

93. *Alexander M Sullivan*, (1886) 11 Cox 44.
94. *Apurba Krishna Bose*, (1907) 35 Cal 141 .
95. *Ibid.*
96. *Balbir Singh v State of UP*, AIR 2000 SC 464 : 2000 Cr LJ 590 .
97. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .

# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).

II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 125] Waging war against any Asiatic Power in alliance with the Government of India.**

**Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the <sup>98</sup>[Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with <sup>99</sup>[imprisonment for life], to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.**

### **COMMENT—**

**Waging war against Asiatic power.**—This section restrains a person from making India the base of intrigues and enterprise for the restoration of deposed rulers or other like purposes. The fulfilment of the obligations of the State to allies and friendly Powers requires that the abetment of such schemes by its subjects whether by furnishing supplies or otherwise should be forbidden.<sup>100</sup> "One Sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory".<sup>101</sup> This section, however, does not affect India's right as sovereign nation to offer political asylum to a deposed ruler.

<sup>98</sup>. Subs. by the A.O. 1950, for "Queen".

<sup>99</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

<sup>100</sup>. M & M 105.

<sup>101</sup>. *Jameson*, (1896) 2 QB 425, 430.



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II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 126] Committing depredation on territories of power at peace with the Government of India.**

**Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the <sup>102</sup>[Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.**

### **COMMENT—**

**Depredation.**—The preceding section provides for waging war against any Asiatic Power in alliance with the Government of India, this section prevents the commission of depredation or plunder on territories of States at peace with the Government of India. The scope of this section is much wider than the preceding section, for it applies to a Power which may or may not be Asiatic.

<sup>102</sup>. Subs. by the A.O. 1950, for "Queen".

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## CHAPTER VI OF OFFENCES AGAINST THE STATE

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II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

**<sup>31</sup>[s 127] Receiving property taken by war or depredation mentioned in sections 125 and 126.**

**Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.**

### COMMENT—

This section applies to those persons who knowingly receive any property obtained by waging war with a Power at peace with the Government of India or by committing depredation on its territories.

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## CHAPTER VI OF OFFENCES AGAINST THE STATE

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- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 128] Public servant voluntarily allowing prisoner of State or war to escape.**

**Whoever, being a public servant and having the custody of any State prisoner<sup>1</sup> or prisoner of war<sup>2</sup>, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with <sup>103</sup>[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### **COMMENT—**

**Allowing escape to prisoners.**—This section and section 225A provide for one kind of offence. In both sections the public servant who has the custody of the prisoner is punished if he voluntarily allows such prisoner to escape. In this section the prisoner must be a State prisoner or a prisoner of war; under section 225A the prisoner may be an ordinary criminal. The offence under this section is thus, an aggravated form of the offence than under section 225A.

**1. 'State prisoner'** is one whose confinement is necessary in order to preserve the security of India from foreign hostility or from internal commotion, and who has been confined by the order of the Government of India. <sup>104</sup>.

**2. 'Prisoner of war'** is one who in war is taken in arms. Those who are not in arms, or who being in arms submit and surrender themselves, are not to be slain but to be made prisoners. But it seems those only are prisoners of war who are taken in arms. <sup>105</sup>.

103. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

104. Beng Reg III of 1818; Bom Reg VIII of 1818; Mad Reg II of 1819.

105. M & M 107.

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II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 129] Public servant negligently suffering such prisoner to escape.**

**Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.**

### **COMMENT—**

**Negligently suffering prisoners to escape.**—The offence under this section is like the one provided in section 128. Under it the escape of the prisoner should be owing to the *negligence* of the public servant. Section 128 punishes a public servant who *voluntarily* allows a State prisoner to escape. Section 223 punishes the escape of an ordinary prisoner under similar circumstances.



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- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### [s 130] Aiding escape of, rescuing or harbouring such prisoner.

**Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with <sup>106</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

**Explanation.—**A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in <sup>107</sup>[India], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

### COMMENT—

**Aiding escape, harbouring escapees.**—This section uses words more extensive than those in the two preceding ones which contemplate an escape only from some prison or actual place of custody. Again in the last two sections the offender is a public servant; under this section he may be any person. The scope of this section is much narrower than section 129. This section requires that the rescue or assistance be given "knowingly".

<sup>106</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

<sup>107</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

