuted without sanction under [section 197 Code of Criminal Procedure, 1973 \(CrPC, 1973\)](#).³ To make out an offence under this provision, it has to be stated that the public servant knowingly disobeyed any particular direction of the law which he was bound to obey and further that such disobedience would cause injury to any person to the knowledge of the public servant.

1. *K K Patel v State of Gujarat*, [AIR 2000 SC 3346 \[LNIND 2000 SC 889\]](#) : [2000 Cr LJ 4592](#) : [JT 2000 \(7\) SC 246 \[LNIND 2000 SC 889\]](#) : [\(2000\) 6 SCC 195 \[LNIND 2000 SC 889\]](#) : [\(2000\) 4 Supreme 160](#) .

2. *Prabhakara Panicker M B v State of Kerala*, [2010 Cr LJ 4117 \(Ker\)](#) : [2010 \(3\) KHC 152](#) .

3. *BS Thind v State of HP*, [1992 Cr LJ 2935](#) ; *People's Union for Civil Liberties v State of Maharashtra*, [1998 Cr LJ 2138 \(Bom\)](#).

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

⁴[[s 166A] Public servant disobeying direction under law.

Whoever, being a public servant,—

- (a) **knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or**
- (b) **knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or**
- (c) **fails to record any information given to him under sub-section (1) of [section 154 of the Code of Criminal Procedure, 1973](#) (2 of 1974), in relation to cognizable offence punishable under [section 326A](#), [section 326B](#), [section 354](#), [section 354B](#), [section 370](#), [section 370A](#), [section 376](#), [section 376A](#), ⁵[[section 376AB](#), [section 376B](#), [section 376C](#), [section 376D](#), [section 376DA](#), [section 376DB](#)], [section 376E](#) or [section 509](#),**

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.]