

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:—

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

Onus of proving exception lies on accused.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.².

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.³.

Applicability of General exceptions during investigation.—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.⁴ Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions", acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.⁵.

Of the Right of Private Defence

[s 103] When the right of private defence of property extends to causing death.

The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

State Amendments

Karnataka.—*The following amendments were made by Karnataka Act No. 8 of 1972, s. 2 (w.e.f. 7-10-1972).*

In its application to the State of Karnataka in s. 103(1) in clause Thirdly—

- (i) after the words "mischief by fire", insert the words "or any explosive substance";
- (ii) after the words "as a human dwelling, or", insert the words "as a place of worship or".

(2) after clause Fourthly, insert the following clause, namely:—

Fifthly.—Mischief by fire or any explosive substance committed on any property used or intended to be used for the purpose of Government or any local authority, statutory body or company owned or controlled by Government or railway or any vehicle used or adapted to be used for the carriage of passengers for hire or reward.

Maharashtra.—*The following amendments were made by Maharashtra Act No. 19 of 1971, s. 26 (w.e.f. 31-12-1971).*

In its application to the State of Maharashtra, In section 103, add the following at the end, namely:—

"Fifthly.—Mischief by fire or any explosive substance committed on any property used or intended to be used for the purposes of Government or any local authority, statutory body, company owned or controlled by Government, railway or tramway, or on any vehicle used or adapted to be used, for the carriage of passengers for hire or reward."

Uttar Pradesh.—*The following amendments were made by U.P. Act No. 29 of 1970, s. 2, w.e.f. 17-7-1970.*

In its application to the State of Uttar Pradesh, In section 103, after clause Fourthly, add the following clause, namely:—

Fifthly.—Mischief by fire or any explosive substance committed on—

- (a) Any property used or intended to be used for the purpose of Government, or any local authority or other corporation owned or controlled by the Government, or
- (b) any railway as defined in clause (4) of section 3 of the Indian Railways Act, 1890 or railways stores as defined in the Railways Stores (Unlawful Possession) Act, 1955; or

(c) any transport vehicle as defined in clause (33) of section 2 of the Motor Vehicles Act, 1939.

COMMENT.—

Death caused in defence of property.—Section 100 enumerates the cases in which the right of private defence of the body extends to the causing of death; this section enumerates the cases in which it extends to the causing of death in defence of property.

A person employed to guard the property of his employer is protected by sections 97, 99, 103 and 105 if he causes death in safeguarding his employer's property when there is reason to apprehend that the person whose death has been caused was about to commit one of the offences mentioned in this section or to attempt to commit one of those offences. A person whose duty it is to guard a public building is in the same position, that is to say, it is his duty to protect the property of his employer and he may take such steps for this purpose as the law permits. The fact that the property to be guarded is public property does not extend the protection given to a guard. Therefore, a police constable on guard duty at a magazine or other public building is not entitled to fire at a person merely because the latter does not answer his challenge.⁴⁹¹ The deceased, none of whom was in possession of any dangerous weapons, were harvesting crop on a plot of land with peaceful intention under the protection of police. The accused who claimed the crops did not approach the authorities for redress, although they had time to do so, sent away the police constables by a ruse and then attacked the deceased with guns and other dangerous weapons and shot them down at close range. It was held by the Supreme Court that the acts of the deceased did not amount to robbery and that the accused had no right of private defence of property.⁴⁹² The accused was in possession of the plots which were under litigation. Finding his opponent, a blind man, getting the plots ploughed, the accused asked him to stop ploughing. On this, 8–10 persons armed with spears and '*lathis*' proceeded towards him. The accused fired a shot from his gun causing death of his opponent, the blind man. The Court observed that a blind villager could not be thought of going to take possession of the plots without mobilising enough man power to deal with resistance likely to be put up by his adversary. It was held that in the circumstances the right of private defence of the person became available to the accused.⁴⁹³.

In the words of the Supreme Court, the High Court committed an error in relation to the plea of self-defence raised on behalf of the accused to the effect that the incident took place at an open space. There is no law that the right of self-defence cannot be exercised in relation to an open space.⁴⁹⁴ Reasonable force may be used in defence of property. It would not in general be reasonable to kill in defence of property alone.⁴⁹⁵

[s 103.1] Trespasser.—

The right of private defence of property extending to causing of death is not available in cases of trespass on open land.⁴⁹⁶

[s 103.2] Causing death while on patrol duty.—

The accused constable killed his head constable. The accused was doing his patrolling duty at the time on a bridge. He claimed to have fired at somebody whom he saw with firearm near the value tower, which was neither used for human dwelling nor for

custody of property. He did not plead that he entertained apprehension of death or grievous hurt. The Court said that the plea of private defence extending to the causing of death was not tenable.⁴⁹⁷.

[s 103.3] CASES.—

The accused did not close his flour mill on the day of "Bharat Bandh", organized by some political parties. The activists entered the mill and demanded closure. They were armed with sharp-edged weapons. They threatened and assaulted the person who was operating the mill. He fired at them resulting in death of two persons and also injuring some innocent people. His property was set on fire. It was held that the acts of the accused were within the reasonable limits of the right of private defence. His conviction was set aside.⁴⁹⁸.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370].

2. The Indian Evidence Act, I of 1872, section 105.

3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).

4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

491. *Jamuna Singh*, (1944) 23 Pat 908.

492. *Gurdatta Mal*, AIR 1965 SC 257 [LNIND 1964 SC 30] : (1965) 1 Cr LJ 242 . *Champer v State of Orissa*, 1988 Cr LJ 1882 Orissa, wherein a land dispute, death was caused in excess of the right of private defence. *Mahabir Choudhary v State of Bihar*, AIR 1996 SC 1998 [LNIND 1996 SC 891] : 1996 Cr LJ 2860 , causing death in response to mischief to property, there being no fear of death or grievous hurt, held right exceeded. *Ram Bilas Yadav v State of Bihar*, AIR 2002 SC 530 [LNIND 2001 SC 2789] , irrigation dispute, appellants came with pre-determination and also more armed and did more harm than necessary. They were not entitled to any benefit under the section or to the benefit of section 300, exception 2.

493. *Chandra Shekhar Tiwari v State*, 1993 Cr LJ 2159 (All).

494. *Kishan Chand v State of UP*, (2007) 14 SCC 737 [LNIND 2007 SC 1190] : AIR 2008 SC 133 [LNIND 2007 SC 1190] : (2007) 6 All LJ 658.

495. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : AIR 2008 SC 1172 [LNIND 2008 SC 187].

496. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] : 2002 Cr LJ 563 ; *Puttan v State of TN*, AIR 2000 SC 3405 (2) : 2000 SCC (Cr) 1504, the circumstances showed that the accused were entitled to private defence of property. But procurement of a lethal weapon, and the number of injuries inflicted by him showed that the accused crossed all frontiers of private defence. Conviction was altered to one under section 304 Part I. *Gokula v State of Rajasthan*, 1998 Cr LJ 4053 : AIR 1998 SC 3016 [LNIND 1998 SC 743] , two persons seen on the land were not shown to be trespassers, there was no question of any justification for causing their death in defence of property. The accused convicted for murder. Another

similar case, *Jotram v State of Rajasthan*, 1998 Cr LJ 1492 (Raj); *Arjunan v State of TN*, 1997 Cr LJ 2327 (Mad), in a sudden quarrel over the right to cut a tree, the accused gave a blow of the wooden reaper on the head of the deceased causing death, the tree stood on the land of the deceased and was in his actual physical possession, the right of private defence not available to the accused. See also *Govind Singh v State of Rajasthan*, 1997 Cr LJ 1562 (Raj), no proof of trespassing cattle, yet attack and killing, conviction under section 304, Part II.

497. *Bhupendra Singh A Chudasama v State of Gujarat*, AIR 1997 SC 3790 [LNIND 1997 SC 1378] : 1998 Cr LJ 57 .

498. *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] .

THE INDIAN PENAL CODE

CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.¹.

The following acts are exempted under the Code from criminal liability:—

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:—

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Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.³.

Applicability of General exceptions during investigation.—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.⁴ Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions", acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.⁵.

Of the Right of Private Defence

[s 104] When such right extends to causing any harm other than death.

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

COMMENT.—

This section applies in cases where an injury (but not death) is inflicted on the offender in the course of his committing the offences of theft, mischief, or criminal trespass by the person exercising the right of private defence. But the section does not apply to a case where death has been caused in exercise of the supposed right of private defence.⁴⁹⁹. Even so where the accused had killed a person by exceeding his right of private defence of property under this section, his case would fall within the ambit of Exception-II to [section 300 IPC, 1860](#), and his offence would amount to culpable homicide not amounting to murder. He could not, therefore, be punished with a sentence of death. In the instant case the sentence was altered to one of life imprisonment.⁵⁰⁰.

Sections 101 and 104 restrict the right of private defence in certain cases to voluntarily causing hurt or grievous hurt. Section 101 is a corollary to section 100, and this section to section 103.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370].

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499. *Ramram Mahton*, (1947) 26 Pat 550.

500. *Jai Bhagwan v State of Haryana*, AIR 1999 SC 1083 [LNIND 1999 SC 116] : 1999 Cr LJ 1634 accused party was in possession of the land into which the other party entered for tilling it. The mother of the accused exhorted them and they murderously assaulted the deceased. The act amounted to criminal trespass within the meaning of section 411. The right of self-defence to the extent of causing death did not exist. The offence of murder was made out. *State of UP v Laeeq*, AIR 1999 SC 1942 [LNIND 1999 SC 447] : 1999 Cr LJ 2879 exceeding the right of private defence, punishment under section 304.

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Of the Right of Private Defence

[s 105] Commencement and continuance of the right of private defence of property.

The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either

the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

COMMENT.—

This section indicates when the right of defence of property commences and till what period it continues. It is similar to section 102.

[s 105.1] First clause.—

The right of private defence of property commences when a reasonable apprehension of danger to property commences. Before such apprehension commences the owner of the property is not called upon to apply for protection to the public authorities. The right commences not when the actual danger to the property commences but when there is reasonable apprehension of danger.⁵⁰¹.

[s 105.2] Second clause.—

The right of private defence of property against theft continues till (1) the offender has affected his retreat with the property, or (2) the assistance of public authorities is obtained, or (3) the property has been recovered.⁵⁰². An offender is to be considered as having affected his retreat when he has once got off having escaped immediate pursuit not having been made. A recapture of the plundered property, while it is in course of being carried away, is authorized, for the taking and retaking is one transaction. But when the offence has been committed and the property removed, a recapture after an interval of time by the owner or by other persons on his behalf, however justifiable, cannot be deemed an exercise of the right of defence of property. The recovery which the section contemplates seems to be a recovery either immediate or made before the offender has reached his final retreat.⁵⁰³. Where the appellants followed up tracks purporting to be those of their stolen cattle, and prior to the arrival of the police (for whose assistance one of their party had ridden away) proceeded to the complainants' village and fired at them, it was held that the appellants' right of private defence of their property had been put an end to by the successful retreat of the thieves, and that their

alleged rediscovery of the cattle in the complainants' possession could not revive that right.^{504.}

[s 105.3] Third clause.—

A rightful owner in peaceful possession of his land is entitled to defend his property against any person or persons who threaten to dispossess him. The law does not expect any cowardice on his part when there is real and imminent danger to his property from outside sources. Thus, a rightful owner is entitled to throw out, by using such force as would in the circumstances of the case appear to be reasonable necessary, any person who tries to invade his right to peaceful possession of his property. But if the trespasser has settled in the possession of the property, the recourse which the rightful person must adopt, is to recover possession in accordance with law and not by force. In such a case the trespasser would be entitled to defend his possession even against a rightful owner if the latter tries to evict him by use of force. But no hard and fast rule can be laid down in this behalf because much would depend on the facts of each case.^{505.}

[s 105.4] Fourth clause.—

In the case of criminal trespass and mischief the right of private defence ceases to exist as soon as the commission of these offences ceases.^{506.}

[s 105.5] Fifth clause.—

The right of private defence against house-breaking continues only so long as the house-trespass continues; hence, where a person followed a thief and killed him in the open, after the house-trespass had ceased, it was held that he could not plead the right of private defence.^{507.}

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

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501. *Chakradhar*, (1964) 2 Cr LJ 696 .

502. *Punjabrao*, (1945) Nag 881.

503. M & M 81; *Amar Singh*, AIR 1968 Raj 11 [LNIND 1966 RAJ 160] .

504. *Mir Dad*, (1925) 7 Lah 21.

505. *Maguni Charan Pradhan v State of Orissa*, (1991) 3 SCC 352 [LNIND 1991 SC 191] : 1991 (2) Crimes 261 (SC).

506. *Rajesh Kumar v Dharamvi*, 1997 Cr LJ 2242 : AIR 1997 SC 3769 [LNIND 1997 SC 445] , the accused came to the place of occurrence and attacked the complainant after the latter had already damaged the outer door of the house. It was held that the accused had no right of private defence.

507. *Balakee Jolahed*, (1868) 10 WR (Cr) 9; *Gulbadan v State*, (1885) PR No. 25 of 1885.

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9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:—

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

Onus of proving exception lies on accused.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.².

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.³.

Applicability of General exceptions during investigation.—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.⁴ Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions", acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.⁵.

Of the Right of Private Defence

[s 106] Right of private defence against deadly assault when there is risk of harm to innocent person.

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

ILLUSTRATION

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

COMMENT.—

This section should be read in the light of section 100. Injury to innocent persons in the exercise of the right of defence is excusable under it.⁵⁰⁸

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370].
2. The Indian Evidence Act, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
508. *State of Karnataka v Madesha*, (2007) 7 SCC 35 [LNIND 2007 SC 918] : AIR 2007 SC 2917 [LNIND 2007 SC 921], risk of harm to an innocent person in the exercise of the right of private defence. The court examined whether the right could be available to a person who caused the death of a man who had no role to play in the dispute.

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 107] Abetment of a thing.

A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

ILLUSTRATION

A, a public officer is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

COMMENTS.—

In common parlance, the word 'abet' means assistance, co-operation and encouragement and includes wrongful purpose. In *Corpus Juris Secundum*, vol I at p 306, the meaning of the word 'abet' is given as follows:

'To abet' has been defined as meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage, counsel, induce, or assist; to encourage or to set another on to commit.

Used with 'aid'. The word 'abet' is generally used with the word 'aid' and similar words.

In order to bring a person abetting the doing of a thing, under any one of the clauses enumerated under section 107, it is not only necessary to prove that the person who has abetted has taken part in the steps of the transactions but also in some way or other he has been connected with those steps of the transactions which are criminal. The offence of abetment depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.¹.

For the purposes of the first two clauses of this section it is immaterial whether the person instigated commits the offence or not or the persons conspiring together

actually carry out the object of the conspiracy.² It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.³ The Court noted that in *Faguna Kanta Nath v State of Assam*⁴, the appellant was tried for an offence under section 165A for having abetted the commission of an offence by an officer, who was acquitted, and it was held that the appellant's conviction for abetment was also not maintainable. But subsequently in *Jamuna Singh v State of Bihar*,⁵ it was considered not desirable to hold that an abettor cannot be punished if the person actually committing the offence is acquitted. The Court said that the abettor's guilt depends upon the nature of the offence abetted and the manner of abetment. It is only in cases of intentional aiding that the abettor would have to be acquitted with the principal offender.⁶ Following this state of the rulings the Supreme Court ordered the acquittal of the single abettor when the main offender as also all other abettors already stood acquitted.

The Supreme Court has reiterated that before anybody can be punished for abetment of suicide, it must be proved that the death in question was a suicidal death.⁷

The Supreme Court held that the offence of abetment is a separate and independent offence. Where the offence is committed in consequence of the abetment but there is no provision for punishment of such abetment, the abettor is to be punished along with the offender for the original offence.⁸

Abetment is constituted by:

- (1) instigating a person to commit an offence; or
- (2) engaging in a conspiracy to commit it; or
- (3) intentionally aiding a person to commit it.

The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under [section 107, Indian Penal Code \(IPC\)](#), 1860. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.⁹

[s 107.1] Mens rea.—

In order to proceed against a person for criminal offence under section 107, prosecution must prove the element of *mens rea*. Negligence or carelessness or the facilitation cannot be termed to be abetment so as to punish the guilty as per the provision of penal laws.¹⁰ In order to constitute abetment, the abettor must be shown to have "intentionally" aided to commission of the crime. Mere proof, that the crime charged could not have been committed without involvement and/or interposition of the alleged abettor is not enough compliance with the requirements of section 107. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of section 107.¹¹

[s 107.2] Sting operation, mens rea and abetment.—

In typical sting operations, though the operation is carried in the public interest, the same is generally done by instigating the accused. Hence the victim, who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the transaction raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed but for the enticement. In such circumstances, should the individual, i.e., the sting operator be held criminally liable for commission of the offence that is inherent and inseparable from the process by which commission of another offence is sought to be established? What about the operator who has *mens rea* or guilty intention to commit the offence? These are puzzling questions when there is an allegation that the sting operator is alleged to have committed the abetment of the offence. The Supreme Court in *Rajat Prasad v CBI*,¹² observed that a crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. At the same time, the criminal intent (*mens rea*) behind the commission of the act will have to be established before the liability of the person charged with the commission of crime can be adjudged. The Court held that the questions whether the sting operation is a journalistic exercise and any criminal intent can be imputed are to be answered by the evidence of the parties.

(1) Abetment by instigation.—First clause.—A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.¹³

[s 107.3] "Instigate" Meaning.—

Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or 'urging forward'. The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction ... to keep irritating or annoying somebody until he reacts".¹⁴ The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid as provided in the three clauses of the section.¹⁵ Instigate means the active role played by a person with a view to stimulate another person to do the thing. In order to hold a person guilty of abetting it must be established that he had intentionally done something which amounted to instigating another to do a thing.¹⁶ Instigation may be of an unknown person.¹⁷ A mere acquiescence or permission does not amount to instigation.¹⁸

[s 107.4] Wilful misrepresentation or wilful concealment.—

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) by wilful concealment of a material fact which he is bound to disclose, voluntarily

causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing. The illustration is an example of instigation by 'wilful misrepresentation'. Instigation by 'wilful concealment' is where some duty exists which obliges a person to disclose a fact. The explanation to section 107 says that any wilful misrepresentation or wilful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".¹⁹

[s 107.5] CASES.—Direct instigation.—

Where, of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed, but picked up a stick and used it, B (the master of A), who gave a general order to beat, was held guilty of abetting the assault made by them.²⁰

[s 107.6] Suicide.—

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.²¹ Deceased committed suicide by hanging himself because of alleged illicit relationship between his wife and the accused. Accused took the wife of deceased away from the house of her brother and kept her with him for four days. There is definitely a proximity and nexus between the conduct and behaviour of the accused and wife of deceased with that of suicide committed by the deceased.²² Where a married girl committed suicide by burning herself in her in-law's house, her in-laws were held guilty of abetment because they were persistently torturing her for inadequate dowry and had gone to the extent of accusing her of illegitimate pregnancy.²³ "All these tortures and taunts", Ray J said,²⁴ "Caused depression in her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on her person and setting it afire." In another case of the same kind a husband persistently demanded more money from his wife, quarrelling with her everyday. On the fateful day when she happened to say that death would have been better than this, she heard only this in reply that her husband would feel relieved if she ended her life. Immediately thereafter she set herself on fire. The husband was held guilty of instigating her to commit suicide.²⁵ Mere harassment of wife by husband due to differences per se does not attract [section 306](#) read with [section 107, IPC, 1860](#).²⁶

Demand of loan amount by accused from deceased itself does not come within the scope of abetment as defined under section 107.²⁷ Goading and intimidating a debtor with a view to pressurising him for repayment of the loan which brought about a suicide by the debtor immediately thereafter, was held as not amounting to abetment of suicide and, therefore, no case under section 306 read with section 34 was made out.²⁸

The accused told the other person "to go and die". It was held that this would not in itself satisfy the ingredients of instigation. Instigation has to be with *mens rea*. The suicide was committed two days after the quarrel between the accused and the deceased. This also showed that the suicide was not the direct result of the quarrel. The suicide note indicated that her husband was a frustrated man and given to drinking and suffered from great stress and depression.²⁹

The accused, a Motor Vehicle Inspector, beat up and abused a driver for not being able to produce necessary papers. The driver committed suicide. The Court said that it was not shown that he was guilty of any act of abetment within the meaning of section 107. The charge against him under section 107 was quashed.³⁰

[s 107.7] Proof.—

In *Chitresh Kumar Chopra v State (Govt. of NCT of Delhi)*,³¹ the Supreme Court reiterated the legal position laid down in its earlier three judge bench judgment in the case of *Ramesh Kumar v State of Chhattisgarh*,³² and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. In order to prove that the accused abetted commission of suicide by a person, it has to be established that:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.³³

[s 107.8] Threats.—

Mere threats of involving the family in a false and frivolous case cannot be held to tantamount to instigation. By such threats it cannot be held that the accused instigated the deceased to commit suicide.³⁴

[s 107.9] Test.—

No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.³⁵

(2) Abetment by conspiracy.—Second clause.—'Conspiracy' consists in the agreement of two or more [persons] to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, is punishable if for a criminal object or for the use of criminal means.³⁶ It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.³⁷ Where parties concert together, and have a common object, the act of

one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of all.³⁸

Before the introduction of Chapter V-A, conspiracy, except in cases provided for by sections 121A, 311, 400, 401 and 402 of the Code, was a mere species of abetment when an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.³⁹ For an offence under the second clause of this section a mere combination of persons or agreement is not enough; an act or illegal omission must take place in pursuance of the conspiracy. But for an offence under section 120A a mere agreement is enough if the agreement is to commit an offence.⁴⁰

[s 107.10] Abetment and Conspiracy-Difference between.—

Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, an illegal act or an act which is not illegal, by illegal, means. It differs from other offences because mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated under [section 107, IPC, 1860](#).⁴¹ There is no analogy between [section 120B](#) and [section 109, IPC, 1860](#). There may be an element of abetment in a conspiracy, but conspiracy is something more than an abetment. Offences created by [sections 109 and 120B, IPC, 1860](#) are quite distinct and there is no warrant for limiting the prosecution to only one element of conspiracy, that is, abetment when the allegation is that what a person did was something over and above that.⁴²

(3) Abetment by aid.—Third clause.—By act.—A person, it is trite, abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends to facilitate and does in fact facilitate the commission thereof, would attract the third clause of [section 107 of the IPC, 1860](#). Doing something for the offender is not abetment. Doing something with knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment.⁴³ In order to constitute abetment by aiding within the meaning of the third paragraph of [section 107, IPC, 1860](#) the abettor must be shown to have intentionally aided the commission of the crime. A person may invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless it is shown that the invitation was extended with a view to facilitate the commission of the murder, it cannot be said that the person extending the invitation had abetted the murder. The language used in the section is "intentionally aids" and therefore, active complicity is the gist of the offence of abetment under the third paragraph of [section 107, IPC, 1860](#).⁴⁴ Abetment includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. On facts held, in the instant case, there was no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide.⁴⁵ Where the principal offender killed the victim with a knife provided by the defendant who later claimed that he thought the knife would be used only to threaten, the defendant's conviction for murder was upheld, the Court of Appeal saying that the trial judge was correct to direct the jury that the defendant could be so convicted if he contemplated that the principal offender might kill or cause serious bodily harm to the victim as part of their joint enterprise.⁴⁶ It is not necessary that the abettor should be present at the place of the occurrence. It is also not necessary to show that the secondary party to a conspiracy to

murder intended the victim to be killed provided it is proved that he contemplated or foresaw the event as a real or substantial risk. Mere absence from the scene of the crime cannot amount to unequivocal communication of withdrawal from the enterprise. The accused was recruited with certain others by a person to kill his wife. At a predetermined time she was taken to the agreed place and killed. The accused was not present when the killing took place. It was held that he was rightly convicted in that he had lent encouragement and assistance before the commission of the crime.⁴⁷.

[s 107.11] By illegal omission.—

The definition of abetment as given in [section 107, IPC, 1860](#) not only includes instigation but also intentional aiding by an illegal omission.⁴⁸ A lady advocate was attending the chamber of her senior advocate, the accused. On the day of the incident she was talking with the accused at her residence. At that moment in his presence, she poured kerosene on her and set herself on fire. The accused did nothing to save her. It was held that this did not amount to "illegal omission". He was held not guilty of abetment of suicide.⁴⁹.

[s 107.12] Abetment of offences under other laws.—

The offence of aiding and abetting is applicable to all statutory offences unless specifically excluded by statute and accordingly it was held to apply to offences created by the [English] Public Order Act, 1986.⁵⁰ An abetment of an offence under the [Prevention of Corruption Act, 1988](#) can be made by a non-public servant. Abettors are to be prosecuted through trial under the [Prevention of Corruption Act](#).⁵¹.

[s 107.13] CASES.—By act.—Presence at bigamous marriage.—

Mere presence at the scene of a bigamous marriage without any evidence of instigation aiding or conspiring would not amount to abetment.⁵² Where the accused held the *antarpat* (screen) during the performance of a marriage which he knew was a void marriage under section 494, it was held that his act amounted to an act of intentional aid and fell within the purview of the explanation.⁵³

[s 107.14] Presence at exhibition of blue film.—

While entering into the parlour the accused was not aware of the type of film under exhibition. Immediately after his entry, the police raided the parlour and charge-sheeted him as an abettor of offences under sections 292, 293 and 294 because blue films were under exhibition. Following the Supreme Court decision in *Shri Ram v State of UP*,⁵⁴ the Court held that something more must be shown than mere presence.

[s 107.15] Rape-Abetment.—

In a case of custodial rape, husband and wife, taken into police custody, were kept in separate rooms. The wife was raped by the head constable while the accused

constable kept watch over the husband and did nothing hearing the shrieks of the victim wife. Conviction of the accused constable for abetting commission of rape was upheld.⁵⁵

[s 107.16] Humiliation.—

The accused persons caused constant humiliation to the deceased by accusing him of theft of things belonging to relatives at a marriage occasion. He committed suicide after returning from marriage. The humiliation caused by the accused was held to be not such as to amount to instigation which could have induced the deceased to commit suicide.⁵⁶

[s 107.17] Attempt.—

Merely because the section opens with the words "if any person commits suicide" it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt on the one hand and abetment of commission of suicide and its attempt on the other are treated differently by law and therefore, the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under [section 309](#) read with [section 116, IPC, 1860](#). To implement the scheme of law he has got to be held to be punishable under [section 306](#) read with [section 511, IPC, 1860](#). The Supreme Court has never laid down in *Satvir Singh*⁵⁷ that under no circumstance an offence under [section 306](#) read with [section 511, IPC, 1860](#) can be committed. The Supreme Court did not have occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under [section 306](#) read with [section 511, IPC, 1860](#).⁵⁸

1. *Kartar Singh v State of Punjab*, (1994) 3 SCC 569 : 1994 Cr LJ 3139 : (1994) 1 SCC (Cr) 899.
2. *Faguna Kanto*, 1959 Cr LJ 917 : AIR 1959 SC 673 [LNIND 1959 SC 2].
3. *Jamuna Singh v State of Bihar*, AIR 1967 SC 553 [LNIND 1966 SC 202] : 1967 Cr LJ 541 .
4. *Faguna Kanta Nath v State of Assam*, AIR 1959 SC 673 [LNIND 1959 SC 2] : 1959 Supp 2 SCR 1 : 1959 Cr LJ 917 .
5. *Jamuna Singh v State of Bihar*, AIR 1967 SC 553 [LNIND 1966 SC 202] : 1967 Cr LJ 541 .
6. Citing *Madan Raj Bhandari v State of Rajasthan*, AIR 1970 SC 436 [LNIND 1969 SC 230] : 1970 Cr LJ 519 where the abettor of inducing miscarriage was acquitted when the person causing miscarriage was acquitted. In *Ex-Sepoy Haradhan Chakrabarty v UOI*, AIR 1990 SC 1210 [LNIND 1990 SC 57] : (1990) 2 SCC 143 [LNIND 1990 SC 57] , it was held that abetment fails when substantive offence is not established against the principal offender.
7. *Wazir Chand v State of Haryana*, AIR 1989 SC 378 [LNIND 1988 SC 569] : 1989 Cr LJ 809 : (1989) 1 SCC 244 [LNIND 1988 SC 569] .

8. *Kishori Lal v State of MP*, (2007) 10 SCC 797 [LNIND 2007 SC 800] : AIR 2007 SC 2457 [LNIND 2007 SC 800] : (2007) 3 Ker LT 259 .
9. *State of Punjab v Iqbal Singh*, AIR 1991 SC 1532 [LNIND 1991 SC 279] ; *Surender v State of Hayana*, (2006) 12 SCC 375 [LNIND 2006 SC 1015] ; *Kishori Lal v State of MP*, AIR 2007 SC 2457 [LNIND 2007 SC 800] ; and *Sonti Rama Krishna v Sonti Shanti Sree*, AIR 2009 SC 923 [LNIND 2008 SC 2319] .
10. *B Ammu v State of TN*, 2009 Cr LJ 866 (Mad); *Chitresh Kumar Chopra v State (Government of NCT of Delhi)*, AIR 2010 SC 1446 [LNIND 2009 SC 1663] .
11. *Shri Ram v State of UP*, AIR 1975 SC 175 [LNIND 1974 SC 349] : 1975 Cr LJ 240 (SC) quoted in *Jasobant Narayan Mohapatra v State of Orissa*, 2009 Cr LJ 1043 (Ori); *Benupani Behera v State*, 1992 (1) Ori LR 571 .
12. *Rajat Prasad v CBI*, 2014 Cr LJ 2941 : 2014 (5) Scale 574 [LNIND 2014 SC 467] .
13. *Amiruddin*, (1922) 24 Bom LR 534 [LNIND 1922 BOM 98] , 542.
14. *Chitresh Kumar Chopra v State (Government of NCT of Delhi)*, AIR 2010 SC 1446 [LNIND 2009 SC 1663] ; *Kishangiri Mangalgiri Goswami v State of Gujarat*, (2009) 4 SCC 52 [LNIND 2009 SC 193] : (2009) 1 SCR 672 [LNIND 2009 SC 193] : AIR 2009 SC 1808 2009 Cr LJ 1720.
15. *Goura Venkata Reddy v State of AP*, (2003) 12 SCC 469 [LNIND 2003 SC 1004] .
16. *Rajib Neog v State of Assam*, 2011 Cr LJ 399 (Gau).
17. *Ganesh D Savarkar*, (1909) 12 Bom LR 105 .
18. *Ram Singh v State*, 1997 Cr LJ 1406 (P&H), the complainant (wife) alleged that her in-laws incited her husband to marry over again. There was no evidence to show that they negotiated or arranged the second marriage, nor of their presence at the time of performance of second marriage. Complaint quashed. See also *Darbar Singh v State of Chhattisgarh*, 2013 Cr LJ 1612 (Chh).
19. *Netai Dutta v State of WB*, AIR 2005 SC 1775 [LNIND 2005 SC 208] : (2005) 2 SCC 659 [LNIND 2005 SC 208] ; *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] .
20. *Rasookoollah*, (1869) 12 WR (Cr) 51. Where the accused had instigated three persons to commit murder, his conviction under sections 307/109 was upheld. *Hemant Kumar Mondal v State of WB*, 1993 Cr LJ 82 (Cal).
21. *M Mohan v State*, Represented by the Deputy Superintendent of Police, (2011) 3 SCC 626 [LNIND 2011 SC 246] : 2011 (3) Scale 78 [LNIND 2011 SC 246] : AIR 2011 SC 1238 [LNIND 2011 SC 246] : 2011 Cr LJ 1900 ; *Amalendu Pal v State of WB*, (2010) 1 SCC 707 [LNIND 2009 SC 1978] ; *Rakesh Kumar v State of Chhattisgarh*, (2001) 9 SCC 618 [LNIND 2001 SC 2368] , *Gangula Mohan Reddy v State of AP*, (2010) 1 SCC 750 [LNIND 2010 SC 3] ; *Thanu Ram v State of MP*, 2010 (10) Scale 557 [LNIND 2010 SC 962] : (2010) 10 SCC 353 [LNIND 2010 SC 962] : (2010) 3 SCC (Cr) 1502; *SS Chheena v Vijay Kumar Mahajan*, (2010) 12 SCC 190 [LNIND 2010 SC 746] : (2010 AIR SCW 4938); *Sohan Raj Sharma v State of Haryana*, AIR 2008 SC 2108 [LNIND 2008 SC 845] : (2008) 11 SCC 215 [LNIND 2008 SC 845] .
22. *Dammu Sreenu v State of AP*, AIR 2009 SC 3728 : (2009) 14 SCC 249 [LNIND 2009 SC 1356]
23. *Gurbachan Singh v Satpal Singh*, (1990) 1 SCC 445 [LNIND 1989 SC 475] : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
24. *Ibid*, (1990) 1 SCC 445 [LNIND 1989 SC 475] at p 458 : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
25. *Brijlal v Prem Chand*, AIR 1989 SC 1661 [LNIND 1989 SC 243] : (1989) Supp 2 SCC 680. But where there was no evidence of dowry demands, self immolation by the married woman within

two years of marriage was held to be her personal act. *Padmabai v State of MP*, 1987 Cr LJ 1573 (MP).

26. *Bhagwan Das v Kartar Singh*, AIR 2007 SC 2045 [LNIND 2007 SC 650] ; *Dayalan Babu v State*, 2011 Cr LJ 359 (Mad).
27. *Paramjeetsingh Chawala v State of MP*, 2007 Cr Lj 3343 (MP).
28. *Vedprakash Bhajji v State of MP*, 1995 Cr LJ 893 (MP). *Netai Dutta v State of WB*, 2005 Cr LJ 1737 , no averment that the employer had withheld salary, or of aiding or instigating suicide, proceedings against employer to be quashed.
29. *Sanju v State of MP*, 2002 Cr LJ 2796 : AIR 2002 SC 1998 [LNIND 2002 SC 357] (Supp).
30. *Bura Manohar v State of AP*, 2002 Cr LJ 3322 (AP); *Central Bureau of Investigation v VC Shukla*, 1998 Cr LJ 1905 : AIR 1998 SC 1406 [LNIND 1998 SC 272] ; *Bapurao v State of Maharashtra*, 2003 Cr LJ 2181 (Bom).
31. *Chitresh Kumar Chopra v State (Govt. of NCT of Delhi)*, 2009 (16) SCC 605 [LNIND 2009 SC 1663] : AIR 2010 SC 1446 [LNIND 2009 SC 1663] .
32. *Ramesh Kumar v State of Chhattisgarh*, AIR 2001 SC 3837 [LNIND 2001 SC 2368] : (2001) Cr LJ 4724 .
33. *State of MP v Shrideen Chhatri Prasad Suryawanshi*, 2012 Cr LJ 2106 (MP); *Jetha Ram v State of Rajasthan*, 2012 Cr LJ 2459 (Raj); *Kailash Baburao Pandit v State of Maharashtra*, 2011 Cr LJ 4044 (Bom).
34. *Vijay Kumar Rastogi v State of Rajasthan*, 2012 Cr LJ 2342 (Raj).
35. *Praveen Pradhan v State of Uttarakhand*, (2012) 9 SCC 734 [LNIND 2012 SC 612] : 2012 (9) Scale 745 : 2012 Cr LJ 4925 .
36. Per Willes J, in *Mulcahy*, (1868) LR 3 HL 306, 317. See *Quinn v Leathem*, (1901) AC 495 , 529.
37. Explanation 5 to section 108; *Kalil Munda*, (1901) 28 Cal 797 .
38. *Ameer Khan*, (1871) 17 WR (Cr) 15.
39. *Tirumal Reddi*, (1901) 24 Mad 523, 546.
40. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : 1962 (1) Cr LJ 770 . See *CBI v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : (1998) 3 SCC 410 [LNIND 1998 SC 272] ; Abetment by conspiracy not made out.
41. *Noor Mohammad Mohd. Yusuf Momin v State of Maharashtra*, AIR 1971 SC 885 [LNIND 1970 SC 155] : (1970) 1 SCC 696 [LNIND 1970 SC 155] .
42. *State of AP v Kandimalla Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] : 1962 (1) SCR 194 [LNIND 1961 SC 95] .
43. *State of MP v Mukesh*, (2006) 13 SCC 197 [LNIND 2006 SC 844] : (2007) 2 SCC (Cr) 680.
44. *Shri Ram*, 1975 Cr LJ 240 : AIR 1975 SC 175 [LNIND 1974 SC 349] ; See also *Trilokchand*, 1977 Cr LJ 254 : AIR 1977 SC 666 [LNIND 1975 SC 278] .
45. *Rajbabu v State of MP*, (2008) 17 SCC 526 [LNIND 2008 SC 1499] : AIR 2008 SC 3212 [LNIND 2008 SC 1499] : 2008 Cr LJ 4301 : (2008) 69 AIC 65 .
46. *R v State*, (1989) 3 All ER 90 CA. The Court considered the decisions in *Chan Wing Sui v R*, (1984) 3 All ER 877 and *Hyam v DPP*, (1974) 2 All ER 41 . *Krishan Lal v UOI*, 1994 Cr LJ 3472 , intentional aiding.
47. *R v Rook*, (1993) 1 WLR 1005 (CA).
48. *Jamnalal Pande v State of MP*, 2010 Cr LJ 538 (MP).
49. *Surendra Agnihotri v State of MP*, 1998 Cr LJ 4443 (MP).
50. *R v Jefferson*, The Times, 22 June 1993 (CA).
51. *P Nallammal v State*, AIR 1999 SC 2556 [LNIND 1999 SC 660] : 1999 Cr LJ 3967 .

52. *Muthammal*, 1981 Cr LJ 833 (Mad) : 1981 Mad LW (Cr) 80 ; *Karuppiah v Nagawalli*, 1982 Mad LJ (Cr) 19 : 1982 Cr LJ 1362 : 2004 Cr LJ 4272 (Kar).
53. *Malan*, (1957) 60 Bom LR 428 .
54. *Shri Ram v State of UP*, AIR 1975 SC 175 [LNIND 1974 SC 349] : 1975 Cr LJ 240 .
55. *Ram Kumar v State of HP*, AIR 1995 SC 1965 : 1995 Cr LJ 3621 : 1995 Supp (4) SCC 67 .
56. *Neelam v State of AP*, 2003 Cr LJ (NOC) 160 (AP) : (2002) 2 Andh LT (Cr) 186 .
57. *Satvir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] : (2001) 8 SCC 633 [LNIND 2001 SC 2168] .
58. *Berin P Varghese v State*, 2008 Cr LJ 1759 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 108] Abettor.

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

ILLUSTRATIONS

- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

ILLUSTRATIONS

- (a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.
- (b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.
- (c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.
- (d) A, intending to cause a theft to be committed, instigates B to take property

belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

ILLUSTRATION

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

ILLUSTRATION

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

COMMENTS.—

Abetment under the [IPC, 1860](#) involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence,^{59.} and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to give effect to the [criminal act](#) or purpose, is punishable under the Code.

'**Abettor**', under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act, which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section he must be an instigator or a conspirator or an intentional helper.

Merely because the accused's brother was carrying on criminal activities in her house, the appellant cannot be held guilty unless there is some material to show her complicity.^{60.}

Explanation 1.—If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2.—The question regarding abettor's guilt depends on the nature of the act abetted and the manner in which abetment was made. Commission of the act abetted is not necessary for the offence of abetment.⁶¹ The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

Explanation 3.—This explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment.⁶² The offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he employs to act for him.

Explanation 4.—This Explanation is to be read as follows: "When the abetment of an offence is an offence the abetment of such an abetment is also an offence". In view of Explanation 4 appended under [section 108 of the IPC, 1860](#) the contention of accused that there cannot be any abetment of an abetment and it is unknown to criminal jurisprudence, holds no water and merits no consideration.⁶³

[s 108.1] Abetment of attempt to commit suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 and read with [section 107, IPC, 1860](#).⁶⁴

[s 108.2] Euthanasia.—

Assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.⁶⁵ But in *Aruna Ramchandra Shanbaug v UOI*,⁶⁶ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution Bench](#) of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.⁶⁷

[s 108.3] Political murder.—

The accused were poor villagers who were brainwashed and became tools for committing crimes. The leaders who called for revenge were not charge sheeted and they got off scot-free. Even their names were not revealed as they were political head-weight. Such leaders who prompt the followers to commit crimes should be charge sheeted for abetment of offence for murder.

[s 108.4] Abetment is substantive offence.—

The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.⁶⁸ It cannot be held in

law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under [section 107, IPC, 1860](#) a person abets the doing of an act in either of three ways which can be: instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under [section 115](#) or [section 116, IPC, 1860](#) even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. This is clear from Explanation 2 and illustration (a) thereto, to [section 108, IPC, 1860](#). It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.⁶⁹

59. *Molazim Tewari*, (1961) 2 Cr LJ 266 .

60. *Marry Perara Lilly v State*, (1987) Supp1 SCC 182 : (1988) 1 SCC (Cr) 56.

61. *Sundar v State of UP*, 1995 Cr LJ 3481 (All), relying on *Sukh Ram v State of MP*, 1989 SCC (Cr) 357 : AIR 1989 SC 772 [LNIND 2016 MP 593] .

62. *Chaube Dinkar Rao*, (1933) 55 All 654 .

63. *Gundala Reddeppa Naidu v State of AP*, 2005 Cr LJ 4702 (AP).

64. *Gian Kaur v State of Punjab*, AIR 1996 SC 946 [LNIND 1996 SC 653] : (1996) 2 SCC 648 [LNIND 1996 SC 653] .

65. The Constitution Bench *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] held that both euthanasia and assisted suicide are not lawful in India which overruled the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] . The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die.

66. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

67. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [LNIND 2018 SC 87] .

68. *Gallu Saheb v State of Bihar*, AIR 1958 SC 813 [LNIND 1958 SC 76] ; *Maruti Dada*, (1875) 1 Bom 15; *Sahib Ditta*, (1885) PR No. 20 of 1885.

69. *Jamuna Singh v State of Bihar*, AIR 1967 SC 553 [LNIND 1966 SC 202] : 1967 Cr LJ 541 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

70. [s 108A] Abetment in India of offences outside India.

A person abets an offence within the meaning of this Code who, in 71. [India], abets the commission of any act without and beyond 72. [India] which would constitute an offence if committed in 73. [India].

ILLUSTRATION 74.

A, in 75. [India], instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.]

COMMENTS.—

This section makes an abetment in India by a citizen of India of an act committed in a foreign territory an offence punishable under the [IPC, 1860](#) if it would constitute an offence if committed in India. This illustration has become somewhat obsolete as Goa is now a part of Indian territory and not a foreign country as it was when this illustration was formulated.

70. Added by Act 4 of 1898, section 3.

71. 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. 1-4-1951), to read as above.

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73. 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.

74. This Illustration is inappropriate as Goa, which was a Portuguese colony at the time of the British imperial enactment now forms part of the Union Territory.—Ed.

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THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

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THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 109] Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

ILLUSTRATIONS

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
- (c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

COMMENTS.—

Under this section the abettor is liable to the same punishment as that which may be inflicted on the principal offender, (1) if the act of the latter is committed in consequence of the abetment, and (2) no express provision is made in the Code for the punishment of such an abetment. [Section 109, IPC, 1860](#) becomes applicable even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission.⁷⁶

[s 109.1] Scope.—

This section lays down nothing more than that if the [IPC, 1860](#) has not separately provided for the punishment of abetment as such then it is punishable with the punishment provided for the original offence. Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not, is a question to be decided on the facts of each

case. It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Further, the act abetted should be committed in consequence of the abetment or in pursuance of the conspiracy as provided in the Explanation to section 109. Under the Explanation an act or offence is said to be committed in pursuance of abetment if it is done in consequence of (a) instigation (b) conspiracy or (c) with the aid constituting abetment. Instigation may be in any form and the extent of the influence which the instigation produced in the mind of the accused would vary and depend upon facts of each case. The offence of conspiracy created under section 120A is bare agreement to commit an offence. It has been made punishable under section 120B. The offence of abetment created under the second clause of section 107 requires that there must be something more than mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by section 107 (second), "engages in any conspiracy ... for the doing of that thing, if an act or omission took place in pursuance of that conspiracy". The punishment for these two categories of crimes is also quite different. [Section 109, IPC, 1860](#) is concerned only with the punishment of abetment for which no express provision has been made in the [IPC, 1860](#). The charge under section 109 should, therefore, be along with charge for murder which is the offence committed in consequence of abetment. An offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable under section 120B for which a charge under section 109 is unnecessary and inappropriate.⁷⁷. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. "Act abetted" in section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.⁷⁸. The commission of the offence of rape in a hut then in possession of the accused was held to be not sufficient in itself to show that the accused abetted the offence.⁷⁹.

[s 109.2] Distinct offence.—

Section 109 is by itself creative of an offence though it is punishable in the context of other offences. The accused was charged under sections 300 and 149. The Court said that he could not be convicted under section 300 with the aid of section 109. That would cause great prejudice to the accused in his defence.⁸⁰. The offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.⁸¹. A plain reading of sections 107–109 of the [IPC, 1860](#) would show that act complained of in order to amount to abetment has to be committed either prior to or at the time of commission of the offences.⁸².

Where the appellant, the wife of a co-accused asked the prosecutrix, aged 15 years to go to the house of the accused and to bring *lassi*, and when the prosecutrix reached there, the co-accused, who were two in number, bolted the house from inside and committed rape on her, it was held that the appellant was guilty of the offence of abetment.⁸³.

[s 109.3] Failure to prevent is not abetment.—

It has been held by the Supreme Court that a failure to prevent the commission of an offence is not an abetment of that offence. The Court said:

Where a person aids and abets the perpetrator of a crime at the very time when the crime is committed, he is a principal of the second degree and section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or had engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. Section 109 applies even where the abettor is not present. Active abetment at the time of committing the offence is covered by section 109.

The words 'act abetted' as used in section 109 means the specific offence abetted. Mere help in the preparation for the commission of an offence which is not ultimately committed is not abetment within the meaning of section 109. 'Any offence' in section 109 means offence punishable under [IPC](#) or any special or local law. The abetment of an offence under the special or local law, therefore, is punishable under section 109. For constituting offence of abetment, intentional and active participation by the abettor is necessary.⁸⁴.

When a person is charged with the abetment of an offence, it is normally linked with an offence which has been proved.⁸⁵.

[s 109.4] Procedure.—Failure to frame Charge.—

[Section 109, IPC, 1860](#) is a distinct offence. Accused having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substituted convicted for offence under [section 302, IPC, 1860](#) with the aid of [section 109, IPC, 1860](#). There was obviously thus, not only a legal flaw but also a great prejudice to the appellant in projecting his defence.⁸⁶. [Section 109, IPC, 1860](#) is by itself an offence though punishable in the context of other offences.⁸⁷.

[s 109.5] Sentence.—

When the act abetted is committed as a consequence of abetment, the abettor should be punished with the punishment provided for the main offence with the help of [section 109, IPC, 1860](#) and even if a charge under [section 120B, IPC, 1860](#) had been framed, no separate sentence under that section is called for.⁸⁸. No distinction should be made in the quantum of sentence to be awarded to the principal offender and that awarded to the abettor.⁸⁹.

[s 109.6] Compoundable.—

When an offence is compoundable under [section 320 of the Cr PC, 1973](#), the abetment of such may be compounded in like manner.⁹⁰.

[s 109.7] CASES.—

Where the accused instigated others to assault with deadly weapons and not to kill, he should be convicted under section 324 read with section 109, IPC, 1860 and not under section 307 read with section 109, IPC, 1860.⁹¹ Where the accused did not participate in the act of rape but kept watch while others were committing the offence, and thereby aided and abetted the commission of the crime instead of preventing it, he was held liable to be convicted under section 376 read with this section and not under section 376 read with section 34.⁹²

[s 109.8] Distinction between sections 109 and 114.—

There is a distinction between section 109 and section 114. Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by section 109 and section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is, before the first steps have been taken to commit it.⁹³

76. *NMMY Momin*, 1971 Cr LJ 793 : AIR 1971 SC 885 [LNIND 1970 SC 155]. Where the accused suffered trial for the substantive offences of causing hurt under sections 328 and 272 by mixing ethyl and methyl alcohol but his direct involvement was not established, section 109 was not permitted to be pushed into service for convicting him for abetment; *Joseph v State of Kerala*, AIR 1994 SC 34 : 1994 Cr LJ 21 : 1995 SCC (Cr) 165.

77. *Arjun Singh v State of HP*, AIR 2009 SC 1568 [LNIND 2009 SC 252] : (2009) 4 SCC 18 [LNIND 2009 SC 252] : (2009) 1 SCR 983 [LNIND 2009 SC 252] : 2009 (2) Scale 302 [LNIND 2009 SC 252] : 2009 Cr LJ 1332 . See *Kehar Singh v The State (Delhi Admn.)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] ; *Kulwant Singh v State of Bihar*, (2007) 15 SCC 670 [LNIND 2007 SC 820] .

78. *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] .

79. *Ashok Nirvuti Desai v State of Maharashtra*, 1995 Cr LJ 826 (Bom). *Jag Narain Prasad v State of Bihar*, 1998 Cr LJ 2553 : AIR 1998 SC 2879 [LNIND 1998 SC 387] , the accused charged with exhorting his son to kill the victim. The court said that it was not believable that an aged person would involve his son into crime for a trivial reason. Mere presence at the spot is not sufficient to involve all the family members who were there. See also *Manjula v Muni*, 1998 Cr LJ 1476 (Mad).

80. *Wakil Yadav v State of Bihar*, 1999 Cr LJ 5000 (SC). *Arjun Singh v State of HP*, (2009) 4 SCC 18 [LNIND 2009 SC 252] : AIR 2009 SC 1568 [LNIND 2009 SC 252] : 2009 Cr LJ 1332 , ingredients restated, the offence was not made out in this case.

81. *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] ; *Kishangiri Mangalgiri Swami v State of Gujarat*, 2009 (4) SCC 52 [LNIND 2009 SC 193] .

82. *Jasobant Narayan Mohapatra v State of Orissa*, 2009 Cr LJ 1043 (Ori).

83. *Om Prakash v State of Haryana*, 2015 Cr LJ 586 : (2015) 2 SCC 84 [LNIND 2014 SC 887] .
84. *Kulwant Singh v State of Punjab*, (2007) 15 SCC 670 [LNIND 2007 SC 820] .
85. *Goura Venkata Reddy v State of AP*, (2003) 12 SCC 469 [LNIND 2003 SC 1004] , the appellant (accused) who instigated the other accused was convicted under section 304/109 and not under section 302/109.
86. *Wakil Yadav v State of Bihar*, (2000) 10 SCC 500 : 1999 AIR SCW 4694.
87. *Joseph Kurian Philip Jose v State*, (1994) 6 SCC 535 [LNIND 1994 SC 927] : AIR 1995 SC 4 [LNIND 1994 SC 927] : 1995 Cr LJ 502 .
88. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
89. *Ashok Nivruti Desai v State of Maharashtra*, (1995) 1 Cr LJ 826 (Bom). *Vinit v State of Maharashtra*, (1994) 2 Cr LJ 1791 (Bom).
90. *Section 320(3) Code of Criminal Procedure, 1973*.
91. *Jai Narain*, 1972 Cr LJ 469 : AIR 1972 SC 1764 .
92. *Nawabkhan v State of MP*, 1990 Cr LJ 1179 MP; *Jai Chand v State of HP*, 2002 Cr LJ 2301 (HP); *Munuswamy v State of TN*, 2002 Cr LJ 3916 (SC) : AIR 2002 SC 2994 [LNIND 2002 SC 500]
93. *Kulwant Singh v State of Bihar*, (2007) 15 SCC 670 [LNIND 2007 SC 820] ; *Mathurala Adi Reddy v State of Hyderabad*, AIR 1956 SC 177 : 1956 Cr LJ 341 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 110] Punishment of abetment if person abetted does act with different intention from that of abettor.

Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

COMMENTS.—

This section provides that though the person abetted commits the offence with a different intention or knowledge yet the abettor will be punished with the punishment provided for the offence abetted. The liability of the person abetted is not affected by this section.

Explanation 3 to section 108 should be read in conjunction with this section. See illustration (d) to that section.

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 111] Liability of abettor when one act abetted and different act done.

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

ILLUSTRATIONS

- (a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.
- (b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.
- (c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

COMMENTS.—

Liability of abettor when different act done.—This section proceeds on the maxim "every man is presumed to intend the natural consequences of his act". If one man instigates another to perpetrate a particular crime, and that other, in pursuance of such instigation, not only perpetrates that crime, but, in the course of doing so, commits another crime in furtherance of it, the former is criminally responsible as an abettor in respect of such last-mentioned crime, if it is one which, as a reasonable man, he must, at the time of the instigation, have known would, in the ordinary course of things, probably have to be committed in order to carry out the original crime. B and C instigated A to rob the deceased on his return to home after receiving a sum of money; whereupon A killed the deceased. A was convicted of murder and B and C of offences under sections 109, 302.⁹⁴ Where the act contemplated and instigated was no more than a thrashing with a *lathi*, but one of the assailants suddenly took out a spearhead

from his pocket and fatally stabbed the person who was to be thrashed, the others were not held liable for murder or abetment of murder.⁹⁵.

94. *Mathura Das*, (1884) 6 All 491 , 494.

95. *Girja Prasad*, (1934) 57 All 717 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 112] Abettor when liable to cumulative punishment for act abetted and for act done.

If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

ILLUSTRATION

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offences of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

COMMENTS.—

This section extends the principle enunciated in the preceding section. Under it the abettor is punished for the offence abetted as well as the offence committed. A joint reading of sections 111, 112 and 133 make it abundantly clear that if a person abets another in the commission of an offence and the principal goes further thereafter and does something more which has a different result from that intended by the abettor and makes the offence an aggravated one, the abettor is liable for the consequences of the acts of his principal. The crux of the problem in an enquiry of this sort is whether the abettor as reasonable man at the time of his instigation or intentionally aiding the principal would have foreseen the probable consequences of his abetment.⁹⁶.

^{96.} *Re Irala Palle Ramiah*, 1957 Cr LJ 815 (AP).

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 113] Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, caused a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

ILLUSTRATION

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

COMMENTS.—

This section should be read in conjunction with section 111. Section 111 provides for the doing of an act different from the one abetted, whereas this section deals with the case when the act done is the same as the act abetted but its effect is different.

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 114] Abettor present when offence is committed.

Whenever any person who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

COMMENTS.—

This section:

is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition ... Section 114 deals with the case, where there has been the crime of abetment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case is this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abetted. The section is evidently not punitory. Because participation *de facto*. ... may sometimes be obscure in detail, it is established by the presumption *Juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by s. 114 brings the case within the ambit of s. 34.⁹⁷.

The meaning of this section is that if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it. The abetment must be complete apart from the mere presence of the abettor.⁹⁸ The words "who if absent would be liable to be punished as an abettor" clearly show that abetment must be one prior to the commission of the offence and complete by itself.⁹⁹ Where, for instance, a blow is struck by A, in the presence of, and by the order of, B, both are principals in the transaction. If A instigates B to murder, he commits abetment; if absent, he is punishable as an abettor, and if the offence is committed, then under section 109; if present, he is by this section deemed to have committed the offence and is punishable as a principal. This section applies to cases where a person abets the commission of the offence sometime before at a different place and also remains present at the time the offence is committed.¹⁰⁰ But where a person is charged with abetment under this section for aiding in the Commission of an offence, e.g., [section 300 IPC, 1860](#) and the person charged as the principal offender is acquitted on the ground that he had not committed the offence in question, no further question arises regarding abettor's liability.¹⁰¹

Section 114 is not applicable in every case in which the abettor is present at the commission of the offence abetted. While section 109 is a section dealing generally with abetment, section 114 applies to those cases only in which not only is the abettor present at the time of the commission of the offence but abetment has been committed prior to and independently of his presence.¹⁰²

[s 114.1] Sections 34 and 114.—

The distinction between sections 34 and 114 is a very fine one. According to section 34, where a **criminal act** is done by several persons, in furtherance of the common intention of all, each of them is liable as if it were done by himself alone; so that if two or more persons are present, aiding and abetting in the commission of a murder each will be tried and convicted as a principal, though it might not be proved which of them actually committed the act. Section 114 refers to the case where a person by abetment, previous to the commission of the act, renders himself liable as an abettor, is present when the act is committed, but takes no active part in the doing of it.¹⁰³ A mere direction from one person to another and the carrying out of that direction by the other may be only instigation of the latter's act and may not be a case of a joint act falling under section 34.¹⁰⁴ Accused provided an axe to his son who assaulted the victim leading to his death. It was not a pre-meditated action on the part of main accused and appellant supplied axe instantaneously without considering its pros and cons. Conviction of appellant on charge of abetment (section 114) is not maintainable.¹⁰⁵

1. 'Present'.—It is not necessary that the party should be actually present, an ear or eye witness of the transaction; he is, in construction of law, present, aiding and abetting, if, with the intention of giving assistance, he be near enough to afford it, should occasion arise. A conspirator, who, while his friends enter into a house and loot it, stands and watches outside in pursuance of the common design, does not escape liability under the section.¹⁰⁶ Where, therefore, a person watched at the door of a house while a murder was being committed inside he would be guilty of murder.¹⁰⁷

[s 114.2] Section 376 read with Section 114.—

In order to bring home such conviction under **section 376, IPC, 1860** read with **section 114, IPC, 1860** there must be evidence on record to show: (a) that there was abetment of rape to be committed; (b) that the abettors have factually abetted the commission of rape; and (c) that they were present at the time when the commission of rape took place.¹⁰⁸

97. *Barendra Kumar Ghosh*, (1924) 52 IA 40 , 53 : 27 Bom LR 148, 159 : 52 Cal 197.

98. *Krishnaswami Naidu*, (1927) 51 Mad 263. See *Malanrama v State of Maharashtra*, ILR 1958 Bom 700 [LNIND 1957 BOM 189] : 1960 Cr LJ 1189 where it was held in the circumstances of the case that the mere presence of the accused at the ceremony knowing that the offence of bigamy was being committed and the throwing the holy rice over the couple did not amount to abetment of bigamy notwithstanding that one of the accused persons distributed pan after the ceremony. Followed in *CS Vardachari v CS Shanti*, 1987 Cr LJ 1048 over similar facts.

99. *Sital*, (1935) 11 Luck 384 .

100. *Nanboo v Kedar*, AIR 1962 MP 91 [LNIND 1961 MP 109].

101. *Mahammed Jasimuddin*, 1982 Cr LJ 1510 (Gau). See also *State v Naroshbhai Haribhai Tandel*, 1997 Cr LJ 2783 (Guj).

102. *Kulwant Singh v State of Bihar*, (2007) 15 SCC 670 [LNIND 2007 SC 820] .

103. *Jan Mahomed*, (1864) 1 WR (Cr) 49; *Nga Po Kyone*, (1933) 11 Ran 354.

104. *MA Reddy v State*, AIR 1956 SC 177 : 1956 Cr LJ 341 .
105. *Muklesur Rahaman v State*, 2010 Cr LJ 4488 . Also see, *Kalubhai Maganbhai Vaghela v State of Gujarat*, 2009 Cr LJ 2317 (Guj).
106. *Khandu v State*, (1899) 1 Bom LR 351 , 355.
107. *Sidharth v State of Bihar*, AIR 2005 SC 4352 [LNIND 2005 SC 752] : (2005) 12 SCC 545 [LNIND 2005 SC 752] : 2005 Cr LJ 4499 : (2006) 1 SCC (Cr) 175. Also see *Mukati Prasad Rai alias Mukti Rai v State IR*, 2005 SC 1271 : (2004) 13 SCC 144 : (2005) 1 SCC (Cr) 69; *Awadh Mahto v State of Bihar*, 2007 Cr LJ 342 (Pat).
108. *Mangiya v State of Rajasthan*, 2000 Cr LJ 4814 (Raj).

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 115] Abetment of offence punishable with death or imprisonment for life—if offence not committed.

Whoever abets the commission of an offence punishable with death or ^{109.} [imprisonment for life] shall, if that offence be not committed in consequence of the abetment, and no express provision¹ is made by this Code for the punishment of such abetment,² be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If act causing harm be done in consequence.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

ILLUSTRATION

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or ^{110.} [imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

COMMENT.—

This section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment or only in part committed.

When more than ten persons are instigated to commit an offence punishable with death, the offence comes under this section as well as under section 117. Abetment under this section need not necessarily be abetment of the commission of an offence by a particular person against a particular person.^{111.}

1. 'Express provision'.—This refers to sections in which specific cases of abetment of offences punishable with death or imprisonment for life are dealt with.^{112.}

2. 'Such abetment'.—These words refer to the abetment of the offence specified in the section itself, namely an offence punishable with death or imprisonment for life, and only sections 121 and 131 provide for the punishment of the abetment of such offence.^{113.}

- 109.** Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
- 110.** Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
- 111.** *Dwarkanath Goswami*, ([1932](#)) 60 Cal 427 ; *Lavji Mandan v State*, ([1939](#)) 41 Bom LR 980 .
- 112.** *Ibid.*
- 113.** *Lavji Mandan*, ([1939](#)) 41 Bom LR 980 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 116] Abetment of offence punishable with imprisonment— if offence be not committed.

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence.

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

ILLUSTRATIONS

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.
- (b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

COMMENT—

Where abetted offence not committed.—This section provides for the abetment of an offence punishable with imprisonment. There is no corresponding provision in the Code relating to abetment of an offence punishable with fine only.

Three different states of fact may arise after an abetment—

(1) No offence may be committed. In this case the offender is punishable under sections 115 and 116 for the mere abetment to commit a crime.

(2) The very act at which the abetment aims may be committed, and will be punishable under sections 109 and 110.

(3) Some act different but naturally flowing from the act abetted may be perpetrated, in which case the abettor will fall under the penalties of sections 111, 112 and 113.

[s 116.1] Section 116 and Section 306.—

Section 116, IPC, 1860 is "abetment of offence punishable with imprisonment if offence be not committed". But the crux of the offence under section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence, there cannot be an offence under **section 116** read with **section 306, IPC, 1860**.¹¹⁴ The Supreme Court has never laid down in *Satvir Singh*¹¹⁵ that under no circumstance an offence under **section 306** read with **section 511 IPC, 1860** can be committed. The Supreme Court did not have occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under **section 306** read with **section 511, IPC, 1860**. Merely because the section opens with the words "if any person commits suicide" it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt on the one hand and abetment of commission of suicide and its attempt on the other are treated differently by law and, therefore, the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under **section 309** read with **section 116, IPC, 1860**. To implement the scheme of law he has got to be held to be punishable under **section 306** read with **section 511, IPC, 1860**.¹¹⁶

^{114.} *Satvir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] : (2001) 8 SCC 633 [LNIND 2001 SC 2168] : 2001 Cr LJ 4625 : (2002) 1 SCC (Cr) 48.

^{115.} *Supra*.

^{116.} *Berin P Varghese v State*, 2008 Cr LJ 1759 (Ker).

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 117] Abetting commission of offence by the public or by more than ten persons.

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

ILLUSTRATION

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

COMMENT—

Abetting by public or more than ten persons.—Abetment has a reference both to the person or persons abetted, and to the offence or offences the commission of which is abetted. This section deals with former, whatever may be the nature of the offence abetted, while section 115 deals with the latter without having regard to the person or persons abetted.¹¹⁷.

Under this section it will be sufficient to show any instigation or other mode of abetment, though neither the effect intended, nor any other effect follows from it. The gravamen of a charge under this section is the abetment itself, the instigation to general lawlessness, not the particular offence of which the commission is instigated.¹¹⁸. The section covers all offences and is a general provision for abetment of any number of persons exceeding ten. When more than ten persons are instigated to commit an offence punishable with death, the offence comes under section 115 as well as this section.¹¹⁹. Abetment of the commission of murder, whether by a single individual or by a class of persons exceeding ten, falls under section 115. In the latter case, it may fall under this section also, but as this section prescribes a lesser punishment, section 115 is the more appropriate provision for such an offence. Although both the sections are applicable, there cannot be separate sentences under the two sections for the same **criminal act**, and the conviction should properly be under that section which inflicts the higher punishment.¹²⁰.

[s 117.1] Instigation is essential.—

A mere intention or preparation to instigate is neither instigation nor abetment. In order to constitute an offence under this section by pasting leaflets it is necessary that either the public should have read the leaflets or they should have been exposed to public gaze.¹²¹.

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117. *Lavji Mandan v State*, (1939) 41 Bom LR 980 .
 118. *Konda Satyavtamma v State*, (1931) 55 Mad 90.
 119. *Dwarkanath Goswami*, (1932) 60 Cal 427 .
 120. *Lavji Mandan*, (1939) 41 Bom LR 980 .
 121. *Parimal Chatterji*, (1932) 60 Cal 327 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 118] Concealing design to commit offence punishable with death or imprisonment for life.

Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or ^{122.}[imprisonment for life],

^{123.}[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence or makes any representation which he knows to be false respecting such design,

If offence be committed – if offence be not committed.

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

ILLUSTRATION

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

COMMENT—

Concealing design to commit offence.—Sections 118, 119 and 120 all contemplate the concealment of a design by persons other than the accused to commit the offence charged. These sections apply to the concealment of all offences except those which are merely punishable with fine. Under section 107 concealment of a design to commit an offence constitutes an abetment. There must be an obligation on the person concealing the offence to disclose.^{124.} The Cr PC, 1973 creates such obligation in respect of several offences of a serious nature ([sections 39](#) and [40 Cr PC, 1973](#)). The concealment to be criminal must be intentional or at least with knowledge that it will facilitate the commission of an offence.

^{122.} Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

^{123.} Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 119] Public servant concealing design to commit offence which it is his duty to prevent.

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;

125 [voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design;

If offence be committed.

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence be punishable with death, etc.

or, if the offence be punishable with death or 126 [imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

If offence be not committed.

or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

ILLUSTRATION

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to so facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provisions of this section.

COMMENT—

Public servant concealing design to commit offence.—Section 118 deals with persons who are not public servants. In this section the same principle is extended to public servants but with severe penalty.

125. Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

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

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 120] Concealing design to commit offence punishable with imprisonment.

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

If offence be committed—if offence be not committed.

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term for such imprisonment, or with such fine as is provided for the offence, or with both.

COMMENT—

Punishment for concealing design.—The basic principle of this section and section 118 is one and the same. Section 118 deals with offences punishable with death or imprisonment for life; this section deals with offences punishable with imprisonment. All offences except those punishable only with fine are included in these two sections.

THE INDIAN PENAL CODE

1. CHAPTER V-A CRIMINAL CONSPIRACY

[s 120A] Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Providedthat no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

COMMENT—

Criminal conspiracy.—This chapter has introduced into the criminal law of India a new offence, viz., the offence of criminal conspiracy. It came into existence by the Criminal Law (Amendment) Act, 1913. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention.². Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means.³. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.⁴.

[s 120A.1] Ingredients.—

The ingredients of this offence are—

- (1) that there must be an agreement between the persons who are alleged to conspire; and
- (2) that the agreement should be
 - (i) for doing of an illegal act, or
 - (ii) for doing by illegal means an act which may not itself be illegal.^{5.} Meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.^{6.}

The most important ingredient of the offence being, the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them as conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under [section 120-B of the Indian Penal Code, 1860 \(IPC, 1860\)](#).^{7.}

[s 120A.2] Elements of Criminal Conspiracy.—

- (a) an object to be accomplished,
- (b) a plan or scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.^{8.}

1. Two or more persons needed.—To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself. In *Topandas v State of Bombay*,^{9.} which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty v UOI*,^{10.} it was laid down that "two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself." The question of a single person being convicted for an offence of conspiracy was considered in *Bimbadhar Pradhan v The State of Orissa*,^{11,12.} and held that It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. In the Red fort Attack Case^{13.} the Supreme Court found that it was nothing but a well-planned conspiracy, in which apart from sole appellant, some others were also involved and convicted the sole appellant for criminal conspiracy.^{14.} Under the common law since husband and wife constitute one person there cannot be any conspiracy to commit an offence if husband and wife are the only parties to an agreement.^{15.} "It seems rather odd that though husband and wife by

themselves alone cannot be convicted of an offence of conspiracy for agreeing to commit an offence but if two of them commit the self-same substantive offence they can be convicted of that offence".¹⁶ Fortunately this state of law does not exist in India, where husband and wife by themselves alone can be parties to a criminal conspiracy. Where the husband is a party with some others in a conspiracy and his wife joined him in that with knowledge that he was involved with others to commit an unlawful act, she would be guilty of the conspiracy.¹⁷ Since conspiracy requires at least two persons, where two or more named persons only were charged and all but one of them were acquitted, the remaining accused could not be convicted under [section 120B, IPC, 1860](#), as he could not have conspired with himself.¹⁸ In a similar case before the Supreme Court, a military major was tried for theft of military goods along with nine others who were supposed to have abetted him. He was found guilty along with one more accused and the rest were acquitted. On his appeal, the High Court quashed the judgment of the Court martial because there was no proof that he had removed the wheel drums. He was reinstated. In view of the acquittal and reinstatement of the main accused, the matter of his co-accused came before the Supreme Court. He too was ordered to be acquitted and reinstated.¹⁹ The same rule obtained under the English common law provided two named persons were tried together.²⁰ This rule has now been abolished by section 5(8) of the Criminal Law Act, 1977 which provides that unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted, e.g., where one was acquitted for want of sanction or on ground of being an exempted person. The Bombay High Court has taken the same view in a case. Thus, where of the two accused one was a public servant and he had to be acquitted as he was prosecuted without obtaining sanction under [section 197, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), the other could still be convicted on a charge of conspiracy as the acquittal of the other accused was not on facts but on technical ground and in spite of evidence establishing the factum of conspiracy.²¹

The circumstances in which a single person can be tried and convicted have been thus, stated in *Kenny*.²² "But though there must be plurality of conspirators, it is not necessary that all should be brought to trial together. One person may be indicted, alone, for conspiring with other persons who are not in custody, or who are even unknown to the indictors. Indeed, some of the conspirators may be unknown to the rest, provided all are acting under the directions of one leader. There need not be communication between each conspirator and every other, provided there be a design common to all."²³ Thus, a wife knowing that her husband was involved with others in a conspiracy, agreed with him that she would join the conspiracy and play her part, it was held that she thereby became guilty of conspiracy notwithstanding that the only person with whom she actually concluded the agreement was her husband.²⁴

2. Agreement is gist of the offence.—The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.²⁵ Meeting of minds is essential. Mere knowledge or discussion is not sufficient.²⁶ It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but the presence of an agreement to carry out the object of the intention, is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.²⁷ In the absence of an agreement, a mere thought to commit a crime does not constitute the offence.²⁸ The offence of conspiracy is a substantive offence. It renders the mere agreement to commit an offence punishable even if no offence takes place pursuant to the illegal agreement.²⁹ The object in view or the methods employed should be illegal, as defined in section 43, (*supra*). A distinction is drawn between an agreement to

commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter, there must be some act done by one or more of the parties to the agreement to give effect to the object thereof, that is, there must be an overt act. An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.³⁰ A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.³¹ A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.³²

The meeting of the minds to form a criminal conspiracy has to be proved by adducing substantive evidence, in cases where the circumstantial evidence is incomplete or vague.³³

[s 120A.3] *Actus reus.*—

The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to give effect to an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.³⁴

[s 120A.4] *Participation.*—

It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.³⁵ To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act.³⁶ Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.³⁷ The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.³⁸

[s 120A.5] Overt act.—

No overt act is necessary.^{39.} Where the allegation against the third accused was that he was merely standing nearby when the other accused committed the murder, he cannot be charged for an offence under [sections 302/120B, IPC, 1860](#), in the absence of any other reliable evidence.^{40.} In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement.^{41.} When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.^{42.} Where the conspiracy alleged is with regard to the commission of a serious crime as contemplated by section 120-B read with the proviso to sub-section (2) of section 120A, then the mere proof of an agreement is enough to bring about conviction under section 120B and the proof of any overt act by the accused or by any of them would not be necessary.^{43.} The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable.^{44.}

It is not an ingredient of the offence under this section that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.^{45.} Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.^{46.} It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy.^{47.} It is also not necessary that every conspirator must have taken part in each and every act done in pursuance of a conspiracy.^{48.} It is, however, necessary that a charge of conspiracy should contain particulars of the names of the place or places where it was hatched, persons hatching it, how was it hatched and what the purpose of the conspiracy was.^{49.}

In the matter^{50.} of the assassination of the then Prime Minister of India, Smt. Indira Gandhi, one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. One of them was acquitted by the Supreme Court. His movements after the incident were not properly proved. The documents recovered from his custody did not indicate any agreement between him and the other accused. They only showed his agitated mind which was in the grip of an avenging mood. This is not enough to establish an agreement with anybody. On the other hand, about *Kehar Singh*, it was shown that he was having secret talks with one of the actual killers, that they were trying all the time to keep themselves away from their wives and children, they avoided the company of the other members of the family and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret. This was enough to constitute a *prima facie* evidence of conspiracy within the meaning of [section 10 of the Evidence Act, 1872](#) and to bring them within the jacket of punishment of all for the act of one.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.⁵¹. Thus, a conspiracy is an inference from circumstances. There cannot always be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.⁵². It is manifest that the meeting of minds of two or more persons is a *sine qua non* but it may not be possible to establish by direct evidence. Its existence and objective can be inferred from the surrounding circumstances and parties conduct. It is necessary that the incriminating circumstances must form a chain of events, from which a conclusion about the accused's guilt could be drawn. The help of circumstantial evidence is necessary because a conspiracy is always hatched in secrecy. It becomes difficult to locate any direct evidence.⁵³. A businessman was in great need of money for completing the construction of a theatre complex. He was approached by a person who told him that his financier friend would help him with money. This was followed by a number of meetings between him and the team of financiers during which documents were executed and money released in cash which cash was found to be counterfeit currency. Every member of the team was held to be guilty of conspiracy and of cheating under section 420.⁵⁴. Seizure of unexplained currency notes from the possession of a person who claimed to be the owner of the money was held to be not sufficient to connect him with the person who was the main accused of smuggling currency, though he was a relative of the main accused.⁵⁵.

Where a bank accountant dishonestly agreed with others to conceal dishonour of cheques purchased by the bank and thus, causing risk to the economic interests of the bank, he was held guilty of conspiring to defraud whatever his motive or underlying purpose might have been (he contended that he acted in the interest of the bank) and even though he had no desire to harm the victim and no loss was actually caused.⁵⁶. Officials of a nationalised bank, in violation of departmental instructions, allowing advance credits on banker's cheques to the account of a customer dealing in securities. Advance credits were allowed before the cheques were sent for clearance and in some cases even before the cheques were received. This allowed the customer to take pecuniary advantage by overdrawing money from his account which he was not entitled to. Public funds were thus, misused. It was held that a criminal conspiracy between bank officials and the customer stood proved. One of them was acquitted because no conclusive evidence could be found against him.⁵⁷.

A criminal conspiracy can be proved by circumstantial evidence or by necessary implication. A smaller conspiracy may be the part of a larger conspiracy. It was held on facts that a criminal conspiracy was established when officials of two public sector banks acted in such a way that the transaction appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself but the transaction was in fact meant to help a private party to use public funds for private purpose.⁵⁸. Where the accused, an LIC agent, was charged with cheating the LIC by entering into conspiracy with the co-accused, a Development Officer, on the allegation that insurance policies were got issued on the basis of fake and forged documents and he received premium commission and bonus in respect of those policies, the accused was entitled to be acquitted because the forging was done by the co-accused without the knowledge and consent of the accused. Bonus, Commission, etc., in respect of those policies were credited to his account only in the normal course.⁵⁹. A 'vaid' and an 'up-vaid' who, in conspiracy with others made bogus

medical bills for government servants and got them duly passed through their Ayurvedic Aushadhalaya for payment of 30 per cent of the amount of the bills, were caught in a trap and the tainted money was recovered from the accused. One of the accused died during the pendency of appeal. Conviction of the other under sections 120B/468 was held to be proper.⁶⁰.

A group of friends went to a club for fun and frolic. One of them (the main accused) suddenly fired at the bar mate for her refusal to serve drinks. The others were unaware of the accused carrying a loaded pistol. They had stayed at the club for about two and a half hours. The Court said that this could not constitute an evidence of conspiracy. The Court also said that the fact that the group members dispersed separately and also helped to retrieve the murder weapon would not suggest conspiracy for murder.⁶¹.

[s 120A.6] Same verdict in respect of each not necessary.—

It has been held that the rule that both parties to a conspiracy had to be convicted or acquitted has been abrogated by the Criminal Law Act, 1977 (English). The important question is whether there is a material difference in the evidence against the two.⁶².

[s 120A.7] Sections 34 and 120A.—

There is not much substantial difference between conspiracy as defined in section 120A and acting on a common intention, as contemplated in section 34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under section 34 is the commission of a [criminal act](#) in furtherance of a common intention of all the offenders, which means that there should be unity of criminal behaviour resulting in something, for which an individual would be punishable, if it were all done by himself alone.⁶³. Another point of difference is that a single person cannot be convicted under section 120A and, therefore, where all the accused except one were acquitted, the Supreme Court ordered his acquittal also,⁶⁴ whereas under section 34, read with some other specific offence, a single person can be convicted because each is responsible for the acts of all others.

[s 120A.8] Sections 107 and 120A.—

For an offence under this section a mere agreement is enough if the agreement is to commit an offence. But, for an offence under the second clause of section 107 an act or illegal omission must take place in pursuance of the conspiracy and a mere agreement is not enough.⁶⁵.

3. How proved (section 120A IPC, 1860 and section 10 Evidence Act, 1872-Doctrine of agency).—There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct evidence or by circumstantial evidence. But [section 10 of the Evidence Act](#) introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another and have made a partnership in crime. The said section reads: "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common

intention, after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it."

The section can be analysed as follows: "(1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a coconspirator and not in his favour."⁶⁶.

Since conspiracy is often hatched up in utmost secrecy it is mostly impossible to prove conspiracy by direct evidence. It has, oftener than not, to be inferred from the acts, statements and conduct of the parties to the conspiracy.⁶⁷ The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.⁶⁸ If it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object.⁶⁹ It should, however, be remembered that where there is no direct evidence, for example through the evidence of an approver, and the case for the prosecution is dependent on circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy and rule out the theory of innocence.⁷⁰ Thus, chairman of a large cooperative society cannot be punished vicariously for the acts of others as *mens rea* cannot be excluded in a criminal case. As a chairman he had to deal with various matters and it would have been impossible for him to look into every detail to find out if someone was committing any criminal breach of trust.⁷¹ Similarly, a case of conspiracy to misappropriate cash entrusted to the accused is not made out merely from the audit report without any evidence of shortage on actual verification of cash as mistakes and even double entries may be made *bona fide* while preparing the account.⁷² The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.⁷³ One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.⁷⁴.

[s 120A.9] Inference of conspiracy.—

It is a matter of common experience that direct evidence to prove conspiracy is rarely available.⁷⁵ Thus, it is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.⁷⁶ It can be a matter of inference drawn by the Court after considering whether the basic facts and circumstances on the basis of which inference is drawn have been

proved beyond all reasonable doubts and that no other conclusion except that of the complicity of Accused to have agreed to commit an offence is evident.⁷⁷. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.⁷⁸. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.⁷⁹.

One of the accused persons, a foreign national, was found staying in the country without valid passport and visa. His movement to various places with the main accused was established. A large quantity of arms and ammunition was recovered from the place occupied by the main accused. The Court said that an inference of criminal conspiracy could be drawn.⁸⁰. The Court also said that the appeal against conviction of the main accused was dismissed would not be sufficient to say that the charge of conspiracy against other accused would be deemed to be proved.⁸¹. Circumstances proved before, during and after the occurrence of the crime have to be considered together to decide about the complicity of the accused.⁸². Circumstantial evidence was based on the recovery of the scooter used by the executant and alleged to have been owned by a co-conspirator, but the recovery was not based on any information given by the accused, but by one witness. The Supreme Court held that no circumstantial evidence was proved against any of the conspirators.⁸³.

[s 120A.10] Circumstantial evidence, inference must be backed by evidence.—

Most of the circumstances stated as against the accused were not proved. Merely based on the circumstance that the accused had filed a civil suit against the deceased for restraining him from doing a business he cannot be convicted. Moreover, there was no specific evidence as to who the conspirators were, where and when the conspiracy was hatched, what the specific purpose of such a conspiracy was and whether it was relating to the elimination of the deceased.⁸⁴. The law is well established that conspiracy cannot be proved merely on the basis of inferences. The inferences have to be backed by evidence.⁸⁵.

The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must bear in mind that the meeting of minds is essential and mere knowledge or discussion would not be sufficient.⁸⁶. In *Mukesh v State for NCT of Delhi*, Criminal Appeal Nos. 607–608 of 2017, (popular as Nirbhaya Case) the criminal conspiracy was proved by the sequence of events and the conduct of the accused.

In the conspiracy for assassination of the former PM (Rajiv Gandhi) one of the accused persons at one point of time in his confessional statement said that he had a strong suspicion that Rajiv Gandhi was the target of the accused persons. The Court said that this suspicion did not make him a member of the conspiracy. His association, however strong with the main conspirators would not make him a member of the conspiracy by itself. But those who were in the thick of the conspiracy, for example, one who purchased the battery for explosion of human body, their conviction for the main offence was proper. But mere association with LTTE was not sufficient nor the fact that messages about arrests were sent by certain persons.⁸⁷.

[s 120A.11] Contacts through telephone.—

Where the case against the appellants A2 to A4 is that they had hatched a conspiracy with appellant A1 to kill the deceased and the case against A1 was proved as per the 'last seen theory', and to prove the conspiracy the prosecution relied on the circumstance that there were frequent phone calls among the accused some days around the date of murder, and the recovery of some vehicles; the Supreme Court held that the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion by itself cannot take the place of proof.⁸⁸.

[s 120A.12] Between bank officials.—

Criminal conspiracy was taken to be established when officials of two public sector banks acted in such a way that the transaction in question appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself. The transaction was in fact formalised for the purpose of helping a private party to use public funds for a private purpose.⁸⁹.

[s 120A.13] Approval of television serial.—

The accused was the director of *Doordarshan*. The allegation against him was that he continued a serial which was approved at lower rates by an earlier director. Each director worked at different point of time. They did not work together. Their postings were official postings. It was difficult to infer any conspiracy between them for continuing the telecast. The investigation launched against the director was liable to be quashed.⁹⁰.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.

2. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in ([1999](#)) 5 SCC 253 [[LNIND 1999 SC 526](#)].

3. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, ([2013](#)) 1 SCC 613 [[LNIND 2012 SC 1033](#)] : [2012 \(10\) Scale 237](#) [[LNIND 2012 SC 1033](#)] relying on *Ram Narayan Popli v Central Bureau of*

- Investigation*, (2003) 3 SCC 641 [LNIND 2003 SC 26] .
4. State of MP v Sheetla Sahai, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.
 5. Yogesh v State of Maharashtra, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] ; S Arul Raja v State of TN, reported in, 2010 (8) SCC 233 [LNIND 2010 SC 689] ; Mohan Singh v State of Bihar, AIR 2011 SC 3534 [LNIND 2011 SC 820] : 2011 Cr LJ 4837 : (2011) 9 SCC 272 [LNIND 2011 SC 820] ; Central Bureau of Investigation Hyderabad v K Narayana Rao, 2012 AIR SCW 5139 : 2012 Cr LJ 4610 : JT 2012 (9) SC 359 [LNIND 2012 SC 569] : (2012) 9 SCC 512 [LNIND 2012 SC 569] : 2012 (9) Scale 228 [LNIND 2012 SC 569] ; Ajay Aggarwal v UOI, (AIR 1993 SC 1637 [LNIND 1993 SC 431] : 1993 AIR SCW 1866 : 1993 Cr LJ 2516) : (1993) 3 SCC 609 [LNIND 1993 SC 431] .
 6. Rajiv Kumar v State of UP, AIR 2017 SC 3772 [LNIND 2017 SC 367] .
 7. Pratapbhai Hamirbhai Solanki v State of Gujarat, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; Damodar v State of Rajasthan, (2004) 12 SCC 336 [LNIND 2003 SC 803] ; Kehar Singh v State (Delhi Admn), (1988) 3 SCC 609 [LNIND 1988 SC 887] ; State of Maharashtra v Somnath Thapa, (1996) 4 SCC 659 [LNIND 1996 SC 776] .
 8. Ram Narayan Popli v Central Bureau of Investigation, (2003) 3 SCC 641 [LNIND 2003 SC 26] .
 9. Topandas v State of Bombay, AIR 1956 SC 33 [LNIND 1955 SC 78] : 1956 Cr LJ 138 : (1955) 2 SCR 881 [LNIND 1955 SC 78] . The ruling in Topandas case, AIR 1956 SC 33 [LNIND 1955 SC 78] and Fakhruddin case, AIR 1967 SC 1326 [LNIND 1966 SC 307] were not followed in Sanichar Sahni v State of Bihar, (2009) 7 SCC 198 [LNIND 2009 SC 1350] : (2009) 3 SCC (Cr) 347, because here only one person was charged under section 120-B and for no other offence, and his co-accused was charged with another offence but not under section 120-B, the court said that the charge was not properly framed. In the earlier cases, more than one were charged with conspiracy, all but one were acquitted, the single one could not be convicted. He was convicted for murder which was proved against him.
 10. Haradhan Chakrabarty v UOI, AIR 1990 SC 1210 [LNIND 1990 SC 57] : 1990 Cr LJ 1246 : (1990) 2 SCC 143 [LNIND 1990 SC 57] .
 11. See also Thakur H v State of HP, 2013 Cr LJ 1704 (HP).
 12. Bimbadhar Pradhan v The State of Orissa, AIR 1956 SC 469 [LNIND 1956 SC 25] .
 13. Mohd Arif v State of NCT of Delhi, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] .
 14. McDowell, (1966) 1 All ER 193 : (1965) 3 WLR 1138 ; Rex v IRC Haulage, (1944) KB 551 : (1944) 1 All ER 691 . Central Bureau of Investigation v VC Shukla, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 ; Ajay Kumar Rana v State of Bihar, 2001 Cr LJ 3837 (Pat).
 15. Mowji, (1957) All ER 385 : (1957) 2 WLR 277 . See Glanville Williams, *Legal Unity of Husband and Wife*, 10 Modern LR 16 (1947). "But either spouse may be convicted of inciting the other to commit a crime if such be proved." See Kenny, 450, p 428, *Outlines Of Criminal Law*, 19th Edn 1966.
 16. Cross & Jones : *Introduction To Criminal Law*, 9th Edn, p 343.
 17. R v Charstny, (1991) 1 WLR 1381 (CA).
 18. Bhagat Ram, AIR 1972 SC 1502 [LNIND 1972 SC 72] : 1972 Cr LJ 909 ; Tapandas, AIR 1956 SC 33 [LNIND 1955 SC 78] : (1955) 2 SCR 881 [LNIND 1955 SC 78] ; Fakhruddin, AIR 1967 SC 1326 [LNIND 1966 SC 307] : 1967 Cr LJ 1197 ; See also State v Dilbagh Rai, 1986 Cr LJ 138 (Delhi).
 19. Relying upon Faguna Kanta Nath v State of Assam, AIR 1959 SC 673 [LNIND 1959 SC 2] : 1959 Cr LJ 90 : 1959 Supp 2 SCR 1, where also the acquittal of the co-accused automatically

followed the acquittal of the main accused; *Madan Lal Bhandari v State of Rajasthan*, AIR 1970 SC 436 [LNIND 1969 SC 230] : 1970 Cr LJ 519 : (1969) 2 SCC 385 [LNIND 1969 SC 230] : (1970) 1 SCR 688 [LNIND 1969 SC 230] , the nurse causing miscarriage acquitted, the conspirator also acquitted.

20. *Plummer v State*, (1902) 2 KB 339 ; *Coughlan* (1976) 64 Cr App Rep 11 .
21. *Pradumna*, 1981 Cr LJ 1873 (Bom).
22. JE Cecil Turner, *Kenny's Outlines of Criminal Law*, 428, 19th Edn, 1966.
23. Citing *R v Myrick and Ribuffi*, (1929) 21 Cr App R 94 TAC.
24. *Regina v Chrastry*, (1991) 1 WLR 1381 (CA). *Kuldeep Singh v State of Rajasthan*, 2001 Cr LJ 479 (SC), the only evidence against one of the accused conspirators was that he was seen moving with others to the house of the deceased. This was held to be not sufficient to make him a part of the conspiracy or participant in murder.
25. *Mohammad Ismail*, (1936) Nag 152; *Bimbadhar Pradhan*, (1956) Cut 409 SC; *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196] ; *Chaman Lal v State of Punjab*, (2009) 11 SCC 721 [LNIND 2009 SC 721] AIR 2009 SC 2972 [LNIND 2009 SC 721] , requisites of the offence restated.
26. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646 : *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66.
27. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] Mere knowledge, or even discussion, of the plan is not, *per se* enough; *Russell on Crimes*, 12th Edn, vol I, quoted in *Kehar Singh v State (Delhi Administration)*, 1988 (3) SCC 609 [LNIND 1988 SC 887] at 731.
28. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
29. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
30. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] . *K Hashim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , the court enumerated four elements of criminal conspiracy, the essence is an unlawful agreement and it is complete when the agreement is framed. A design resting in mind only does not make out the offence.
31. *Subramanian Swamy v A Raja*, AIR 2012 SC 3336 [LNIND 2012 SC 498] : 2012 Cr LJ 4443 : (2012) 9 SCC 257 [LNIND 2012 SC 498] (Involvement of finance minister in 2G Spectrum Case) - Criminal conspiracy cannot be inferred on the mere fact that there were official discussions between the officers of the MoF and that of DoT and between two Ministers, which are all recorded. Suspicion, however, strong, cannot take the place of legal proof and the meeting between Shri P Chidambaram and Shri A Raja would not by itself be sufficient to infer the existence of a criminal conspiracy so as to indict Shri P. Chidambaram.
32. *Esher Singh v State of AP*, 2004 (11) SCC 585 [LNIND 2004 SC 329] .
33. *Gulam Sarbar v State of Bihar*, 2014 Cr LJ 34 : (2014) 3 SCC 401.
34. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
35. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *State of HP v Krishan Lal Pardhan*, (AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709) : (1987) 2 SCC 17 [LNIND 1987 SC 131] .
36. *K R Purushothaman v State*, AIR 2006 SC 35 [LNIND 2005 SC 842] : (2005) 12 SCC 631 [LNIND 2005 SC 842] ; approved in *John Pandian v State Rep by Inspector of Police, TN*, AIR 2011 SC (Supp) 531 : (2011) 3 SCC(Cr) 550 : 2010 (13) Scale 13.

37. *Yash Pal Mittal v State of Punjab*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 : (1977) 4 SCC 540 [LNIND 1977 SC 304].
38. *Firozuddin Basheeruddin v State*, 2001 (7) SCC 596 [LNIND 2001 SC 1755].
39. *K Hasim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : 2005 Cr LJ 143.
40. *Raju v State of Chhattisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031]
41. *Sushil Suri v CBI*, AIR 2011 SC 1713 [LNIND 2011 SC 494] : (2011) 5 SCC 708 [LNIND 2011 SC 494] : (2011) 2 SCC(Cr) 764 : (2011) 8 SCR 1 [LNIND 2011 SC 494].
42. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
43. *SC Bahri v State of Bihar*, AIR 1994 SC 2020 : 1994 Cr LJ 3271 .
44. *Kehar Singh v State (Delhi Administration)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
45. *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196]
46. *Lennart v State*, AIR 1970 SC 549 [LNIND 1969 SC 396] : 1970 Cr LJ 707 .
47. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 ; *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] SC : 1978 Cr LJ 189 .
48. *State of HP v Krishnalal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] .
49. *KS Narayanan*, 1982 Cr LJ 1611 (Mad); *Krishnalal Naskar*, 1982 Cr LJ 1305 (Cal). *Mahabir Prasad Akela v State of Bihar*, 1987 Cr LJ 1545 Pat, no meeting of minds.
50. (1988) 3 SCC 609 [LNIND 1988 SC 887] : AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 CR LJ 1 . AS AGAINST THIS SEE, *Param Hans Yadav v State of Bihar*, AIR 1987 SC 955 [LNIND 1987 SC 253] : 1987 Cr LJ 789 : (1987) 2 SCC 197 [LNIND 1987 SC 253] , murder of Collector by a person whose connection with the jailed co-accused not proved, though the latter had a grudge against the collector for demolishing his temple and detaining him. Reversing the High Court decision, 1986 Pat LJR 688 .
51. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] ; *NV Subba Rao v State*, (2013) 2 SCC 162 [LNIND 2012 SC 1350] : 2013 Cr LJ 953 .
52. *MS Reddy v State Inspector of Police ACB Nellore*, 1993 Cr LJ 558 (AP). *Ammuni v State of Kerala*, AIR 1998 SC 280 : 1998 Cr LJ 481 , the accused administered poison and caused death of the woman and her two children, there was evidence to show that all the four entered into a conspiracy to murder the woman. They were seen hanging around her house. One of the glass tumblers recovered from her place carried the finger prints of one of them. One of them also confessed. Conspiracy proved conviction under sections 300/34, confirmed. *Kuldeep Singh v State of Rajasthan*, AIR 2000 SC 3649 [LNIND 2000 SC 724] , accused persons entered into conspiracy to cause death, circumstantial evidence coupled with recoveries. Guilt established. Conviction for murder and conspiracy.
53. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
54. *Nellai Ganesan v State*, 1991 Cr LJ 2157 . See also *Khalid v. State*, 1990 Cr LJ (NOC) Raj, where the court inferred the fact of agreement from transmission of thoughts sharing the unlawful design, the court observing that neither proof of actual words of communication nor actual physical meeting of persons involved is necessary.
55. *KTMS Mohd v UOI*, AIR 1992 SC 1831 [LNIND 1992 SC 362] : 1992 Cr LJ 2781 .

56. *Wai Yu-Tsang v The Queen*, (1991) 3 WLR 1006 PC, applying *Welham v DPP*, (1961) AC 103 HL(E) and *Reg v Allsop*, (1976) 64 Cr App R; CA. *Shambhu Singh v State of UP*, AIR 1994 SC 1559 : 1994 Cr LJ 1584 , the Supreme Court did not interfere in the concurrent finding of the lower courts as to the involvement of the accused in the conspiracy.
57. *Mir Naqvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] . The court also explained the nature of the crime.
58. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] , under the **National Housing Bank Act, 1987**. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; criminal conspiracy by bank officials in relation to Harshad Mehta Securities Scam, illegally extending discounting/ rediscounting facility for bills of exchange by bank officials, conspiracy in relation to persons liable to be convicted, role/conduct necessary to fasten liability.
59. *Nand Kumar Singh v State of Bihar*, AIR 1992 SC 1939 : 992 Cr LJ 3587 : (1992) Supp (2) SCC 111 .
60. *Narain Lal Nirala v State of Rajasthan*, AIR 1993 SC 118 : 1993 Cr LJ 3911 .
61. *State v Siddarth Vashisth (alias Manu Sharma)*, 2001 Cr LJ 2404 (Del).
62. *R v Ashton*, (1992) Cr LR 667 (CA).
63. *Dinanath*, 1939 Nag 644.
64. *Vinayak v State of Maharashtra*, AIR 1984 SC 1793 [LNIND 1984 SC 255] : (1984) 4 SCC 441 [LNIND 1984 SC 255] : 1984 SCC (Cr) 605.
65. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : (1962) 1 Cr LJ 770 . Further explained by the Supreme Court in *Kehar Singh v State (Delhi Admn)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
66. *State of TN through Superintendent of Police CBI/SIT v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *Sardar Sardul Singh Caveeshar v State of Maharashtra*, (AIR 1965 SC 682 [LNIND 1963 SC 67] : 1965 (1) Cr LJ 608) : (1964) 2 SCR 378 [LNIND 1963 SC 67] See also.
67. *Bhagwandas*, AIR 1974 SC 898 : 1974 Cr LJ 751 ; *Ashok Datta Naik*, 1979 Cr LJ NOC 95 (Goa); *V Shivanarayan*, AIR 1980 SC 439 : 1980 Cr LJ 388 ; *Mohd Usman Mohd Hussain*, AIR 1981 SC 1062 [LNIND 1981 SC 127] : 1981 Cr LJ 588 : (1988) 3 SCC 609 [LNIND 1988 SC 887] ; *State of UP v Girijashankar Misra*, 1985 Cr LJ NOC 79 (Delhi); *Subhas*, 1985 Cr LJ 1807 (Cal).
68. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; An offence of criminal conspiracy can also be proved by circumstantial evidence. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901]. In *S Arul Raja v State of TN*, 2010 (8) SCC 233 [LNIND 2010 SC 689] in which it is held that mere circumstantial evidence to prove the involvement of the appellant is not sufficient to meet the requirements of criminal conspiracy under Section 120A of the (IPC, 1860) A meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence.
69. *Re MD Mendekar*, 1972 Cr LJ 978 (Mysore); See also *Bhagwandas*, *supra*.
70. *DB Naik*, 1982 Cr LJ 856 (Bom); *Hari Ram*, 1982 Cr LJ 294 (HP).
71. *Jethsur Surangbhai*, AIR 1984 SC 151 [LNIND 1983 SC 329] : 1984 Cr LJ 162 (SC) : (1984) SCC (Cr) 474.
72. *Ajoyadha Prashadl* 1985 Cr LJ 1401 (Ori).
73. *State v VC Shukla*, 1980 Cr LJ 965 : 1980 Cr LR (SC) 301 . Also *VC Shukla v State (Delhi Admn)*, AIR 1980 SC 1382 [LNIND 1980 SC 179] : 1980 SCC (Cr) 561 and 849 (1980) 2 SCC 665 [LNIND 1980 SC 179] . *State of HP v Gian Chand*, 2000 Cr LJ 949 (HP); *Sardari Lal v State of Punjab*, 2003 Cr LJ 383 (P&H), *State of MP v Sheetla Sahai*, (2009) 8 SCC 617 : (2009) 3 SCC (Cr)

901; *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66; *Y Venkaiah v State of AP*, AIR 2009 SC 2311 [LNIND 2009 SC 513] : (2009) Cr LJ 2834 : (2009) 12 SCC 126 [LNIND 2009 SC 513]. *State of MP v Paltan Mallah*, 2005 AIR 2005 SC 733 [LNIND 2005 SC 64] : Cr LJ 918 SC : (2005) 3 SCC 169 [LNIND 2005 SC 64].

74. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600 [LNIND 2005 SC 580]

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75. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .

76. *Rajiv Kumar v State of UP*, AIR 2017 SC 3772 [LNIND 2017 SC 367] .

77. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .

78. *State of Maharashtra v Som Nath Thapa*, AIR 1996 SC 1744 [LNIND 1996 SC 776] : 1996 AIR SCW 1977 : 1996 Cr LJ 2448 : (1996) 4 SCC 649 .

79. *State through Central Bureau of Investigation v Dr Anup Kumar Srivastava*, AIR 2017 SC 3698 [LNIND 2017 SC 371] .

80. *Lal Singh v State of Gujarat*, AIR 2001 SC 746 [LNIND 2001 SC 98] : 2001 Cr LJ 978 . The case under the Terrorists and Disruptive Activities (Prevention) Act, 1987. *Saju v State of Kerala*, AIR 2001 SC 175 [LNIND 2000 SC 1552] , no inference of conspiracy to murder from circumstances proved in the case, *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 : (2007) 5 SCC 634 [LNIND 2007 SC 647] , inference regarding conspiracy can be drawn from surrounding circumstances because normally no direct evidence is available.

81. *Ibid.* The court followed the ruling in *Babu Singh v State of Punjab*, AIR 1996 SC 3250 [LNIND 1996 SC 860] : 1996 Cr LJ 2503 ; *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , it is difficult to establish conspiracy by direct evidence. But there should be material evidence showing the connection between the alleged conspiracy and the act done pursuant to that conspiracy. *Firozuddin Basheerudin v State of Kerala*, AIR 2001 SC 3488 [LNIND 2001 SC 1755] : 2001 Cr LJ 4215 , conspiracy to eliminate a police informer on whose information contraband gold was seized from the accused persons, chain of circumstances to the point of murder, complete, conviction. *State of Kerala v P Suganthan*, AIR 2000 SC 3323 [LNIND 2000 SC 1298] : 2000 Cr LJ 4584 , conspiracy to murder the earlier paramour of the concubine, not proved. *Hira Lal Hari Lal v CBI*, AIR 2003 SC 2545 [LNIND 2003 SC 499] : 2003 Cr LJ 3041 : (2003) 5 SCC 257 [LNIND 2003 SC 499] , difficult to prove conspiracy by direct evidence. An agreement between the parties to do something unlawful has to be proved. The allegation here was that of evasion of customs duty.

82. *Chandra Prakash v State of Rajasthan*, 2014 Cr LJ 2884 : (2014) 8 SCC 340 [LNIND 2014 SC 346] .

83. *Indra Dalal v State of Haryana*, 2015 Cr LJ 3174 : 2015 (6) SCJ 501 [LNIND 2015 SC 358] .

84. *Balkar Singh v State of Haryana*, 2015 Cr LJ 901 : (2015) 2 SCC 746 [LNIND 2014 SC 950] .

85. *Satyavir Singh v State of UP*, 2016 Cr LJ 4863 (All), 2015 (91) ALLCC 892.

86. *State v Nitin Gunwant Shah*, 2015 Cr LJ 4759 : 2016 (1) SCJ 30 [LNIND 2015 SC 529] .

87. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 .

88. *Kiriti Pal v State of WB*, 2015 Cr LJ 3152 : 2015 (3) Crimes 11 (SC).

89. *R Venkatkrishnan v CBI*, 2010 1 SCC (Cr) 164 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

90. *Mahesh Joshi v State, (CBI)*, 2002 Cr LJ 97 (Kant).

THE INDIAN PENAL CODE

1.CHAPTER V-A CRIMINAL CONSPIRACY

[s 120B] Punishment of criminal conspiracy.

- (1) **Whoever is a party to a criminal conspiracy to commit an offence punishable with death, ^{91.} [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.**
- (2) **Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]**

COMMENT—

Earlier to the introduction of sections 120A and B, conspiracy per se was not an offence under [IPC, 1860](#), except in respect of the offence mentioned in section 121A. However, abetment by conspiracy was and still remains to be an ingredient of abetment under the second clause of [section 107 of IPC, 1860](#). The punishment therefore, is provided under various sections, viz., sections 108–117. Whereas under section 120A, the essence of the offence of criminal conspiracy is a bare agreement to commit the offence, the abetment under section 107 requires the commission of some act or illegal omission pursuant to the conspiracy.^{92.} Criminal conspiracy is an independent offence. It is punishable separately.^{93.} The punishment for conspiracy is the same as if the conspirator had abetted the offence.^{94.} The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is one to commit an act which although illegal is not an offence punishable with death, imprisonment for life or rigorous imprisonment for more than two years.

Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There may be an element of abetment in a conspiracy; but conspiracy is something more than abetment. The offences created by section 109 and section 120A are quite distinct and where offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as conspiracy to commit those offences.^{95.}

This section applies to those who are the members of the conspiracy during its continuance. Conspiracy has to be treated as a continuing offence and whoever is a party to the conspiracy during the period for which he is charged is liable under this section.^{96.} A conspiracy is held to be continued and renewed as to encompass all its members wherever and whenever any member of it acts in furtherance of the common design.^{97.} The most important ingredient of a criminal conspiracy is an agreement for an illegal act, conspiracy continues to subsist till it is executed or rescinded or frustrated by choice or necessity.^{98.} The conspirators' connection with the conspiracy

would get snapped after he is nabbed by the police and kept in custody. He would then cease to be the agent of others. In this case (*Rajiv assassination*) the prosecution could not establish that the accused persons who were under detention continued their conspiratorial contact with those who remained outside. A statement which constitutes *prima facie* evidence of a conspiracy may amount to an act for which all the members can be held liable.^{99.}

Where the accused conspired with others in awarding a contract when he was in job, he could be held liable for subsequent acts of other conspirators even after his retirement as he contributed his part for furtherance of the conspiracy.^{100.}

For the purpose of establishing or proving the charge of conspiracy, it is not necessary that there should be knowledge of who are other conspirators and of the detailed stages of the conspiracy. The necessary requisite is knowledge of the main object and purpose of the conspiracy.^{101.} A fraud was alleged to have been committed by Government officers in processing and verifying fake bills. It was held that all the officers who dealt with the relevant files at one point of time or the other could not be considered to have taken part in the conspiracy or that they would be guilty of aiding and abetting the offence. Individual acts of criminal misconduct would have to be considered for fastening liability.^{102.}

An accused can be convicted for substantive offence even where he has been acquitted of the charge of conspiracy.^{103.}

[s 120B.1] Sanction for prosecution ([section 120B IPC, 1860](#) and [section 196 \(Cr PC, 1973\)](#)).—

This section has to be read along with section 196(1-A) (2) ([Cr PC, 1973](#)), which requires previous sanction of the State Government or the District Magistrate to launch prosecution in respect of a criminal conspiracy to commit an offence punishable with less than two years imprisonment. Thus, where the object of the conspiracy was cheating by false personation under [section 419, IPC, 1860](#), which is an offence punishable with a three-year imprisonment, the mere fact that there were other non-cognizable offences for which too the accused had been charged would not vitiate the trial in absence of sanction under section 196(1A)(2), ([Cr PC, 1973](#)), as that section is meant to be applicable to a case where the object of the conspiracy is to commit an offence punishable with less than two years' imprisonment.^{104.} Where the act in question was not done by the army officer in the discharge of his official duties, it was held that a sanction for his prosecution was not necessary.^{105.}

[s 120B.2] Can a company be prosecuted for Criminal conspiracy.—

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through that person or the body of persons.^{106.}

[s 120B.3] Signing differently in *vakalatnama*.—

The fact was that the accused put their signatures in *vakalatnama* differently from their original ones. It has been alleged by the complainant that the accused petitioners have deliberately and wilfully put their signatures on the *vakalatnama* in collusion with each other like irresponsible persons in order to gain wrongfully and with a view to cheat and mislead the complainant. It was held that the alleged action of the petitioners in signing their own name on the *vakalatnama* and filing the same in the Court through their counsel is neither an offence nor prohibited by any law. When the alleged act itself was not illegal, it cannot be said that there was any 'criminal conspiracy' and in absence of the basis for a charge for criminal conspiracy, the petitioners cannot be prosecuted or punished for the offence under [section 120-B of the IPC, 1860](#).¹⁰⁷.

[s 120B.4] Seeking opinion.—

Merely taking someone's opinion, who is an outsider to litigation, before filing the reply in the Court would not undermine the administration of justice in any way and it is not indicative of criminal conspiracy.¹⁰⁸

[s 120B.5] Hooch Tragedy case.—

In a case, the allegation was that all the accused persons hatched a criminal conspiracy and they created a well-oiled machinery for importing methyl alcohol to make spurious liquor. Accused diluted the spirit by adding water and sold it through their outlets. Many persons died due to the consumption of spurious liquor. Some persons lost their eyesight and number of others sustained grievous injuries. Supreme Court said that the whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business, which itself was a conspiracy, they mixed or allowed to be mixed methanol and used it so freely that ultimately resulted in the tragedy. Conviction is upheld.¹⁰⁹.

[s 120B.6] Corruption cases.—

The prosecution asserted that the appellants A1 to A4 had entered into a conspiracy and in furtherance thereof, A1 who was a public servant, had come to possess assets to the tune of Rs. 66.65 crores, disproportionate to her known sources of income, during the period from 1991 to 1996, when she held the office of the Chief Minister of the State. The Supreme Court in respect to the charge of criminal conspiracy observed that the free flow of money from one account to the other of the respondent's, firms/companies also proved beyond reasonable doubt that all the accused persons had actively participated in the criminal conspiracy to launder the ill-gotten wealth of A1 for purchasing properties in their names.¹¹⁰.

[s 120B.7] Previous sanction.—

No Court shall take cognizance of the offence of any criminal conspiracy punishable under [section 120B of the IPC, 1860](#), (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided

that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.¹¹¹

2. Sentence.—Where the accused is charged both under section 109 as well as [section 120B, IPC, 1860](#), and the offence abetted is shown to have been committed as a result of the abetment, the abettor should be punished with the imprisonment provided for the principal offence under [section 109, IPC, 1860](#), and no separate sentence need be recorded under [section 120B IPC, 1860](#).¹¹² Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.¹¹³ Where no jail term was awarded to the principal accused in a conspiracy and he was let off with fine alone, it was held that substantive sentence of imprisonment awarded to the other accused was wrongful and, therefore, they also were ordered to pay fine only.¹¹⁴ Where six of the seven persons accused of criminal conspiracy were acquitted, remaining one accused could not be convicted merely for being the head of the section of the branch where fraud was alleged to have been committed.¹¹⁵ Where the appellant-accused was one of the active members of the criminal conspiracy along with other accused and hatched the plan to kill/eliminate the deceased and in furtherance thereof other accused persons successfully killed/eliminated the deceased and it was not the case of the appellant-accused and nor was urged also that his case fell under Section 120(2) so as to be awarded less sentence as prescribed therein, the conviction and award of life sentence as prescribed under [Section 302](#) read with [Section 120B, IPC, 1860](#) was held proper.¹¹⁶ The accused pleaded guilty to conspiring to cause a public nuisance. He conspired with others to interfere with a premier division football match by means of extinguishing the floodlights while the match was in progress. The object of doing so was to affect bets placed on the match abroad, which depended on the score at the time when the lights were switched off and the match was abandoned. The plan was not put into effect and the accused and others were arrested before the match was due to take place. The accused would have received substantial reward for his role. He was sentenced to four years' imprisonment. His appeal was dismissed. The Court said that the practice of interfering with such an important sporting fixture was something which should be actively discouraged by severe sentences. The sentence could not be described as manifestly excessive.¹¹⁷

Law relating to Conspiracy as summarised by the Supreme Court in State of TN through Superintendent of Police, CBI/SIT v Nalini, (AIR 1999 SC 2640 [LNIND 1999 SC 1584] : (1999) 5 SCC 253 [LNIND 1999 SC 526] : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : 1999 Cr LJ 3124).

1. Under [Section 120A, IPC, 1860](#), offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention, but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.
2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in chain A enrolling B, B enrolling C, and so on and all will be members of the single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.
5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus, to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.
6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.
7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficult in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed to Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".
8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at

the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.
10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the other put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
91. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).
92. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, [2005 Cr LJ 3950 : \(2005\) 11 SCC 600 \[LNIND 2005 SC 580\]](#).
93. *State of MP v Sheetla Sahai*, [2009 Cr LJ 4436 : \(2009\) 8 SCC 617](#) : (2009) 3 SCC(Cr) 901.
94. *Alim Jan Bibi*, [\(1937\) 1 Cal 484](#) . It is not necessary that each and every conspirator must have taken part in the commission of the act. *State of HP v Krishanlal Pradhan*, [AIR 1987 SC 773 \[LNIND 1987 SC 131\] : 1987 Cr LJ 709 : \(1987\) 2 SCC 17 \[LNIND 1987 SC 131\]](#) . Govt of NCT of Delhi v Jaspal Singh, [\(2003\) 10 SCC 586 \[LNIND 2003 SC 649\]](#) , essential requirements of charge under the section. *Ram Narayan Popli v CBI*, [AIR 2003 SC 2748 \[LNIND 2003 SC 26\] : \(2003\) 3 SCC 641 \[LNIND 2003 SC 26\]](#) , statement of ingredients. *Nazir Khan v State of Delhi*, [AIR 2003 SC 4427 \[LNIND 2003 SC 696\] : \(2003\) 8 SCC 461 \[LNIND 2003 SC 696\]](#) , statement of ingredients and matters of proof.
95. *Subbaiah*, [AIR 1961 SC 1241 \[LNIND 1961 SC 95\]](#) . See also *Mohd Hussain v KS Dalipsinghji*, [AIR 1970 SC 45 \[LNIND 1969 SC 147\] : \(1970\) 1 SCR 130 \[LNIND 1969 SC 147\]](#) . See also *Jagdish Prasad v State of Bihar*, [1990 Cr LJ 366](#) Pat, conspiracy with railway employees to procure allotment of wagons under cover of fake letters. *State of Rajasthan v Govind Ram Bagdiya*, [2003 Cr LJ 1169](#) (Raj), the prosecution has to prove the elements of conspiracy. No

proof was forthcoming in this case in the matter of allotment of house of any conspiracy among officials to manipulate the system.

96. *Abdul Kadar v State*, [\(1963\) 65 Bom LR 864](#) . For an example of a failed prosecution under this section see *State of UP v Pheru Singh*, [AIR 1989 SC 1205 : 1989 Cr LJ 1135](#) . In *Darshan Singh v State of Punjab*, [AIR 1983 SC 554 \[LNIND 1983 SC 95\] : 1983 Cr LJ 985 : \(1983\) 2 SCC 411 \[LNIND 1983 SC 95\]](#) , the Supreme Court considered it to be unbelievable that the accused hatched their plot while taking drinks in the presence of a stranger. For proof of conspiracy it often becomes necessary to convert one of the conspirators into an approver witness and this may require corroboration. See *Balwant Kaur v UT Chandigarh*, [AIR 1988 SC 139 \[LNIND 1987 SC 738\] : 1988 Cr LJ 398](#) . The absence of one of the conspirators at one of their meetings does not by itself rule out his complicity. Conspiracies are hatched under cover of secrecy. They are generally proved by circumstantial evidence, *EK Chandrasenan v State of Kerala*, [AIR 1995 SC 1066 \[LNIND 1995 SC 88\] : 1995 Cr LJ 1445](#) ; *Aniceto Lobo v State (Goa, Daman and Diu)*, [AIR 1994 SC 1613 : 1994 Cr LJ 1582 : 1993 Supp \(3\) SCC 311](#) , conspiracy of three persons, one of whom, being bank employee, took out blank drafts, the other forged signatures and third opened accounts in fictitious names to encash the drafts, all of them were held to be equally guilty of the offence.

97. *Esher Singh v State of AP*, [AIR 2004 SC 3030 \[LNIND 2004 SC 329\] : \(2004\) 11 SCC 585 \[LNIND 2004 SC 329\]](#) .

98. *Damodar v State of Rajasthan*, [AIR 2003 SC 4414 \[LNIND 2003 SC 803\] : 2003 Cr LJ 5014 : \(2004\) 12 SCC 336 \[LNIND 2003 SC 803\]](#) . *R Sai Bharathi v J Jayalalitha*, [AIR 2004 SC 692 \[LNIND 2003 SC 1023\] : 2004 Cr LJ 286 : \(2004\) 2 SCC 9 \[LNIND 2003 SC 1023\]](#) , alleged conspiracy was to dispose of by auction the property of a Govt Co at a low price, but the bids made by the alleged conspirators reflected a fair price. Ingredients of the section not made out. *Hardeep Singh Sohal v State of Punjab*, [AIR 2004 SC 4716 \[LNIND 2004 SC 902\] : \(2004\) 11 SCC 612 \[LNIND 2004 SC 1006\]](#) conspiracy for murder not proved. Another charge of conspiracy for murder was rejected in *Hem Raj v State of Punjab*, [AIR 2003 SC 4259 \[LNIND 2003 SC 759\] : 2003 Cr LJ 4987 : \(2003\) 12 SCC 241 \[LNIND 2003 SC 759\]](#) . *State of HP v Satya Dev Sharma*, [\(2002\) 10 SCC 601](#) , criminal conspiracy between timber merchants and private landowners and Government officials for felling and misappropriating trees standing on Government land.

99. *State of TN v Nalini*, [AIR 1999 SC 2640 \[LNIND 1999 SC 1584\] : 1999 Cr LJ 3124](#) . Under TADA (repealed) such confession had the status of evidence. *Ram Singh v State of HP*, [AIR 1997 SC 3483 \[LNIND 1997 SC 1060\] : 1997 AIR SCW 1331 : 1997 Cr LJ 4091](#) , in a murder by some persons, the accused persons assisted them in causing disappearance of the dead body secretly in furtherance of their conspiracy, their conviction under sections 201-120B was held to be proper. *Subhash Harnarayanji Laddha v State of Maharashtra*, [\(2006\) 12 SCC 545 \[LNIND 2006 SC 1088\]](#) , conspiracy not proved. *Mallanna v State of Karnataka*, [\(2007\) 8 SCC 523 \[LNIND 2007 SC 1526\]](#) , conspiracy not proved.

100. *R Balkrishna Pillai v State of Kerala*, [1996 Cr LJ 757](#) (Ker); *Devender Pal Singh v State (NCT) of Delhi*, [2002 Cr LJ 2034](#) (SC), acquittal of a co-accused on the ground of non-corroboration of the confessional statement did not have the effect of demolishing the prosecution regarding conspiracy *Saju v State of Kerala*, [2001 Cr LJ 102](#) (SC), no evidence to show that the accused was responsible for pregnancy or insisted upon its termination. The accused and co-accused were fellow workers and seemed to be hired killers. They were seen together at the place of the incident both before and after it. That was held to be not sufficient to prove charge of conspiracy against them. *State of HP v Jai Lal*, [AIR 1999 SC 3318 \[LNIND 1999 SC 798\] : 1999 Cr LJ 4294](#) State Government scheme of purchasing infected apples from growers and destroying them. Allegations that some of them over charged by inflating weight. But no evidence of

experts about overweight, etc., charge not proved. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a charge-sheet was not quashed where there was evidence to believe that the two accused persons had conspired to produce a document for fulfilling the eligibility criteria for an appointment. *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 , the prosecution could not prove that one of the two accused was a party to the conspiracy. *Arun Gulab Gawli v State of Maharashtra*, 1998 Cr LJ 4481 (Bom) mere inference cannot invite punishment.

101. *Mohd Amin v CBI*, (2008) 15 SCC 49 [LNIND 2008 SC 2255] : (2009) 3 SCC (Cr) 693.
102. *Soma Chakravarty v State*, AIR 2007 SC 2149 [LNIND 2007 SC 632] : (2007) 5 SCC 403 [LNIND 2007 SC 632] .
103. *T Shankar Prasad v State of AP*, AIR 2004 SC 1242 [LNIND 2004 SC 41] : 2004 Cr LJ 884 : (2004) 3 SCC 753 [LNIND 2004 SC 41] .
104. *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 . See also *Vinod Kumar Jain v State through CBI*, 1991 Cr LJ 669 (Del); *State of Bihar v Simranjit Singh Mann*, 1987 Cr LJ 999 (Pat).
105. *Nirmal Puri (Lt Gen Retd) v UOI*, 2002 Cr LJ 158 (Del).
106. *Iridium India Telecom Ltd v Motorola Incorporated*, AIR 2011 SC 20 [LNIND 2010 SC 1012] : 2010 AIR (SCW) 6738 : JT 2010 (11) SC 492 [LNIND 2010 SC 1012] : (2011) 1 SCC 74 [LNIND 2010 SC 1012] : (2010) 3 SCC(Cr) 1201 : 2010 (11) Scale 417 ; relied on *Standard Chartered Bank v Directorate of Enforcement*, AIR 2005 SC 2622 [LNIND 2005 SC 476] : (2005) 4 SCC 530 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961.
107. *Padam Chand v The State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .
108. *Sanjiv Rajendra Bhatt v UOI*, 2016 Cr LJ 185 : (2016) 1 SCC 1 [LNIND 2015 SC 596] .
109. *Chandran v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] : (2011) 2 SCC(Cr) 551 : (2011) 8 SCR 273 [LNIND 2011 SC 358] ; Also see *Ravinder Singh @ Ravi Pavar v State of Gujarat*, AIR 2013 SC 1915 2013 Cr Lj 1832.
110. *State of Karnataka v Selvi J Jayalalitha*, 2017 (2) Scale 375 [LNIND 2017 SC 72] : 2017 (1) RCR (Criminal) 802.
111. *Section 196(2) of Code of Criminal Procedure, 1973*.
112. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
113. *State of Orissa v Bishnu Charan Muduli*, 1985 Cr LJ 1573 (Ori).
114. *CR Mehta v State of Maharashtra*, 1993 Cr LJ 2863 (Bom). The Court referred to *Rameshwar Dayal v State of UP*, 1971 (3) SCC 924 : 1972 SCC (Cr) 172.
115. *BN Narasimha Rao v Govt of AP*, 1995 Cr LJ 4181 (SC), reversing AP High Court. See also *Sayed Mohd Owais v State of Maharashtra*, 2003 Cr LJ 303 (Bom).
116. *Bilal Hajar v State*, AIR 2018 SC 4780 [LNIND 2018 SC 520] .
117. *R v Chee Kew Ong*, (2001) 1 Cr App R (S) 117 [CA (Crim Div)].

THE INDIAN PENAL CODE

1. CHAPTER V-A CRIMINAL CONSPIRACY

[s 120A] Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

COMMENT—

Criminal conspiracy.—This chapter has introduced into the criminal law of India a new offence, viz., the offence of criminal conspiracy. It came into existence by the Criminal Law (Amendment) Act, 1913. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention.². Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means.³. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.⁴.

[s 120A.1] Ingredients.—

The ingredients of this offence are—

- (1) that there must be an agreement between the persons who are alleged to

- conspire; and
- (2) that the agreement should be
- (i) for doing of an illegal act, or
 - (ii) for doing by illegal means an act which may not itself be illegal.⁵
Meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.⁶

The most important ingredient of the offence being, the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them as conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under **section 120-B of the Indian Penal Code, 1860 (IPC, 1860)**.⁷

[s 120A.2] **Elements of Criminal Conspiracy.—**

- (a) an object to be accomplished,
- (b) a plan or scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.⁸

1. Two or more persons needed.—To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself. In *Topandas v State of Bombay*,⁹ which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty v UOI*,¹⁰ it was laid down that "two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself." The question of a single person being convicted for an offence of conspiracy was considered in *Bimbadhar Pradhan v The State of Orissa*,^{11,12} and held that It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. In the Red fort Attack Case¹³ the Supreme Court found that it was nothing but a well-planned conspiracy, in which apart from sole appellant, some others were also involved and convicted the sole appellant for criminal conspiracy.¹⁴ Under the common law since husband and wife constitute one person there cannot be any conspiracy to commit an offence if husband and wife are the only parties to an agreement.¹⁵ "It seems rather odd that though husband and wife by themselves alone cannot be convicted of an offence of conspiracy for agreeing to commit an offence but if two of them commit the self-same substantive offence they can be convicted of that offence".¹⁶ Fortunately this state of law does not exist in

India, where husband and wife by themselves alone can be parties to a criminal conspiracy. Where the husband is a party with some others in a conspiracy and his wife joined him in that with knowledge that he was involved with others to commit an unlawful act, she would be guilty of the conspiracy.¹⁷ Since conspiracy requires at least two persons, where two or more named persons only were charged and all but one of them were acquitted, the remaining accused could not be convicted under section 120B, IPC, 1860, as he could not have conspired with himself.¹⁸ In a similar case before the Supreme Court, a military major was tried for theft of military goods along with nine others who were supposed to have abetted him. He was found guilty along with one more accused and the rest were acquitted. On his appeal, the High Court quashed the judgment of the Court martial because there was no proof that he had removed the wheel drums. He was reinstated. In view of the acquittal and reinstatement of the main accused, the matter of his co-accused came before the Supreme Court. He too was ordered to be acquitted and reinstated.¹⁹ The same rule obtained under the English common law provided two named persons were tried together.²⁰ This rule has now been abolished by section 5(8) of the Criminal Law Act, 1977 which provides that unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted, e.g., where one was acquitted for want of sanction or on ground of being an exempted person. The Bombay High Court has taken the same view in a case. Thus, where of the two accused one was a public servant and he had to be acquitted as he was prosecuted without obtaining sanction under section 197, Code of Criminal Procedure, 1973 (Cr PC, 1973), the other could still be convicted on a charge of conspiracy as the acquittal of the other accused was not on facts but on technical ground and in spite of evidence establishing the factum of conspiracy.²¹

The circumstances in which a single person can be tried and convicted have been thus, stated in *Kenny*.²² "But though there must be plurality of conspirators, it is not necessary that all should be brought to trial together. One person may be indicted, alone, for conspiring with other persons who are not in custody, or who are even unknown to the inditors. Indeed, some of the conspirators may be unknown to the rest, provided all are acting under the directions of one leader. There need not be communication between each conspirator and every other, provided there be a design common to all."²³ Thus, a wife knowing that her husband was involved with others in a conspiracy, agreed with him that she would join the conspiracy and play her part, it was held that she thereby became guilty of conspiracy notwithstanding that the only person with whom she actually concluded the agreement was her husband.²⁴

2. Agreement is gist of the offence.—The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.²⁵ Meeting of minds is essential. Mere knowledge or discussion is not sufficient.²⁶ It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but the presence of an agreement to carry out the object of the intention, is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.²⁷ In the absence of an agreement, a mere thought to commit a crime does not constitute the offence.²⁸ The offence of conspiracy is a substantive offence. It renders the mere agreement to commit an offence punishable even if no offence takes place pursuant to the illegal agreement.²⁹ The object in view or the methods employed should be illegal, as defined in section 43, (*supra*). A distinction is drawn between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter,

there must be some act done by one or more of the parties to the agreement to give effect to the object thereof, that is, there must be an overt act. An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.³⁰ A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.³¹ A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.³²

The meeting of the minds to form a criminal conspiracy has to be proved by adducing substantive evidence, in cases where the circumstantial evidence is incomplete or vague.³³

[s 120A.3] ***Actus reus.***—

The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to give effect to an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.³⁴

[s 120A.4] **Participation.—**

It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.³⁵ To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act.³⁶ Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.³⁷ The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.³⁸

[s 120A.5] **Overt act.—**

No overt act is necessary.³⁹ Where the allegation against the third accused was that he was merely standing nearby when the other accused committed the murder, he cannot be charged for an offence under [sections 302/120B, IPC, 1860](#), in the absence of any other reliable evidence.⁴⁰ In a case where the agreement is for accomplishment

of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement.⁴¹. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.⁴² Where the conspiracy alleged is with regard to the commission of a serious crime as contemplated by section 120-B read with the proviso to sub-section (2) of section 120A, then the mere proof of an agreement is enough to bring about conviction under section 120B and the proof of any overt act by the accused or by any of them would not be necessary.⁴³ The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable.⁴⁴.

It is not an ingredient of the offence under this section that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.⁴⁵ Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.⁴⁶ It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy.⁴⁷ It is also not necessary that every conspirator must have taken part in each and every act done in pursuance of a conspiracy.⁴⁸ It is, however, necessary that a charge of conspiracy should contain particulars of the names of the place or places where it was hatched, persons hatching it, how was it hatched and what the purpose of the conspiracy was.⁴⁹.

In the matter⁵⁰ of the assassination of the then Prime Minister of India, Smt. Indira Gandhi, one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. One of them was acquitted by the Supreme Court. His movements after the incident were not properly proved. The documents recovered from his custody did not indicate any agreement between him and the other accused. They only showed his agitated mind which was in the grip of an avenging mood. This is not enough to establish an agreement with anybody. On the other hand, about Kehar Singh, it was shown that he was having secret talks with one of the actual killers, that they were trying all the time to keep themselves away from their wives and children, they avoided the company of the other members of the family and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret. This was enough to constitute a *prima facie* evidence of conspiracy within the meaning of [section 10 of the Evidence Act, 1872](#) and to bring them within the jacket of punishment of all for the act of one.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.⁵¹ Thus, a conspiracy is an

inference from circumstances. There cannot always be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.⁵². It is manifest that the meeting of minds of two or more persons is a *sine qua non* but it may not be possible to establish by direct evidence. Its existence and objective can be inferred from the surrounding circumstances and parties conduct. It is necessary that the incriminating circumstances must form a chain of events, from which a conclusion about the accused's guilt could be drawn. The help of circumstantial evidence is necessary because a conspiracy is always hatched in secrecy. It becomes difficult to locate any direct evidence.⁵³. A businessman was in great need of money for completing the construction of a theatre complex. He was approached by a person who told him that his financier friend would help him with money. This was followed by a number of meetings between him and the team of financiers during which documents were executed and money released in cash which cash was found to be counterfeit currency. Every member of the team was held to be guilty of conspiracy and of cheating under section 420.⁵⁴. Seizure of unexplained currency notes from the possession of a person who claimed to be the owner of the money was held to be not sufficient to connect him with the person who was the main accused of smuggling currency, though he was a relative of the main accused.⁵⁵.

Where a bank accountant dishonestly agreed with others to conceal dishonour of cheques purchased by the bank and thus, causing risk to the economic interests of the bank, he was held guilty of conspiring to defraud whatever his motive or underlying purpose might have been (he contended that he acted in the interest of the bank) and even though he had no desire to harm the victim and no loss was actually caused.⁵⁶. Officials of a nationalised bank, in violation of departmental instructions, allowing advance credits on banker's cheques to the account of a customer dealing in securities. Advance credits were allowed before the cheques were sent for clearance and in some cases even before the cheques were received. This allowed the customer to take pecuniary advantage by overdrawing money from his account which he was not entitled to. Public funds were thus, misused. It was held that a criminal conspiracy between bank officials and the customer stood proved. One of them was acquitted because no conclusive evidence could be found against him.⁵⁷.

A criminal conspiracy can be proved by circumstantial evidence or by necessary implication. A smaller conspiracy may be the part of a larger conspiracy. It was held on facts that a criminal conspiracy was established when officials of two public sector banks acted in such a way that the transaction appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself but the transaction was in fact meant to help a private party to use public funds for private purpose.⁵⁸. Where the accused, an LIC agent, was charged with cheating the LIC by entering into conspiracy with the co-accused, a Development Officer, on the allegation that insurance policies were got issued on the basis of fake and forged documents and he received premium commission and bonus in respect of those policies, the accused was entitled to be acquitted because the forging was done by the co-accused without the knowledge and consent of the accused. Bonus, Commission, etc., in respect of those policies were credited to his account only in the normal course.⁵⁹. A 'vaid' and an 'up-vaid' who, in conspiracy with others made bogus medical bills for government servants and got them duly passed through their Ayurvedic Aushadhalaya for payment of 30 per cent of the amount of the bills, were caught in a trap and the tainted money was recovered from the accused. One of the accused died during the pendency of appeal. Conviction of the other under sections 120B/468 was held to be proper.⁶⁰.

A group of friends went to a club for fun and frolic. One of them (the main accused) suddenly fired at the bar mate for her refusal to serve drinks. The others were unaware

of the accused carrying a loaded pistol. They had stayed at the club for about two and a half hours. The Court said that this could not constitute an evidence of conspiracy. The Court also said that the fact that the group members dispersed separately and also helped to retrieve the murder weapon would not suggest conspiracy for murder.⁶¹.

[s 120A.6] **Same verdict in respect of each not necessary.—**

It has been held that the rule that both parties to a conspiracy had to be convicted or acquitted has been abrogated by the Criminal Law Act, 1977 (English). The important question is whether there is a material difference in the evidence against the two.⁶².

[s 120A.7] **Sections 34 and 120A.—**

There is not much substantial difference between conspiracy as defined in section 120A and acting on a common intention, as contemplated in section 34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under section 34 is the commission of a **criminal act** in furtherance of a common intention of all the offenders, which means that there should be unity of criminal behaviour resulting in something, for which an individual would be punishable, if it were all done by himself alone.⁶³. Another point of difference is that a single person cannot be convicted under section 120A and, therefore, where all the accused except one were acquitted, the Supreme Court ordered his acquittal also,⁶⁴. whereas under section 34, read with some other specific offence, a single person can be convicted because each is responsible for the acts of all others.

[s 120A.8] **Sections 107 and 120A.—**

For an offence under this section a mere agreement is enough if the agreement is to commit an offence. But, for an offence under the second clause of section 107 an act or illegal omission must take place in pursuance of the conspiracy and a mere agreement is not enough.⁶⁵.

3. How proved (section 120A IPC, 1860 and section 10 Evidence Act, 1872-Doctrine of agency).—There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct evidence or by circumstantial evidence. But **section 10 of the Evidence Act** introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another and have made a partnership in crime. The said section reads: "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it."

The section can be analysed as follows: "(1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a coconspirator and not in his favour."⁶⁶.

Since conspiracy is often hatched up in utmost secrecy it is mostly impossible to prove conspiracy by direct evidence. It has, oftener than not, to be inferred from the acts, statements and conduct of the parties to the conspiracy.⁶⁷ The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.⁶⁸ If it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object.⁶⁹ It should, however, be remembered that where there is no direct evidence, for example through the evidence of an approver, and the case for the prosecution is dependent on circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy and rule out the theory of innocence.⁷⁰ Thus, chairman of a large cooperative society cannot be punished vicariously for the acts of others as *mens rea* cannot be excluded in a criminal case. As a chairman he had to deal with various matters and it would have been impossible for him to look into every detail to find out if someone was committing any criminal breach of trust.⁷¹ Similarly, a case of conspiracy to misappropriate cash entrusted to the accused is not made out merely from the audit report without any evidence of shortage on actual verification of cash as mistakes and even double entries may be made *bona fide* while preparing the account.⁷² The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.⁷³ One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.⁷⁴

[s 120A.9] **Inference of conspiracy.—**

It is a matter of common experience that direct evidence to prove conspiracy is rarely available.⁷⁵ Thus, it is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.⁷⁶ It can be a matter of inference drawn by the Court after considering whether the basic facts and circumstances on the basis of which inference is drawn have been proved beyond all reasonable doubts and that no other conclusion except that of the complicity of Accused to have agreed to commit an offence is evident.⁷⁷ Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.⁷⁸ This apart, the prosecution has not to establish that a particular unlawful use

was intended, so long as the goods or service in question could not be put to any lawful use. Finally when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.⁷⁹.

One of the accused persons, a foreign national, was found staying in the country without valid passport and visa. His movement to various places with the main accused was established. A large quantity of arms and ammunition was recovered from the place occupied by the main accused. The Court said that an inference of criminal conspiracy could be drawn.⁸⁰ The Court also said that the appeal against conviction of the main accused was dismissed would not be sufficient to say that the charge of conspiracy against other accused would be deemed to be proved.⁸¹ Circumstances proved before, during and after the occurrence of the crime have to be considered together to decide about the complicity of the accused.⁸² Circumstantial evidence was based on the recovery of the scooter used by the executant and alleged to have been owned by a co-conspirator, but the recovery was not based on any information given by the accused, but by one witness. The Supreme Court held that no circumstantial evidence was proved against any of the conspirators.⁸³

[s 120A.10] Circumstantial evidence, inference must be backed by evidence.—

Most of the circumstances stated as against the accused were not proved. Merely based on the circumstance that the accused had filed a civil suit against the deceased for restraining him from doing a business he cannot be convicted. Moreover, there was no specific evidence as to who the conspirators were, where and when the conspiracy was hatched, what the specific purpose of such a conspiracy was and whether it was relating to the elimination of the deceased.⁸⁴ The law is well established that conspiracy cannot be proved merely on the basis of inferences. The inferences have to be backed by evidence.⁸⁵

The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must bear in mind that the meeting of minds is essential and mere knowledge or discussion would not be sufficient.⁸⁶ In *Mukesh v State for NCT of Delhi*, Criminal Appeal Nos. 607–608 of 2017, (popular as Nirbhaya Case) the criminal conspiracy was proved by the sequence of events and the conduct of the accused.

In the conspiracy for assassination of the former PM (Rajiv Gandhi) one of the accused persons at one point of time in his confessional statement said that he had a strong suspicion that Rajiv Gandhi was the target of the accused persons. The Court said that this suspicion did not make him a member of the conspiracy. His association, however strong with the main conspirators would not make him a member of the conspiracy by itself. But those who were in the thick of the conspiracy, for example, one who purchased the battery for explosion of human body, their conviction for the main offence was proper. But mere association with LTTE was not sufficient nor the fact that messages about arrests were sent by certain persons.⁸⁷

[s 120A.11] Contacts through telephone.—

Where the case against the appellants A2 to A4 is that they had hatched a conspiracy with appellant A1 to kill the deceased and the case against A1 was proved as per the 'last seen theory', and to prove the conspiracy the prosecution relied on the circumstance that there were frequent phone calls among the accused some days around the date of murder, and the recovery of some vehicles; the Supreme Court held

that the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion by itself cannot take the place of proof.⁸⁸.

[s 120A.12] **Between bank officials.—**

Criminal conspiracy was taken to be established when officials of two public sector banks acted in such a way that the transaction in question appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself. The transaction was in fact formalised for the purpose of helping a private party to use public funds for a private purpose.⁸⁹.

[s 120A.13] **Approval of television serial.—**

The accused was the director of *Doordarshan*. The allegation against him was that he continued a serial which was approved at lower rates by an earlier director. Each director worked at different point of time. They did not work together. Their postings were official postings. It was difficult to infer any conspiracy between them for continuing the telecast. The investigation launched against the director was liable to be quashed.⁹⁰.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
2. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in [\(1999\) 5 SCC 253 \[LNIND 1999 SC 526\]](#) .
3. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, [\(2013\) 1 SCC 613 \[LNIND 2012 SC 1033\] : 2012 \(10\) Scale 237 \[LNIND 2012 SC 1033\]](#) relying on *Ram Narayan Popli v Central Bureau of Investigation*, [\(2003\) 3 SCC 641 \[LNIND 2003 SC 26\]](#) .
4. *State of MP v Sheetla Sahai*, [2009 Cr LJ 4436 : \(2009\) 8 SCC 617 : \(2009\) 3 SCC\(Cr\) 901](#).
5. *Yogesh v State of Maharashtra*, [AIR 2008 SC 2991 \[LNIND 2008 SC 979\] : 2008 Cr LJ 3872 : \(2008\) 10 SCC 394 \[LNIND 2008 SC 979\]](#) ; *S Arul Raja v State of TN*, reported in, [2010 \(8\) SCC 233 \[LNIND 2010 SC 689\]](#) ; *Mohan Singh v State of Bihar*, [AIR 2011 SC 3534 \[LNIND 2011 SC 820\] : 2011 Cr LJ 4837 : \(2011\) 9 SCC 272 \[LNIND 2011 SC 820\]](#) ; *Central Bureau of Investigation Hyderabad v K Narayana Rao*, [2012 AIR SCW 5139 : 2012 Cr LJ 4610 : JT 2012 \(9\) SC 359 \[LNIND 2012 SC 569\] : \(2012\) 9 SCC 512 \[LNIND 2012 SC 569\] : 2012 \(9\) Scale 228 \[LNIND 2012 SC 569\]](#) ; *Ajay Aggarwal v UOI*, [\(AIR 1993 SC 1637 \[LNIND 1993 SC 431\] : 1993 AIR SCW 1866 : 1993 Cr LJ 2516 \) : \(1993\) 3 SCC 609 \[LNIND 1993 SC 431\]](#) .
6. *Rajiv Kumar v State of UP*, [AIR 2017 SC 3772 \[LNIND 2017 SC 367\]](#) .
7. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, [\(2013\) 1 SCC 613 \[LNIND 2012 SC 1033\] : 2012 Mad LJ \(Cr\) 532 : 2012 \(10\) Scale 237 \[LNIND 2012 SC 1033\]](#) ; *Damodar v State of Rajasthan*, [\(2004\) 12 SCC 336 \[LNIND 2003 SC 803\]](#) ; *Kehar Singh v State (Delhi Admn)*, [\(1988\) 3 SCC 609 \[LNIND 1988 SC 887\]](#) ; *State of Maharashtra v Somnath Thapa*, [\(1996\) 4 SCC 659 \[LNIND 1996 SC 776\]](#) .
8. *Ram Narayan Popli v Central Bureau of Investigation*, [\(2003\) 3 SCC 641 \[LNIND 2003 SC 26\]](#) .
9. *Topandas v State of Bombay*, [AIR 1956 SC 33 \[LNIND 1955 SC 78\] : 1956 Cr LJ 138 : \(1955\) 2 SCR 881 \[LNIND 1955 SC 78\]](#) . The ruling in *Topandas* case, [AIR 1956 SC 33 \[LNIND 1955 SC 78\]](#) and *Fakhruddin* case, [AIR 1967 SC 1326 \[LNIND 1966 SC 307\]](#) were not followed in *Sanichar Sahni v State of Bihar*, [\(2009\) 7 SCC 198 \[LNIND 2009 SC 1350\] : \(2009\) 3 SCC \(Cr\) 347](#), because

here only one person was charged under section 120-B and for no other offence, and his co-accused was charged with another offence but not under section 120-B, the court said that the charge was not properly framed. In the earlier cases, more than one were charged with conspiracy, all but one were acquitted, the single one could not be convicted. He was convicted for murder which was proved against him.

10. *Haradhan Chakrabarty v UOI*, AIR 1990 SC 1210 [LNIND 1990 SC 57] : 1990 Cr LJ 1246 : (1990) 2 SCC 143 [LNIND 1990 SC 57].
11. See also *Thakur H v State of HP*, 2013 Cr LJ 1704 (HP).
12. *Bimbadhar Pradhan v The State of Orissa*, AIR 1956 SC 469 [LNIND 1956 SC 25].
13. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753].
14. *McDowell*, (1966) 1 All ER 193 : (1965) 3 WLR 1138 ; *Rex v IRC Haulage*, (1944) KB 551 : (1944) 1 All ER 691 . *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 ; *Ajay Kumar Rana v State of Bihar*, 2001 Cr LJ 3837 (Pat).
15. *Mowji*, (1957) All ER 385 : (1957) 2 WLR 277 . See Glanville Williams, *Legal Unity of Husband and Wife*, 10 Modern LR 16 (1947). "But either spouse may be convicted of inciting the other to commit a crime if such be proved." See Kenny, 450, p 428, *Outlines Of Criminal Law*, 19th Edn 1966.
16. *Cross & Jones : Introduction To Criminal Law*, 9th Edn, p 343.
17. *R v Charstny*, (1991) 1 WLR 1381 (CA).
18. *Bhagat Ram*, AIR 1972 SC 1502 [LNIND 1972 SC 72] : 1972 Cr LJ 909 ; *Tapandas*, AIR 1956 SC 33 [LNIND 1955 SC 78] : (1955) 2 SCR 881 [LNIND 1955 SC 78] ; *Fakhruddin*, AIR 1967 SC 1326 [LNIND 1966 SC 307] : 1967 Cr LJ 1197 ; See also *State v Dilbagh Rai*, 1986 Cr LJ 138 (Delhi).
19. Relying upon *Faguna Kanta Nath v State of Assam*, AIR 1959 SC 673 [LNIND 1959 SC 2] : 1959 Cr LJ 90 : 1959 Supp 2 SCR 1, where also the acquittal of the co-accused automatically followed the acquittal of the main accused; *Madan Lal Bhandari v State of Rajasthan*, AIR 1970 SC 436 [LNIND 1969 SC 230] : 1970 Cr LJ 519 : (1969) 2 SCC 385 [LNIND 1969 SC 230] : (1970) 1 SCR 688 [LNIND 1969 SC 230] , the nurse causing miscarriage acquitted, the conspirator also acquitted.
20. *Plummer v State*, (1902) 2 KB 339 ; *Coughlan* (1976) 64 Cr App Rep 11 .
21. *Pradumna*, 1981 Cr LJ 1873 (Bom).
22. JE Cecil Turner, *Kenny's Outlines of Criminal Law*, 428, 19th Edn, 1966.
23. Citing *R v Myrick and Ribuffi*, (1929) 21 Cr App R 94 TAC.
24. *Regina v Chrastny*, (1991) 1 WLR 1381 (CA). *Kuldeep Singh v State of Rajasthan*, 2001 Cr LJ 479 (SC), the only evidence against one of the accused conspirators was that he was seen moving with others to the house of the deceased. This was held to be not sufficient to make him a part of the conspiracy or participant in murder.
25. *Mohammad Ismail*, (1936) Nag 152; *Bimbadhar Pradhan*, (1956) Cut 409 SC; *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196] ; *Chaman Lal v State of Punjab*, (2009) 11 SCC 721 [LNIND 2009 SC 721] AIR 2009 SC 2972 [LNIND 2009 SC 721] , requisites of the offence restated.
26. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646 : *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66.
27. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] Mere knowledge, or even discussion, of the plan is not, *per se* enough; *Russell* on

Crimes, 12th Edn, vol I, quoted in *Kehar Singh v State (Delhi Administration)*, 1988 (3) SCC 609 [LNIND 1988 SC 887] at 731.

28. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653].
29. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979].
30. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329]. *K Hashim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142], the court enumerated four elements of criminal conspiracy, the essence is an unlawful agreement and it is complete when the agreement is framed. A design resting in mind only does not make out the offence.
31. *Subramanian Swamy v A Raja*, AIR 2012 SC 3336 [LNIND 2012 SC 498] : 2012 Cr LJ 4443 : (2012) 9 SCC 257 [LNIND 2012 SC 498] (Involvement of finance minister in 2G Spectrum Case) - Criminal conspiracy cannot be inferred on the mere fact that there were official discussions between the officers of the MoF and that of DoT and between two Ministers, which are all recorded. Suspicion, however, strong, cannot take the place of legal proof and the meeting between Shri P Chidambaram and Shri A Raja would not by itself be sufficient to infer the existence of a criminal conspiracy so as to indict Shri P. Chidambaram.
32. *Esher Singh v State of AP*, 2004 (11) SCC 585 [LNIND 2004 SC 329].
33. *Gulam Sarbar v State of Bihar*, 2014 Cr LJ 34 : (2014) 3 SCC 401.
34. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
35. State through Superintendent of Police, *CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *State of HP v Krishan Lal Pardhan*, (AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709) : (1987) 2 SCC 17 [LNIND 1987 SC 131].
36. *K R Purushothaman v State*, AIR 2006 SC 35 [LNIND 2005 SC 842] : (2005) 12 SCC 631 [LNIND 2005 SC 842] ; approved in *John Pandian v State Rep by Inspector of Police, TN*, AIR 2011 SC (Supp) 531 : (2011) 3 SCC(Cr) 550 : 2010 (13) Scale 13.
37. *Yash Pal Mittal v State of Punjab*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 : (1977) 4 SCC 540 [LNIND 1977 SC 304].
38. *Firozuddin Basheeruddin v State*, 2001 (7) SCC 596 [LNIND 2001 SC 1755].
39. *K Hasim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : 2005 Cr LJ 143 .
40. *Raju v State of Chhattisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031]
41. *Sushil Suri v CBI*, AIR 2011 SC 1713 [LNIND 2011 SC 494] : (2011) 5 SCC 708 [LNIND 2011 SC 494] : (2011) 2 SCC(Cr) 764 : (2011) 8 SCR 1 [LNIND 2011 SC 494].
42. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
43. *SC Bahri v State of Bihar*, AIR 1994 SC 2020 : 1994 Cr LJ 3271 .
44. *Kehar Singh v State (Delhi Administration)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887].
45. *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196]
46. *Lennart v State*, AIR 1970 SC 549 [LNIND 1969 SC 396] : 1970 Cr LJ 707 .
47. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 ; *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] SC : 1978 Cr LJ 189 .
48. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] .

49. *KS Narayanan*, 1982 Cr LJ 1611 (Mad); *Krishnalal Naskar*, 1982 Cr LJ 1305 (Cal). *Mahabir Prasad Akela v State of Bihar*, 1987 Cr LJ 1545 Pat, no meeting of minds.
50. (1988) 3 SCC 609 [LNIND 1988 SC 887] : AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 CR LJ 1 . AS AGAINST THIS SEE, *Param Hans Yadav v State of Bihar*, AIR 1987 SC 955 [LNIND 1987 SC 253] : 1987 Cr LJ 789 : (1987) 2 SCC 197 [LNIND 1987 SC 253] , murder of Collector by a person whose connection with the jailed co-accused not proved, though the latter had a grudge against the collector for demolishing his temple and detaining him. Reversing the High Court decision, 1986 Pat LJR 688 .
51. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] ; *NV Subba Rao v State*, (2013) 2 SCC 162 [LNIND 2012 SC 1350] : 2013 Cr LJ 953 .
52. *MS Reddy v State Inspector of Police ACB Nellore*, 1993 Cr LJ 558 (AP). *Ammuni v State of Kerala*, AIR 1998 SC 280 : 1998 Cr LJ 481 , the accused administered poison and caused death of the woman and her two children, there was evidence to show that all the four entered into a conspiracy to murder the woman. They were seen hanging around her house. One of the glass tumblers recovered from her place carried the finger prints of one of them. One of them also confessed. Conspiracy proved conviction under sections 300/34, confirmed. *Kuldeep Singh v State of Rajasthan*, AIR 2000 SC 3649 [LNIND 2000 SC 724] , accused persons entered into conspiracy to cause death, circumstantial evidence coupled with recoveries. Guilt established. Conviction for murder and conspiracy.
53. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
54. *Nellai Ganesan v State*, 1991 Cr LJ 2157 . See also *Khalid v. State*, 1990 Cr LJ (NOC) Raj, where the court inferred the fact of agreement from transmission of thoughts sharing the unlawful design, the court observing that neither proof of actual words of communication nor actual physical meeting of persons involved is necessary.
55. *KTMS Mohd v UOI*, AIR 1992 SC 1831 [LNIND 1992 SC 362] : 1992 Cr LJ 2781 .
56. *Wai Yu-Tsang v The Queen*, (1991) 3 WLR 1006 PC, applying *Welham v DPP*, (1961) AC 103 HL(E) and *Reg v Allsop*, (1976) 64 Cr App R; CA. *Shambhu Singh v State of UP*, AIR 1994 SC 1559 : 1994 Cr LJ 1584 , the Supreme Court did not interfere in the concurrent finding of the lower courts as to the involvement of the accused in the conspiracy.
57. *Mir Naqvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] . The court also explained the nature of the crime.
58. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] , under the **National Housing Bank Act, 1987**. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; criminal conspiracy by bank officials in relation to Harshad Mehta Securities Scam, illegally extending discounting/ rediscounting facility for bills of exchange by bank officials, conspiracy in relation to persons liable to be convicted, role/conduct necessary to fasten liability.
59. *Nand Kumar Singh v State of Bihar*, AIR 1992 SC 1939 : 992 Cr LJ 3587 : (1992) Supp (2) SCC 111 .
60. *Narain Lal Nirala v State of Rajasthan*, AIR 1993 SC 118 : 1993 Cr LJ 3911 .
61. *State v Siddarth Vashisth (alias Manu Sharma)*, 2001 Cr LJ 2404 (Del).
62. *R v Ashton*, (1992) Cr LR 667 (CA).
63. *Dinanath*, 1939 Nag 644.
64. *Vinayak v State of Maharashtra*, AIR 1984 SC 1793 [LNIND 1984 SC 255] : (1984) 4 SCC 441 [LNIND 1984 SC 255] : 1984 SCC (Cr) 605.

65. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : (1962) 1 Cr LJ 770 . Further explained by the Supreme Court in *Kehar Singh v State (Delhi Admn)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
66. *State of TN through Superintendent of Police CBI/SIT v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *Sardar Sardul Singh Caveeshar v State of Maharashtra*, (AIR 1965 SC 682 [LNIND 1963 SC 67] : 1965 (1) Cr LJ 608) : (1964) 2 SCR 378 [LNIND 1963 SC 67] See also.
67. *Bhagwandas*, AIR 1974 SC 898 : 1974 Cr LJ 751 ; *Ashok Datta Naik*, 1979 Cr LJ NOC 95 (Goa); *V Shivanarayan*, AIR 1980 SC 439 : 1980 Cr LJ 388 ; *Mohd Usman Mohd Hussain*, AIR 1981 SC 1062 [LNIND 1981 SC 127] : 1981 Cr LJ 588 : (1988) 3 SCC 609 [LNIND 1988 SC 887] ; *State of UP v Girijashankar Misra*, 1985 Cr LJ NOC 79 (Delhi); *Subhas*, 1985 Cr LJ 1807 (Cal).
68. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; An offence of criminal conspiracy can also be proved by circumstantial evidence. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901]. In *S Arul Raja v State of TN*, 2010 (8) SCC 233 [LNIND 2010 SC 689] in which it is held that mere circumstantial evidence to prove the involvement of the appellant is not sufficient to meet the requirements of criminal conspiracy under Section 120A of the (IPC, 1860) A meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence.
69. Re MD Mendekar, 1972 Cr LJ 978 (Mysore); See also *Bhagwandas*, *supra*.
70. *DB Naik*, 1982 Cr LJ 856 (Bom); *Hari Ram*, 1982 Cr LJ 294 (HP).
71. *Jethsur Surangbhai*, AIR 1984 SC 151 [LNIND 1983 SC 329] : 1984 Cr LJ 162 (SC) : (1984) SCC (Cr) 474.
72. *Ajoyadha Prashadl* 1985 Cr LJ 1401 (Ori).
73. *State v VC Shukla*, 1980 Cr LJ 965 : 1980 Cr LR (SC) 301 . Also *VC Shukla v State (Delhi Admn)*, AIR 1980 SC 1382 [LNIND 1980 SC 179] : 1980 SCC (Cr) 561 and 849 (1980) 2 SCC 665 [LNIND 1980 SC 179] . *State of HP v Gian Chand*, 2000 Cr LJ 949 (HP); *Sardari Lal v State of Punjab*, 2003 Cr LJ 383 (P&H), *State of MP v Sheetla Sahai*, (2009) 8 SCC 617 : (2009) 3 SCC (Cr) 901; *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66; *Y Venkaiah v State of AP*, AIR 2009 SC 2311 [LNIND 2009 SC 513] : (2009) Cr LJ 2834 : (2009) 12 SCC 126 [LNIND 2009 SC 513] . *State of MP v Paltan Mallah*, 2005 AIR 2005 SC 733 [LNIND 2005 SC 64] : Cr LJ 918 SC : (2005) 3 SCC 169 [LNIND 2005 SC 64] .
74. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600 [LNIND 2005 SC 580]
75. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .
76. *Rajiv Kumar v State of UP*, AIR 2017 SC 3772 [LNIND 2017 SC 367] .
77. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .
78. *State of Maharashtra v Som Nath Thapa*, AIR 1996 SC 1744 [LNIND 1996 SC 776] : 1996 AIR SCW 1977 : 1996 Cr LJ 2448 : (1996) 4 SCC 649 .
79. *State through Central Bureau of Investigation v Dr Anup Kumar Srivastava*, AIR 2017 SC 3698 [LNIND 2017 SC 371] .
80. *Lal Singh v State of Gujarat*, AIR 2001 SC 746 [LNIND 2001 SC 98] : 2001 Cr LJ 978 . The case under the Terrorists and Disruptive Activities (Prevention) Act, 1987. *Saju v State of Kerala*, AIR 2001 SC 175 [LNIND 2000 SC 1552] , no inference of conspiracy to murder from circumstances proved in the case, *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 : (2007) 5 SCC 634 [LNIND 2007 SC 647] , inference regarding conspiracy can be drawn from surrounding circumstances because normally no direct evidence is available.

81. *Ibid.* The court followed the ruling in *Babu Singh v State of Punjab*, AIR 1996 SC 3250 [LNIND 1996 SC 860] : 1996 Cr LJ 2503 ; *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , it is difficult to establish conspiracy by direct evidence. But there should be material evidence showing the connection between the alleged conspiracy and the act done pursuant to that conspiracy. *Firozuddin Basheerudin v State of Kerala*, AIR 2001 SC 3488 [LNIND 2001 SC 1755] : 2001 Cr LJ 4215 , conspiracy to eliminate a police informer on whose information contraband gold was seized from the accused persons, chain of circumstances to the point of murder, complete, conviction. *State of Kerala v P Suganthan*, AIR 2000 SC 3323 [LNIND 2000 SC 1298] : 2000 Cr LJ 4584 , conspiracy to murder the earlier paramour of the concubine, not proved. *Hira Lal Hari Lal v CBI*, AIR 2003 SC 2545 [LNIND 2003 SC 499] : 2003 Cr LJ 3041 : (2003) 5 SCC 257 [LNIND 2003 SC 499] , difficult to prove conspiracy by direct evidence. An agreement between the parties to do something unlawful has to be proved. The allegation here was that of evasion of customs duty.

82. *Chandra Prakash v State of Rajasthan*, 2014 Cr LJ 2884 : (2014) 8 SCC 340 [LNIND 2014 SC 346] .
83. *Indra Dalal v State of Haryana*, 2015 Cr LJ 3174 : 2015 (6) SCJ 501 [LNIND 2015 SC 358] .
84. *Balkar Singh v State of Haryana*, 2015 Cr LJ 901 : (2015) 2 SCC 746 [LNIND 2014 SC 950] .
85. *Satyavir Singh v State of UP*, 2016 Cr LJ 4863 (All), 2015 (91) ALLCC 892.
86. *State v Nitin Gunwant Shah*, 2015 Cr LJ 4759 : 2016 (1) SCJ 30 [LNIND 2015 SC 529] .
87. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 .
88. *Kiriti Pal v State of WB*, 2015 Cr LJ 3152 : 2015 (3) Crimes 11 (SC).
89. *R Venkatkrishnan v CBI*, 2010 1 SCC (Cr) 164 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
90. *Mahesh Joshi v State, (CBI)*, 2002 Cr LJ 97 (Kant).

THE INDIAN PENAL CODE

1.CHAPTER V-A CRIMINAL CONSPIRACY

[s 120B] Punishment of criminal conspiracy.

- (1) **Whoever is a party to a criminal conspiracy to commit an offence punishable with death, ^{91.} [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.**
- (2) **Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]**

COMMENT—

Earlier to the introduction of sections 120A and B, conspiracy per se was not an offence under [IPC, 1860](#), except in respect of the offence mentioned in section 121A. However, abetment by conspiracy was and still remains to be an ingredient of abetment under the second clause of [section 107 of IPC, 1860](#). The punishment therefore, is provided under various sections, viz., sections 108–117. Whereas under section 120A, the essence of the offence of criminal conspiracy is a bare agreement to commit the offence, the abetment under section 107 requires the commission of some act or illegal omission pursuant to the conspiracy.^{92.} Criminal conspiracy is an independent offence. It is punishable separately.^{93.} The punishment for conspiracy is the same as if the conspirator had abetted the offence.^{94.} The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is one to commit an act which although illegal is not an offence punishable with death, imprisonment for life or rigorous imprisonment for more than two years.

Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There may be an element of abetment in a conspiracy; but conspiracy is something more than abetment. The offences created by section 109 and section 120A are quite distinct and where offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as conspiracy to commit those offences.^{95.}

This section applies to those who are the members of the conspiracy during its continuance. Conspiracy has to be treated as a continuing offence and whoever is a party to the conspiracy during the period for which he is charged is liable under this section.^{96.} A conspiracy is held to be continued and renewed as to encompass all its members wherever and whenever any member of it acts in furtherance of the common design.^{97.} The most important ingredient of a criminal conspiracy is an agreement for an illegal act, conspiracy continues to subsist till it is executed or rescinded or frustrated by choice or necessity.^{98.} The conspirators' connection with the conspiracy

would get snapped after he is nabbed by the police and kept in custody. He would then cease to be the agent of others. In this case (*Rajiv assassination*) the prosecution could not establish that the accused persons who were under detention continued their conspiratorial contact with those who remained outside. A statement which constitutes *prima facie* evidence of a conspiracy may amount to an act for which all the members can be held liable.^{99.}

Where the accused conspired with others in awarding a contract when he was in job, he could be held liable for subsequent acts of other conspirators even after his retirement as he contributed his part for furtherance of the conspiracy.^{100.}

For the purpose of establishing or proving the charge of conspiracy, it is not necessary that there should be knowledge of who are other conspirators and of the detailed stages of the conspiracy. The necessary requisite is knowledge of the main object and purpose of the conspiracy.^{101.} A fraud was alleged to have been committed by Government officers in processing and verifying fake bills. It was held that all the officers who dealt with the relevant files at one point of time or the other could not be considered to have taken part in the conspiracy or that they would be guilty of aiding and abetting the offence. Individual acts of criminal misconduct would have to be considered for fastening liability.^{102.}

An accused can be convicted for substantive offence even where he has been acquitted of the charge of conspiracy.^{103.}

[s 120B.1] **Sanction for prosecution (section 120B IPC, 1860 and section 196 (Cr PC, 1973)).—**

This section has to be read along with section 196(1-A) (2) (*Cr PC, 1973*), which requires previous sanction of the State Government or the District Magistrate to launch prosecution in respect of a criminal conspiracy to commit an offence punishable with less than two years imprisonment. Thus, where the object of the conspiracy was cheating by false personation under *section 419, IPC, 1860*, which is an offence punishable with a three-year imprisonment, the mere fact that there were other non-cognizable offences for which too the accused had been charged would not vitiate the trial in absence of sanction under section 196(1A)(2), (*Cr PC, 1973*), as that section is meant to be applicable to a case where the object of the conspiracy is to commit an offence punishable with less than two years' imprisonment.^{104.} Where the act in question was not done by the army officer in the discharge of his official duties, it was held that a sanction for his prosecution was not necessary.^{105.}

[s 120B.2] **Can a company be prosecuted for Criminal conspiracy.—**

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through that person or the body of persons.^{106.}

[s 120B.3] **Signing differently in *vakalatnama*.—**

The fact was that the accused put their signatures in *vakalatnama* differently from their original ones. It has been alleged by the complainant that the accused petitioners have deliberately and wilfully put their signatures on the *vakalatnama* in collusion with each other like irresponsible persons in order to gain wrongfully and with a view to cheat and mislead the complainant. It was held that the alleged action of the petitioners in

signing their own name on the *vakalatnama* and filing the same in the Court through their counsel is neither an offence nor prohibited by any law. When the alleged act itself was not illegal, it cannot be said that there was any 'criminal conspiracy' and in absence of the basis for a charge for criminal conspiracy, the petitioners cannot be prosecuted or punished for the offence under [section 120-B of the IPC, 1860](#).¹⁰⁷.

[s 120B.4] **Seeking opinion.—**

Merely taking someone's opinion, who is an outsider to litigation, before filing the reply in the Court would not undermine the administration of justice in any way and it is not indicative of criminal conspiracy.¹⁰⁸

[s 120B.5] **Hooch Tragedy case.—**

In a case, the allegation was that all the accused persons hatched a criminal conspiracy and they created a well-oiled machinery for importing methyl alcohol to make spurious liquor. Accused diluted the spirit by adding water and sold it through their outlets. Many persons died due to the consumption of spurious liquor. Some persons lost their eyesight and number of others sustained grievous injuries. Supreme Court said that the whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business, which itself was a conspiracy, they mixed or allowed to be mixed methanol and used it so freely that ultimately resulted in the tragedy. Conviction is upheld.¹⁰⁹

[s 120B.6] **Corruption cases.—**

The prosecution asserted that the appellants A1 to A4 had entered into a conspiracy and in furtherance thereof, A1 who was a public servant, had come to possess assets to the tune of Rs. 66.65 crores, disproportionate to her known sources of income, during the period from 1991 to 1996, when she held the office of the Chief Minister of the State. The Supreme Court in respect to the charge of criminal conspiracy observed that the free flow of money from one account to the other of the respondent's, firms/companies also proved beyond reasonable doubt that all the accused persons had actively participated in the criminal conspiracy to launder the ill-gotten wealth of A1 for purchasing properties in their names.¹¹⁰

[s 120B.7] **Previous sanction.—**

No Court shall take cognizance of the offence of any criminal conspiracy punishable under [section 120B of the IPC, 1860](#), (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.¹¹¹

2. Sentence.—Where the accused is charged both under section 109 as well as [section 120B, IPC, 1860](#), and the offence abetted is shown to have been committed as a result of the abetment, the abettor should be punished with the imprisonment provided for the principal offence under [section 109, IPC, 1860](#), and no separate sentence need be recorded under [section 120B IPC, 1860](#).¹¹² Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.¹¹³ Where no jail term was awarded to the principal accused in a conspiracy and he was let off with fine alone, it was held that substantive sentence of imprisonment awarded to the other accused was wrongful and, therefore, they also were ordered to pay fine only.¹¹⁴ Where six of the seven persons accused of criminal

conspiracy were acquitted, remaining one accused could not be convicted merely for being the head of the section of the branch where fraud was alleged to have been committed.¹¹⁵ Where the appellant-accused was one of the active members of the criminal conspiracy along with other accused and hatched the plan to kill/eliminate the deceased and in furtherance thereof other accused persons successfully killed/eliminated the deceased and it was not the case of the appellant-accused and nor was urged also that his case fell under Section 120(2) so as to be awarded less sentence as prescribed therein, the conviction and award of life sentence as prescribed under [Section 302](#) read with [Section 120B, IPC, 1860](#) was held proper.¹¹⁶ The accused pleaded guilty to conspiring to cause a public nuisance. He conspired with others to interfere with a premier division football match by means of extinguishing the floodlights while the match was in progress. The object of doing so was to affect bets placed on the match abroad, which depended on the score at the time when the lights were switched off and the match was abandoned. The plan was not put into effect and the accused and others were arrested before the match was due to take place. The accused would have received substantial reward for his role. He was sentenced to four years' imprisonment. His appeal was dismissed. The Court said that the practice of interfering with such an important sporting fixture was something which should be actively discouraged by severe sentences. The sentence could not be described as manifestly excessive.¹¹⁷

Law relating to Conspiracy as summarised by the Supreme Court in State of TN through Superintendent of Police, CBI/SIT v Nalini, ([AIR 1999 SC 2640 \[LNIND 1999 SC 1584\]](#) : [\(1999\) 5 SCC 253 \[LNIND 1999 SC 526\]](#) : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : [1999 Cr LJ 3124](#)).

1. Under [Section 120A, IPC, 1860](#), offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention, but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.
2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.
3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
4. Conspirators may, for example, be enrolled in chain A enrolling B, B enrolling C, and so on and all will be members of the single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be

members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus, to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.
6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.
7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficult in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed to Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".
8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.
9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of

the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the other put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
91. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).
92. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, [2005 Cr LJ 3950 : \(2005\) 11 SCC 600 \[LNIND 2005 SC 580\]](#).
93. *State of MP v Sheetla Sahai*, [2009 Cr LJ 4436 : \(2009\) 8 SCC 617](#) : (2009) 3 SCC(Cr) 901.
94. *Alim Jan Bibi*, [\(1937\) 1 Cal 484](#) . It is not necessary that each and every conspirator must have taken part in the commission of the act. *State of HP v Krishanlal Pradhan*, [AIR 1987 SC 773 \[LNIND 1987 SC 131\] : 1987 Cr LJ 709 : \(1987\) 2 SCC 17 \[LNIND 1987 SC 131\]](#) . Govt of NCT of Delhi v Jaspal Singh, [\(2003\) 10 SCC 586 \[LNIND 2003 SC 649\]](#) , essential requirements of charge under the section. *Ram Narayan Popli v CBI*, [AIR 2003 SC 2748 \[LNIND 2003 SC 26\] : \(2003\) 3 SCC 641 \[LNIND 2003 SC 26\]](#) , statement of ingredients. *Nazir Khan v State of Delhi*, [AIR 2003 SC 4427 \[LNIND 2003 SC 696\] : \(2003\) 8 SCC 461 \[LNIND 2003 SC 696\]](#) , statement of ingredients and matters of proof.
95. *Subbaiah*, [AIR 1961 SC 1241 \[LNIND 1961 SC 95\]](#) . See also *Mohd Hussain v KS Dalipsinghji*, [AIR 1970 SC 45 \[LNIND 1969 SC 147\] : \(1970\) 1 SCR 130 \[LNIND 1969 SC 147\]](#) . See also *Jagdish Prasad v State of Bihar*, [1990 Cr LJ 366](#) Pat, conspiracy with railway employees to procure allotment of wagons under cover of fake letters. *State of Rajasthan v Govind Ram Bagdiya*, [2003 Cr LJ 1169](#) (Raj), the prosecution has to prove the elements of conspiracy. No proof was forthcoming in this case in the matter of allotment of house of any conspiracy among officials to manipulate the system.
96. *Abdul Kadar v State*, [\(1963\) 65 Bom LR 864](#) . For an example of a failed prosecution under this section see *State of UP v Pheru Singh*, [AIR 1989 SC 1205 : 1989 Cr LJ 1135](#) . In *Darshan Singh v State of Punjab*, [AIR 1983 SC 554 \[LNIND 1983 SC 95\] : 1983 Cr LJ 985 : \(1983\) 2 SCC 411 \[LNIND 1983 SC 95\]](#) , the Supreme Court considered it to be unbelievable that the accused hatched their plot while taking drinks in the presence of a stranger. For proof of conspiracy it often becomes necessary to convert one of the conspirators into an approver witness and this may require corroboration. See *Balwant Kaur v UT Chandigarh*, [AIR 1988 SC 139 \[LNIND 1987 SC 738\] : 1988 Cr LJ 398](#) . The absence of one of the conspirators at one of their meetings does not by itself rule out his complicity. Conspiracies are hatched under cover of secrecy. They are generally proved by circumstantial evidence, *EK Chandrasenan v State of Kerala*, [AIR 1995 SC 1066 \[LNIND 1995 SC 88\] : 1995 Cr LJ 1445](#) ; *Aniceto Lobo v State (Goa, Daman and Diu)*, [AIR 1994 SC 1613 : 1994 Cr LJ 1582](#) : 1993 Supp (3) SCC 311 , conspiracy of three persons, one of whom, being bank employee, took out blank drafts, the other forged signatures and third opened

accounts in fictitious names to encash the drafts, all of them were held to be equally guilty of the offence.

97. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329].

98. *Damodar v State of Rajasthan*, AIR 2003 SC 4414 [LNIND 2003 SC 803] : 2003 Cr LJ 5014 : (2004) 12 SCC 336 [LNIND 2003 SC 803]. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023], alleged conspiracy was to dispose of by auction the property of a Govt Co at a low price, but the bids made by the alleged conspirators reflected a fair price. Ingredients of the section not made out. *Hardeep Singh Sohal v State of Punjab*, AIR 2004 SC 4716 [LNIND 2004 SC 902] : (2004) 11 SCC 612 [LNIND 2004 SC 1006] conspiracy for murder not proved. Another charge of conspiracy for murder was rejected in *Hem Raj v State of Punjab*, AIR 2003 SC 4259 [LNIND 2003 SC 759] : 2003 Cr LJ 4987 : (2003) 12 SCC 241 [LNIND 2003 SC 759]. *State of HP v Satya Dev Sharma*, (2002) 10 SCC 601 , criminal conspiracy between timber merchants and private landowners and Government officials for felling and misappropriating trees standing on Government land.

99. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 . Under TADA (repealed) such confession had the status of evidence. *Ram Singh v State of HP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 AIR SCW 1331 : 1997 Cr LJ 4091 , in a murder by some persons, the accused persons assisted them in causing disappearance of the dead body secretly in furtherance of their conspiracy, their conviction under sections 201-120B was held to be proper. *Subhash Harnarayanji Laddha v State of Maharashtra*, (2006) 12 SCC 545 [LNIND 2006 SC 1088] , conspiracy not proved. *Mallanna v State of Karnataka*, (2007) 8 SCC 523 [LNIND 2007 SC 1526] , conspiracy not proved.

100. *R Balkrishna Pillai v State of Kerala*, 1996 Cr LJ 757 (Ker); *Devender Pal Singh v State (NCT) of Delhi*, 2002 Cr LJ 2034 (SC), acquittal of a co-accused on the ground of non-corroboration of the confessional statement did not have the effect of demolishing the prosecution regarding conspiracy *Saju v State of Kerala*, 2001 Cr LJ 102 (SC), no evidence to show that the accused was responsible for pregnancy or insisted upon its termination. The accused and co-accused were fellow workers and seemed to be hired killers. They were seen together at the place of the incident both before and after it. That was held to be not sufficient to prove charge of conspiracy against them. *State of HP v Jai Lal*, AIR 1999 SC 3318 [LNIND 1999 SC 798] : 1999 Cr LJ 4294 State Government scheme of purchasing infected apples from growers and destroying them. Allegations that some of them over charged by inflating weight. But no evidence of experts about overweight, etc., charge not proved. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a charge-sheet was not quashed where there was evidence to believe that the two accused persons had conspired to produce a document for fulfilling the eligibility criteria for an appointment. *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 , the prosecution could not prove that one of the two accused was a party to the conspiracy. *Arun Gulab Gawli v State of Maharashtra*, 1998 Cr LJ 4481 (Bom) mere inference cannot invite punishment.

101. *Mohd Amin v CBI*, (2008) 15 SCC 49 [LNIND 2008 SC 2255] : (2009) 3 SCC (Cr) 693.

102. *Soma Chakravarty v State*, AIR 2007 SC 2149 [LNIND 2007 SC 632] : (2007) 5 SCC 403 [LNIND 2007 SC 632].

103. *T Shankar Prasad v State of AP*, AIR 2004 SC 1242 [LNIND 2004 SC 41] : 2004 Cr LJ 884 : (2004) 3 SCC 753 [LNIND 2004 SC 41].

104. *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 . See also *Vinod Kumar Jain v State through CBI*, 1991 Cr LJ 669 (Del); *State of Bihar v Simranjit Singh Mann*, 1987 Cr LJ 999 (Pat).

105. *Nirmal Puri (Lt Gen Retd) v UOI*, 2002 Cr LJ 158 (Del).
106. *Iridium India Telecom Ltd v Motorola Incorporated*, AIR 2011 SC 20 [LNIND 2010 SC 1012] : 2010 AIR (SCW) 6738 : JT 2010 (11) SC 492 [LNIND 2010 SC 1012] : (2011) 1 SCC 74 [LNIND 2010 SC 1012] : (2010) 3 SCC(Cr) 1201 : 2010 (11) Scale 417 ; relied on *Standard Chartered Bank v Directorate of Enforcement*, AIR 2005 SC 2622 [LNIND 2005 SC 476] : (2005) 4 SCC 530 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961.
107. *Padam Chand v The State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .
108. *Sanjiv Rajendra Bhatt v UOI*, 2016 Cr LJ 185 : (2016) 1 SCC 1 [LNIND 2015 SC 596] .
109. *Chandran v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] : (2011) 2 SCC(Cr) 551 : (2011) 8 SCR 273 [LNIND 2011 SC 358] ; Also see *Ravinder Singh @ Ravi Pavar v State of Gujarat*, AIR 2013 SC 1915 2013 Cr Lj 1832.
110. *State of Karnataka v Selvi J Jayalalitha*, 2017 (2) Scale 375 [LNIND 2017 SC 72] : 2017 (1) RCR (Criminal) 802.
111. *Section 196(2) of Code of Criminal Procedure, 1973*.
112. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
113. *State of Orissa v Bishnu Charan Muduli*, 1985 Cr LJ 1573 (Ori).
114. *CR Mehta v State of Maharashtra*, 1993 Cr LJ 2863 (Bom). The Court referred to *Rameshwar Dayal v State of UP*, 1971 (3) SCC 924 : 1972 SCC (Cr) 172.
115. *BN Narasimha Rao v Govt of AP*, 1995 Cr LJ 4181 (SC), reversing AP High Court. See also *Sayed Mohd Owais v State of Maharashtra*, 2003 Cr LJ 303 (Bom).
116. *Bilal Hajar v State*, AIR 2018 SC 4780 [LNIND 2018 SC 520] .
117. *R v Chee Kew Ong*, (2001) 1 Cr App R (S) 117 [CA (Crim Div)].

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 121] Waging, or attempting to wage war or abetting waging of war, against the Government of India.

Whoever, wages war^{1.} against the ¹[Government of India]^{2.}, or attempts, to wage such war, or abets the waging of such war^{3.}, shall be punished with death, or ²[imprisonment for life] ³[and shall also be liable to fine].

4.[ILLUSTRATIONS]

⁵[***] (a) A joins an insurrection against the ^{6.}[Government of India]. A has committed the offence defined in this section.

7.[*]COMMENT—**

Earlier the word used in section 121 was "Queen". After the formation of the republic under the [Constitution](#) it was substituted by the expression "Government of India" by the Adaption of Laws Order of 1950. In a republic, sovereignty vests in the people of the country and the lawfully elected government is simply the representative and a manifestation of the sovereign, that is, the people. Thus, the expression "Government of India", as appearing in section 121, must be held to mean the State or interchangeably the people of the country as the repository of the sovereignty of India which is manifested and expressed through the elected Government.^{8.}

[s 121.1] Waging war against Government.—

The concept of war embedded in section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence

days, the illustration to section 121 itself makes it clear that "war" contemplated by section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war.⁹

Neither the number of persons nor the manner in which they are assembled or armed is material to constitute an offence under this section. The true criterion is the purpose or intention with which the gathering is assembled. The object of the gathering must be to attain by force and violence an object of a general public nature thereby striking directly against the Government's authority.¹⁰

In *Md Jamiluddin Nasir v State of WB*,¹¹ while enumerating what principles are to be kept in mind in cases, involving application of sections 121, 122, 121A read with section 120B IPC, 1860 as well as section 302 IPC, 1860, the Supreme Court, observed *inter alia* that not all violent behaviour would fall within the prescription of waging war as contemplated under sections 121, 121A, 122 read with section 120B. It was also found that the object sought to be achieved to make a case for the application of section 121, should be directed against the sovereignty of the State and not merely commission of a crime, even if that happens to be of higher magnitude. The concept of 'waging war' should not be stretched too far. A balanced and realistic approach should be maintained while construing the offence committed, to find out whether it amounts to waging of war against the State.

1. 'Wages war'.—The expression "waging war" means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the Government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of Government or those in possession of it yielded to the demands of their leaders.¹² An illuminating discussion on the issue of "Waging war against the Government of India" is to be found in this Court's decision in *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*.¹³ In para 272 of the judgment *P Venkatarama Reddi, J*, speaking for the Court, referred to the report of the Indian Law Commission that examined the draft *Penal Code* in 1847 and quoted the following passage from the report:

We conceive the term 'wages war against the Government' naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous.

The expression, "in like manner and by like means as a foreign enemy", is very significant to understand the nature of the violent acts that would amount to waging war. In "waging war", the intent of the foreign enemy is not only to disturb public peace or law and order or to kill many people. A foreign enemy strikes at the sovereignty of the State, and his conspiracy and actions are motivated by that animus.¹⁴

[s 121.2] New concept of "Waging war" and Caution against using old authorities.—

The concept of war in section 121 which includes insurrection or a civilian uprising should not be understood in the sense of conventional war between two nations or sovereign entities. The normative phenomenon of war as understood in the

international sense does not fit into the ambit and reach of section 121. In the Parliament attack case,¹⁵ the Supreme Court held as follows:

while these are the acceptable criteria of waging war, we must dissociate ourselves from the old English and Indian authorities to the extent that they lay down a too general test of attainment of an object of general public nature or a political object. The Supreme Court expressed reservations in adopting this test in its literal sense and construing it in a manner out of tune with the present day. The court must be cautious in adopting an approach which has the effect of bringing within the fold of S.121 all acts of lawless and violent acts resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression "waging war" should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression "waging war" irrespective of how it was viewed in the long past. An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war. We doubt whether such construction is in tune with the modern day perspectives and standards.

[s 121.3] Terrorist Acts.—

Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. According to the learned Senior Counsel for the State, terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed. However, the degree of animus or intent and the magnitude of the acts done or attempted to be done would assume some relevance in order to consider whether the terrorist acts give rise to a state of war. Yet, the demarcating line is by no means clear, much less transparent. It is often a difference in degree. The distinction gets thinner if a comparison is made of terrorist acts with the acts aimed at overawing the Government by means of criminal force. Conspiracy to commit the latter offence is covered by section 121A.¹⁶ The incorporation of Chapter IV of the [Unlawful Activities \(Prevention\) Act, 1967](#), shall not be viewed as deemed repeal of [section 121 of the IPC, 1860](#). As explained in *Navjot Sandhu (supra)*, a "terrorist act" and an act of "waging war against the Government of India" may have some overlapping features, but a terrorist act may not always be an act of waging war against the Government of India, and vice-versa. The provisions of Chapter IV of the [Unlawful Activities \(Prevention\) Act](#) and those of Chapter VI of the [Indian Penal Code \(IPC\)](#), 1860 including section 121, basically cover different areas.¹⁷

[s 121.4] Foreign nationals not excluded.—

The word "whoever" is a word of broad import. Advisedly such language was used departing from the observations made in the context of the Treason Statute. Supreme Court finds no good reason why foreign nationals stealthily entering into Indian territory with a view to subverting the functioning of the Government and destabilising the society should not be held guilty of waging war within the meaning of section 121. The section on its plain term need not be confined only to those who owe allegiance to the established Government.¹⁸

The explanation to the section makes it clear that the offence is complete even without any act or illegal omission occurring in pursuance of the conspiracy.¹⁹ It is not

necessary that any act or illegal omission should have taken place in pursuance of a conspiracy. An action of waging war, attempt to wage war or abetment to wage war are also covered by section 121-A.²⁰

2. Government of India.—The expression "Government of India" is surely not used in the narrow and restricted sense in section 121. In our considered view, the expression "Government of India" is used in section 121 to imply the Indian State, the juristic embodiment of the sovereignty of the country that derives its legitimacy from the collective will and consent of its people. The use of the phrase "Government of India" to signify the notion of sovereignty is consistent with the principles of Public International Law, wherein sovereignty of a territorial unit is deemed to vest in the people of the territory and exercised by a representative government.²¹

3. 'Abets the waging of such war'.—Such abetment is made a special offence. It is not essential that as a result of the abetment the war should in fact be waged. The main purpose of the instigation should be 'the waging of war'. It should not be merely a remote and incidental purpose but the thing principally aimed at by the instigation. There must be active suggestion or stimulation to the use of violence.²² As criminal acts took place pursuant to the conspiracy, the appellant, as a party to the conspiracy, shall be deemed to have abetted the offence. In fact, he took an active part in a series of steps taken to pursue the objective of conspiracy. The offence of abetting the waging of war, having regard to the extraordinary facts and circumstances of this case, justifies the imposition of capital punishment and, therefore, the judgment of the High Court in regard to the conviction and sentence of Afzal under [section 121 IPC, 1860](#) shall stand.²³

[s 121.5] Principles relating to Section 121.—

- (i) No specific number of persons is necessary to constitute an offence under [S.121, Penal Code](#).
- (ii) The number concerned and the manner in which they are equipped or armed is not material.
- (iii) The true criterion is *quo animo* did the gathering assemble?
- (iv) The object of the gathering must be to attain by force and violence an object of a general public nature, thereby striking directly against the King's authority.
- (v) There is no distinction between principal and accessory and all who take part in the unlawful act incur the same guilt.²⁴

[s 121.6] CASES.—Mumbai Terror Attack Case.—

The primary and the first offence that the appellant and his co-conspirators committed was the offence of waging war against the Government of India. What matters is that the attack was aimed at India and Indians. It was by foreign nationals. People were killed for no other reason than they were Indians; in case of foreigners, they were killed because their killing on Indian soil would embarrass India. The conspiracy, in furtherance of which the attack was made, was, *inter alia*, to hit at India; to hit at its financial centre; to try to give rise to communal tensions and create internal strife and insurgency; to demand that India should withdraw from Kashmir; and to dictate its relations with other countries. Nothing could have been more "in like manner and by

like means as a foreign enemy would do". The appellant was rightly held guilty of waging war against the Government of India and rightly convicted under sections 121, 121A and 122 of the IPC, 1860.²⁵

[s 121.7] Red Fort Attack Case.—

The evidence as to the transmission of thoughts sharing the unlawful design would be sufficient for establishing the conspiracy. Again there must have been some act in pursuance of the agreement. The offence under section 121 of conspiring to wage a war is proved to the hilt against the appellant, for which he has been rightly held guilty for the offence punishable under sections 121 and 121-A, IPC, 1860.²⁶

[s 121.8] Parliament Attack Case.—

The single most important factor which impels to think that this is a case of waging or attempting to wage war against the Government of India is the target of attack chosen by the slain terrorists and conspirators and the immediate objective sought to be achieved thereby. The battlefield selected was the Parliament House complex. The target chosen was Parliament – a symbol of the sovereignty of the Indian republic. Huge and powerful explosives, sophisticated arms and ammunition carried by the slain terrorists who were to indulge in *fidayeen* operations with a definite purpose in view, is a clear indicator of the grave danger in store for the inmates of the House. The planned operations if executed, would have spelt disaster for the whole nation. The undoubted objective and determination of the deceased terrorists was to impinge on the sovereign authority of the nation and its Government. Even if the conspired purpose and objective falls short of installing some other authority or entity in the place of an established Government, it does not detract from the offence of waging war.²⁷

[s 121.9] Charge under Section 121, conviction under Section 123.—

In the case the Court has specifically dealt with the question whether the offence under section 123, IPC, 1860 of which the accused was not charged, is a minor offence falling under the charges framed, and held that the fact that there was no charge against the accused under this particular section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject matter of charges. It was held that the accused is not in any way handicapped by the absence of charge under section 123, IPC, 1860. The case which he had to meet under section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. It was held that viewed from any angle, the evidence on record justifies his conviction under section 123, IPC, 1860.²⁸

[s 121.10] Previous Sanction.—

No Court shall take cognizance of any offence punishable under Chapter VI of IPC, 1860 except with the previous sanction of Central Government or of the State Government.²⁹ Where sanction was obtained only after cognizance, yet no prejudice

was caused because the matter was not proceeded any further and charge was also not yet framed. The Court remitted the matter for disposal after the date of sanction.³⁰

1. Subs. by the A.O. 1950, for "Queen".
2. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
3. Subs. by Act 16 of 1921, section 2, for "and shall forfeit all his property".
4. Subs. by Act 36 of 1957, section 3 and Sch. II, for "Illustrations" (w.e.f. 17 September 1957).
5. The brackets and letter "(a)" omitted by Act 36 of 1957, section 3 and Sch. II (w.e.f. 17 September 1957).
6. Subs. by the A.O. 1950, for "Queen".
7. Illustration (b) omitted by the A.O. 1950.
8. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
9. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
10. *Maganlal v State*, (1946) Nag 126.
11. *Md Jamiluddin Nasir v State of WB*, 2014 Cr LJ 3589 : AIR 2014 SC 2587 [LNIND 2014 SC 138] .
12. *Nazir Khan v State of Delhi*, (2003) 8 SCC 461 [LNIND 2003 SC 696] : 2003 AIR SCW 5068 : AIR 2003 SC 4427 [LNIND 2003 SC 696] : 2003 Cr LJ 5021 .
13. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
14. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
15. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
16. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
17. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
18. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
19. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
20. *Adnan Bilal Mulla v State of Bombay*, 2006 Cr LJ (NOC) 406 Bom : (2006) 5 AIR Bom R 11 DB.

21. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
22. *Hasrat Mohani*, (1922) 24 Bom LR 885 [LNIND 1922 BOM 136] .
23. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
24. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715 relied on *Maganlal Radhakrishan*, AIR 1946 Ngp 173 .
25. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
26. *Mohd. Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] relied on *Kehar Singh v State (Delhi Admn.)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] . See also *State of Gujarat v Jaman Haji Mamad Jat*, 2007 Cr LJ 1584 (Guj).
27. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
28. *Shaukat Hussain Guru v State (NCT) Delhi*, AIR 2008 SC 2419 : (2008) 6 SCC 776 : 2008 Cr LJ 3016 : 2008 (8) SCR 391 : (2008) 3 SCC (Cr) 137.
29. Section 196(1)(a) of **Code of Criminal Procedure, 1973**.
30. *Jamil Akhtar v State of WB*, 2001 Cr LJ 4529 (Cal).

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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).

31. [s 121A] Conspiracy to commit offences punishable by section 121.

Whoever within or without ^{32.}[India] conspires to commit any of the offences punishable by section 121, ^{33.}[*]or conspires to overawe,¹ by means of criminal force or the show of criminal force, ^{34.}[the Central Government or any ^{35.}[State] Government ^{36.[***]}], shall be punished with ^{37.}[imprisonment for life], or with imprisonment of either description which may extend to ten years, ^{38.}[and shall also be liable to fine].**

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

COMMENT—

Conspiracy to wage war.—This section provides for the offence of conspiring to wage war against the Government of India. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this that persons who by conspiring to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools, and only took part in such an assembly.

The Explanation to section 121A clarifies that it is not necessary that any act or illegal omission should take place pursuant to the conspiracy, in order to constitute the said offence. Thus, the **criminal act** done by the deceased terrorists in order to capture the Parliament House is an act that amounts to waging or attempting to wage war. The conspiracy to commit either the offence of waging war or attempting to wage war or abetting the waging of war is punishable under **section 121A IPC, 1860** with the maximum sentence of imprisonment for life. In the circumstances of the case, the imposition of maximum sentence is called for and the High Court is justified in holding

the appellant Afzal guilty under [section 121A IPC, 1860](#) and sentencing him to life imprisonment.³⁹

The words 'conspires to overawe by means of criminal force or the show of criminal force, the Central Government, or any State Government' in this section clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Central Government or any State Government by the organisation of a serious riot or a large and tumultuous unlawful assembly.⁴⁰

[s 121A.1] Ingredients.—

The section deals with two kinds of conspiracies:—

1. Conspiring within or without India to commit any of the offences punishable by section 121.
2. Conspiring to overawe by means of criminal force or the show of criminal force, the Government.

1. 'Overawe'.—The word 'overawe' clearly imports more than the creation of apprehension or alarm or even perhaps fear. It appears to connote the creation of a situation in which the members of the Central or State Government feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger. It is not necessary that the danger should be a danger of assassination or of bodily injury to themselves. The danger might well be a danger to public property or to the safety of members of the general public.²⁵ The word 'overawe' clearly imports more than the creation of apprehension or alarm or fear. A slogan that Government can be changed by an armed revolution does not mean that there is a conspiracy to change the Government by criminal force. At best it means that the petitioners want to educate the people that by force only the Government could be changed.⁴¹

Explanation.—The Explanation to this section says that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission should take place in pursuance thereof.

31. Ins. by Act 27 of 1870, section 4.

32. 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.

33. The words "or to deprive the Queen of the sovereignty of the Provinces or of any part thereof" omitted by the A.O. 1950.

34. Subs. by the A.O. 1937, for "the Government of India or any Local Government".

35. Subs. by the A.O. 1950, for "Provincial".

36. The words "or the Government of Burma" omitted by the A.O. 1948.

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

38. Ins. by Act 16 of 1921, section 3.

39. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
40. *Ramanand v State*, (1950) 30 Pat 152.
41. *Aravindan*, 1983 Cr LJ 1259 (Ker).

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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).

31. [s 121A] Conspiracy to commit offences punishable by section 121.

Whoever within or without ^{32.}[India] conspires to commit any of the offences punishable by section 121, ^{33.}[*]or conspires to overawe,¹ by means of criminal force or the show of criminal force, ^{34.}[the Central Government or any ^{35.}[State] Government ^{36.[***]}], shall be punished with ^{37.}[imprisonment for life], or with imprisonment of either description which may extend to ten years, ^{38.}[and shall also be liable to fine].**

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

COMMENT—

Conspiracy to wage war.—This section provides for the offence of conspiring to wage war against the Government of India. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this that persons who by conspiring to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools, and only took part in such an assembly.

The Explanation to section 121A clarifies that it is not necessary that any act or illegal omission should take place pursuant to the conspiracy, in order to constitute the said offence. Thus, the **criminal act** done by the deceased terrorists in order to capture the Parliament House is an act that amounts to waging or attempting to wage war. The conspiracy to commit either the offence of waging war or attempting to wage war or abetting the waging of war is punishable under **section 121A IPC, 1860** with the maximum sentence of imprisonment for life. In the circumstances of the case, the imposition of maximum sentence is called for and the High Court is justified in holding

the appellant Afzal guilty under [section 121A IPC, 1860](#) and sentencing him to life imprisonment.³⁹

The words 'conspires to overawe by means of criminal force or the show of criminal force, the Central Government, or any State Government' in this section clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Central Government or any State Government by the organisation of a serious riot or a large and tumultuous unlawful assembly.⁴⁰

[s 121A.1] Ingredients.—

The section deals with two kinds of conspiracies:—

1. Conspiring within or without India to commit any of the offences punishable by section 121.
2. Conspiring to overawe by means of criminal force or the show of criminal force, the Government.

1. 'Overawe'.—The word 'overawe' clearly imports more than the creation of apprehension or alarm or even perhaps fear. It appears to connote the creation of a situation in which the members of the Central or State Government feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger. It is not necessary that the danger should be a danger of assassination or of bodily injury to themselves. The danger might well be a danger to public property or to the safety of members of the general public.²⁵ The word 'overawe' clearly imports more than the creation of apprehension or alarm or fear. A slogan that Government can be changed by an armed revolution does not mean that there is a conspiracy to change the Government by criminal force. At best it means that the petitioners want to educate the people that by force only the Government could be changed.⁴¹

Explanation.—The Explanation to this section says that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission should take place in pursuance thereof.

31. Ins. by Act 27 of 1870, section 4.

32. 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.

33. The words "or to deprive the Queen of the sovereignty of the Provinces or of any part thereof" omitted by the A.O. 1950.

34. Subs. by the A.O. 1937, for "the Government of India or any Local Government".

35. Subs. by the A.O. 1950, for "Provincial".

36. The words "or the Government of Burma" omitted by the A.O. 1948.

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

38. Ins. by Act 16 of 1921, section 3.

39. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, [AIR 2005 SC 3820 \[LNIND 2005 SC 580\]](#) : [\(2005\) 11 SCC 600 \[LNIND 2005 SC 580\]](#) : (2005) 2 SCC (Cr) 1715.

40. *Ramanand v State*, (1950) 30 Pat 152.

41. *Aravindan*, [1983 Cr LJ 1259](#) (Ker).

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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 122] Collecting arms, etc., with intention of waging war against the Government of India.

Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the ^{42.} [Government of India], shall be punished with ^{43.}[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, ^{44.}[and shall also be liable to fine].

COMMENT—

This section is intended to put down with a heavy hand any preparation to wage war against the Government of India. The act made punishable by this section cannot be considered attempts; they are in truth preparations made for committing the offence of waging war. Preparation consists of devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation and an attempt is sometimes thin and has to be decided on the facts of each case). There is a greater degree of determination in attempt as compared with preparation.^{45.}

^{42.} Subs. by the A.O. 1950, for "Queen".

43. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
44. Ins. by Act 16 of 1921, section 3.
45. *Koppula Venkat Rao v State of AP*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : (2004) 3 SCC 602 [LNIND 2004 SC 301].

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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 123] Concealing with intent to facilitate design to wage war.

Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the ⁴⁶[Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section reiterates the principle enunciated in section 118, the only difference being that the penalty under it is more severe. [Section 39 of Code of Criminal Procedure \(Cr PC\), 1973](#) read with [section 176 of the IPC, 1860](#) makes it an offence for any person who is aware of the commission of, or of the intention of any person to commit, an offence under sections 121–126, both inclusive (that is, offences against the State specified in Chapter VI of the Code), to omit giving any notice or furnishing any information to any public servant. Moreover, [section 123 of IPC, 1860](#) makes it an offence to conceal, whether by act or omission, the existence of a design to "wage war" against the Government of India, when intending by such concealment to facilitate, or knowing it to be likely that such concealing will facilitate, the waging of such war.⁴⁷

[s 123.1] Section 121 and Section 123.—

To prove an offence under [section 121, IPC, 1860](#), the prosecution is required to prove that the accused is guilty of waging war against the Government of India or attempts to wage such war, or abets the waging of such war, whereas for proving the offence under [section 123, IPC, 1860](#) against the accused, the prosecution is required to prove that there was a concealment by an act or by illegal omission of existence of a design to wage war against the Government of India and he intended by such concealment to facilitate, or he knew that such concealment will facilitate, the waging of war. In the present case, the accused was charged under [section 121, IPC, 1860](#), for waging war against the Government of India or attempting to wage such war or abetting the

waging of such war. The concealment of such fact by an act or illegal omission with an intention to facilitate, or knowing that such concealment will facilitate, waging of war, even in the absence of proof of his involvement in waging of war against the Government of India, will constitute an offence and an accused can always be convicted for the concealment of such fact under [section 123, IPC, 1860](#). The prosecution having been successful in proving the necessary ingredients of [section 123, IPC, 1860](#), it would constitute a minor offence of a major offence and, therefore, the petitioner was convicted under [section 123, IPC, 1860](#) which is a minor offence of the offences he faced trial.⁴⁸

46. Subs. by the A.O. 1950, for "Queen".

47. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .

48. *Shaukat Hussain Guru v State (NCT) Delhi*, AIR 2008 SC 2419 : (2008) 6 SCC 776 : 2008 Cr LJ 3016 : 2008 (8) SCR 391 : (2008) 3 SCC (Cr) 137.

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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 124] Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

Whoever, with the intention of inducing or compelling the ^{49.}[President] of India, or the ^{50.}[Governor ^{51.}[*]] of any ^{52.}[State], ^{53.}[***] ^{54.}[***] ^{55.}[***] to exercise or refrain from exercising in any manner any of the lawful powers of such ^{56.}[President] or ^{57.}[Governor ^{58.}[***]],**

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such ^{59.}[President or ^{60.}[Governor ^{61.}[*]]],**

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

This section is an amplification of the third clause of section 121A. It punishes severely assaults, etc., made on high officers of Government.

^{49.} Subs. by the A.O. 1950, for "Governor General".

^{50.} Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).

^{51.} The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.

^{52.} Subs. by the A.O. 1950, for "Province". Earlier the word "Province" was subs. by the A.O. 1937, for the word "Presidency".

53. The words "or a Lieutenant-Governor" omitted by the A.O. 1937.
54. The words "or a Member of the Council of the Governor General of India" omitted by the A.O. 1948.
55. The words "or of the Council of any Presidency" omitted by the A.O. 1937.
56. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successfully been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
57. Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).
58. The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.
59. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successfully been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
60. Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).
61. The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.

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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).

62. [s 124A] Sedition.

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts

to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 63. [*] the Government established by law in 64. [India], 65. [***] shall be punished with 66. [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.**

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

COMMENT—

The offence under section 124A captioned as 'Sedition' is closely allied to treason – an offence against the State. Many personalities including the Father of the Nation and several freedom fighters have been tried and punished during the imperial rule under the above section. How far in a democratic set-up publishing or preaching of protest even questioning the foundation of the form of Government could be imputed as causing disaffection towards the Government and thus, committing of any offence

under Chapter VI of the [IPC, 1860](#) has to be examined within the letter and spirit of the [Constitution](#) and not as previously done under the imperial rule.⁶⁷.

Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.⁶⁸

[s 124A.1] Constitutional Validity.—

The Supreme Court, in *Kedar Nath Singh v State of Bihar*,⁶⁹ held that this section is not unconstitutional and opined that only when it is construed that the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the section strikes the correct balance between individual fundamental rights and the interest of public order. The Court also held that a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

The Supreme Court in a later Order in *Common Cause v UOI*⁷⁰. ordered that the authorities while dealing with the offences under [section 124A of the IPC, 1860](#) shall be guided by the principles laid down by the [Constitution](#) Bench in *Kedar Nath Singh*.

Section 124A]

[s 124A.2] Ingredients.—

This section requires two essentials:—

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written; or (ii) by signs; or (iii) by visible representation.

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.—A plain reading of the section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations, etc.⁷¹. Necessary ingredient to attract punishment under [section 124A, IPC, 1860](#), appears to be the effort of bringing or attempting to bring into hatred or contempt to excite or attempt to excite disaffection towards the Government established by law in India by words, either spoken or written or by signs or by visible representation or otherwise.⁷². The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or

small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the [IPC, 1860](#). If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.⁷³. The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.⁷⁴. The view of the Federal Court was subsequently overruled by the Privy Council,⁷⁵ as being opposed to the view expressed in several cases.⁷⁶.

In appreciating whether the act done by the accused by words "either spoken or written or by signs or by misrepresentation or otherwise" one cannot shut one's eyes to changes in political consumptions which have taken place over the course of time after the aforesaid penal provision section 124A was included in the [IPC, 1860](#) and the declared objective of the Government of the day. Very often, the demarcating line between political criticism of the Government and those causing disaffection against the Government is thin and waving.⁷⁷.

It is not an essential ingredient of sedition that the act done should be an act which is intended or likely to incite to public disorder.⁷⁸. But this view of the law does no longer seem to be correct, in view of the decision of the Supreme Court in *Kedar Nath's* case,⁷⁹ wherein *Sinha*, CJ observed:

comments, however strongly worded expressing, disapprobation of actions of Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence.

In this very case it was further held that viewed in the context of antecedent history of the legislation, its purpose and the mischief it seeks to suppress the provisions of [section 124A](#) and [section 505](#) of the [IPC, 1860](#) should be limited in their application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following Army action in Punjab, it was held that it would be quite proper to infer from the text and tenor of the speech made by the accused that the same was intended to bring the Government into contempt with the likelihood of eruption of violence and public disorder contemplated in *Kedarnath's* case. In the circumstances, his petition for quashing the criminal proceedings against him under [section 482, Cr PC, 1973](#) was rejected.⁸⁰. The decisive ingredient for establishing the offence of Sedition under [section 124A, IPC, 1860](#) is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, etc. In this case, there is not even a suggestion that appellant did anything as against the Government of India or any other Government of the State. The charge framed against the accused contains no averment that accused did anything as against the Government.⁸¹. The prosecution evidence shows that the slogans were raised a couple of times only by the accused and that neither the slogans evoked a response from any other person of the Sikh community nor reaction from people of other communities. Supreme Court found it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever, the charge of sedition can be founded.

The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. **Section 124A IPC, 1860** would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.⁸² The prosecution case is that the accused has delivered a speech creating ill will and promoting enmity among different retail and linguistic groups of Indian people and thereby committed the offences punishable under **sections 124(A)** and **153(A)** of the **IPC, 1860**. A perusal of the First Information Report and the charge sheet laid by the respondent police would make it abundantly clear that the allegations mentioned therein, if proved, would naturally attract the provisions of **sections 124(A)** and **153(A)** of **IPC, 1860**.⁸³ State of Punjab and Union Territory, Chandigarh, had been declared Disturbed Area and the extremists activities were going on a large scale in September 1984. The law and order situation had so deteriorated that the Army had to spread out. In this background, it will be proper to infer from the text and tenor of the speech made by the accused that the same was intended and it did tend to bring the Government into contempt with the likelihood of eruption of violence and public disorder.⁸⁴

2. Such act, attempt, etc., may be done by words, either spoken or written or by signs or by visible representation.—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not.⁸⁵

[s 124A.3] 'Written'.—

In *Raghbir Singh*,⁸⁶ it has been held that for establishing the charge of sedition, it is not necessary that the accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a person should be the participant in the conspiracy from start to finish. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.⁸⁷ Sending of seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.⁸⁸

[s 124A.4] Advise to kill members of police force.—

The Government established by law acts through human agency and admittedly, the police service or force is itself a principal agency for the administration and maintenance of the law and order in the State. When a person makes a statement or gives an advice to resort to violence by killing four to five police officers, he could be said to have criticised the police force or the service *en bloc*. In such circumstances a *prima facie* case of waging war against the Government could be said to have been made out.⁸⁹

[s 124A.5] 'Visible representation'.—

Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind.^{90.}

[s 124A.6] Explanations 2 and 3.—

Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection.

[s 124A.7] Membership in a banned organization.—

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.^{91.}

[s 124A.8] 'Disapprobation'.—

This means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him.^{92.}

[s 124A.9] Liability for extracts from other papers.—

The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news.^{93.}

[s 124A.10] Liability for letters of correspondents.—

The editor of a newspaper is liable for unsigned seditious letters appearing in his paper.^{94.}

[s 124A.11] Publication of seditious exhibits.—

Republication of a seditious article used as an exhibit in a case of sedition is not justifiable.^{95.}

[s 124A.12] Listening to cassettes.—

Certain accused persons were convicted for listening to some cassettes containing speeches of seditious nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly

facilitated commission of disruptive activities under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987. Their conviction was set aside.⁹⁶

[s 124A.13] Previous Sanction.—

No sanction has been obtained to prosecute the petitioner/ accused for the offence under [section 124A of the IPC, 1860](#) which is a mandatory requirement for the Court to take cognizance of such offence. When that be so, whether the contents of the poster and its publication by the accused, even if it is at his instance, to determine whether any offence of sedition is made out thereof is not called for. [Section 196 of the Cr PC, 1973](#) mandates that a complaint for such offence should be expressly authorised by the Government, and if not, the Court cannot take cognizance of such offence against the accused person. Committal proceedings taken over the final report laid before the Court without production of order of sanction satisfying the statutory mandate is clearly unsustainable.⁹⁷

62. Subs. by Act 4 of 1898, section 4, for section 124A. Earlier section 124A was inserted by Act 27 of 1870, section 5.

63. The words "Her Majesty or" omitted by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A.O. 1937 were omitted by the A.O. 1948.

64. 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.

65. The words "or British Burma" omitted by the A.O. 1948. Earlier the words "or British Burma" were inserted by the A.O. 1937.

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

67. [Advocate Manuel PJ v State, 2012 \(4\) Ker LT 708](#).

68. [Nazir Khan v State of Delhi, AIR 2003 SC 4427 \[LNIND 2003 SC 696\] : \(2003\) 8 SCC 461 \[LNIND 2003 SC 696\] : JT 2003 \(1\) SC 200 : 2003 Cr LJ 5021](#).

69. [Kedar Nath Singh v State of Bihar, AIR 1962 SC 955 \[LNIND 1962 SC 21\] : \[1962\] Supp 2 SCR 76](#).

70. [Common Cause v UOI, Writ Petitions Civil No. 683/2016](#).

71. [Balwant Singh v State of Punjab, AIR 1995 SC 1785 \[LNIND 1995 SC 1420\] : \(1995\) 3 SCC 214 \[LNIND 1995 SC 1420\]](#).

72. [Asit Kumar Sen Gupta v State of Chhattisgarh, 2012 \(NOC\) Cr LJ 384 \(Chh\)](#).

73. [Bal Gangadhar Tilak, \(1897\) 22 Bom 112, 528, \(PC\); BG Tilak, \(1908\) 10 Bom LR 848 \[LNIND 1908 BOM 85\] ; Amba Prasad, \(1897\) 20 All 55 , 69, FB; Luxman, \(1899\) 2 Bom LR 286 ; Shankar, \(1910\) 12 Bom LR 675 \[LNIND 1910 BOM 66\] .](#)

74. [Niharendu Dutt Majumdar, \(1942\) FCR 38](#).

75. [Sadashi v Narayan v State, \(1947\) 49 Bom LR 526 , \(1947\) Bom 110, 74 IA 89.](#)

76. [Bal Gangadhar Tilak, \(1897\) 22 Bom 528, PC; Besant v Advocate-General of Madras, \(1919\) 43 Mad 146 : 21 Bom LR 867 PC; Wallace-Johnson, \(1940\) AC 231 .](#)

77. Advocate Manuel PJ v State, 2012 (4) Ker LT 708 .
78. Pratap "Urdu Daily of New Delhi", (1949) 2 Punj 348.
79. Kedar Nath, AIR 1962 SC 955 [LNIND 1962 SC 21] : 1962 (2) Cr LJ 103 .
80. Naurang Singh, 1986 Cr LJ 846 (P&H).
81. Bilal Ahmed Kaloo v State of AP, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : (1997) 7 SCC 431 [LNIND 1997 SC 1060] : 1997 Cr LJ 4091 : (1997) 1 SCC (Cr) 1094.
82. Balwant Singh v State of Punjab, AIR 1995 SC 1785 [LNIND 1995 SC 1420] : (1995) 3 SCC 214 [LNIND 1995 SC 1420] .
83. P Nedumaran v State, 2003 Cr LJ 4388 (Mad).
84. Naurang Singh v Union Territory, Chandigarh, 1986 Cr LJ 846 (PH).
85. Bal Gangadhar Tilak, (1897) 22 Bom 112, 129; Jogendra Chunder Bose, (1891) 19 Cal 35 , 41.
86. Raghbir Singh, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
87. Foster, 198.
88. Suresh Chandra Sanyal, (1912) 39 Cal 606 . Recovery of seditious material in the shape of letters is enough though they were not written by the person carrying them. Raghbir Singh v State of Bihar, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
89. Hardik Bharatbhai Patel v State of Gujarat, 2016 Cr LJ 225 (Guj) : 2016 (1) RCR (Criminal) 542.
90. Alexander M Sullivan, (1868) 11 Cox 44, 51.
91. Indra Das v State of Assam, (2011) 3 SCC 380 [LNIND 2011 SC 164] : 2011 Cr LJ 1646 : (2011) 1 SCC (Cr) 1150 : (2011) 4 SCR 289 [LNIND 2011 SC 164] ; State v Raneef, (2011) 1 SCC 784 [LNIND 2011 SC 3] : AIR 2011 SC 340 [LNIND 2011 SC 3] : 2011 Cr LJ 982 .
92. Jogendra Chunder Bose, (1891) 19 Cal 35 , 44; Bal Gangadhar Tilak, (1897) 22 Bom 112, 137.
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 .

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CHAPTER VI OF OFFENCES AGAINST THE STATE

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

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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).

62. [s 124A] Sedition.

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts

to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 63. [*] the Government established by law in 64. [India], 65. [***] shall be punished with 66. [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.**

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

COMMENT—

The offence under section 124A captioned as 'Sedition' is closely allied to treason – an offence against the State. Many personalities including the Father of the Nation and several freedom fighters have been tried and punished during the imperial rule under the above section. How far in a democratic set-up publishing or preaching of protest even questioning the foundation of the form of Government could be imputed as causing disaffection towards the Government and thus, committing of any offence

under Chapter VI of the [IPC, 1860](#) has to be examined within the letter and spirit of the [Constitution](#) and not as previously done under the imperial rule.⁶⁷

Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.⁶⁸

[s 124A.1] Constitutional Validity.—

The Supreme Court, in *Kedar Nath Singh v State of Bihar*,⁶⁹ held that this section is not unconstitutional and opined that only when it is construed that the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the section strikes the correct balance between individual fundamental rights and the interest of public order. The Court also held that a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

The Supreme Court in a later Order in *Common Cause v UOI*⁷⁰ ordered that the authorities while dealing with the offences under [section 124A of the IPC, 1860](#) shall be guided by the principles laid down by the [Constitution](#) Bench in *Kedar Nath Singh*.

Section 124A]

[s 124A.2] Ingredients.—

This section requires two essentials:—

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written; or (ii) by signs; or (iii) by visible representation.

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.—A plain reading of the section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations, etc.⁷¹ Necessary ingredient to attract punishment under [section 124A, IPC, 1860](#), appears to be the effort of bringing or attempting to bring into hatred or contempt to excite or attempt to excite disaffection towards the Government established by law in India by words, either spoken or written or by signs or by visible representation or otherwise.⁷² The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would

probably fall within other sections of the [IPC, 1860](#). If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.⁷³. The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.⁷⁴. The view of the Federal Court was subsequently overruled by the Privy Council,⁷⁵ as being opposed to the view expressed in several cases.⁷⁶.

In appreciating whether the act done by the accused by words "either spoken or written or by signs or by misrepresentation or otherwise" one cannot shut one's eyes to changes in political consumptions which have taken place over the course of time after the aforesaid penal provision section 124A was included in the [IPC, 1860](#) and the declared objective of the Government of the day. Very often, the demarcating line between political criticism of the Government and those causing disaffection against the Government is thin and wavering.⁷⁷.

It is not an essential ingredient of sedition that the act done should be an act which is intended or likely to incite to public disorder.⁷⁸. But this view of the law does no longer seem to be correct, in view of the decision of the Supreme Court in *Kedar Nath's* case,⁷⁹ wherein *Sinha*, CJ observed:

comments, however strongly worded expressing, disapprobation of actions of Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence.

In this very case it was further held that viewed in the context of antecedent history of the legislation, its purpose and the mischief it seeks to suppress the provisions of [section 124A](#) and [section 505](#) of the [IPC, 1860](#) should be limited in their application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following Army action in Punjab, it was held that it would be quite proper to infer from the text and tenor of the speech made by the accused that the same was intended to bring the Government into contempt with the likelihood of eruption of violence and public disorder contemplated in *Kedarnath's* case. In the circumstances, his petition for quashing the criminal proceedings against him under [section 482, Cr PC, 1973](#) was rejected.⁸⁰. The decisive ingredient for establishing the offence of Sedition under [section 124A, IPC, 1860](#) is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, etc. In this case, there is not even a suggestion that appellant did anything as against the Government of India or any other Government of the State. The charge framed against the accused contains no averment that accused did anything as against the Government.⁸¹. The prosecution evidence shows that the slogans were raised a couple of times only by the accused and that neither the slogans evoked a response from any other person of the Sikh community nor reaction from people of other communities. Supreme Court found it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever, the charge of sedition can be founded.

The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. [Section 124A IPC, 1860](#) would in the facts and circumstances of the case have no application whatsoever and would not be

attracted to the facts and circumstances of the case.⁸² The prosecution case is that the accused has delivered a speech creating ill will and promoting enmity among different retail and linguistic groups of Indian people and thereby committed the offences punishable under [sections 124\(A\)](#) and [153\(A\)](#) of the [IPC, 1860](#). A perusal of the First Information Report and the charge sheet laid by the respondent police would make it abundantly clear that the allegations mentioned therein, if proved, would naturally attract the provisions of [sections 124\(A\)](#) and [153\(A\)](#) of [IPC, 1860](#).⁸³ State of Punjab and Union Territory, Chandigarh, had been declared Disturbed Area and the extremists activities were going on a large scale in September 1984. The law and order situation had so deteriorated that the Army had to spread out. In this background, it will be proper to infer from the text and tenor of the speech made by the accused that the same was intended and it did tend to bring the Government into contempt with the likelihood of eruption of violence and public disorder.⁸⁴

2. Such act, attempt, etc., may be done by words, either spoken or written or by signs or by visible representation.—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not.⁸⁵

[s 124A.3] **'Written'.**—

In *Raghbir Singh*,⁸⁶ it has been held that for establishing the charge of sedition, it is not necessary that the accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a person should be the participant in the conspiracy from start to finish. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.⁸⁷ Sending of seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.⁸⁸

[s 124A.4] **Advise to kill members of police force.**—

The Government established by law acts through human agency and admittedly, the police service or force is itself a principal agency for the administration and maintenance of the law and order in the State. When a person makes a statement or gives an advice to resort to violence by killing four to five police officers, he could be said to have criticised the police force or the service *en bloc*. In such circumstances a *prima facie* case of waging war against the Government could be said to have been made out.⁸⁹

[s 124A.5] **'Visible representation'.**—

Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind.⁹⁰

[s 124A.6] **Explanations 2 and 3.**—

Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection.

[s 124A.7] **Membership in a banned organization.**—

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.⁹¹

[s 124A.8] **'Disapprobation'.**—

This means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him.⁹²

[s 124A.9] **Liability for extracts from other papers.**—

The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news.⁹³

[s 124A.10] **Liability for letters of correspondents.**—

The editor of a newspaper is liable for unsigned seditious letters appearing in his paper.⁹⁴

[s 124A.11] **Publication of seditious exhibits.**—

Republication of a seditious article used as an exhibit in a case of sedition is not justifiable.⁹⁵

[s 124A.12] **Listening to cassettes.**—

Certain accused persons were convicted for listening to some cassettes containing speeches of seditious nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly facilitated commission of disruptive activities under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987. Their conviction was set aside.⁹⁶

[s 124A.13] **Previous Sanction.**—

No sanction has been obtained to prosecute the petitioner/ accused for the offence under [section 124A of the IPC, 1860](#) which is a mandatory requirement for the Court to take cognizance of such offence. When that be so, whether the contents of the poster and its publication by the accused, even if it is at his instance, to determine whether any offence of sedition is made out thereof is not called for. [Section 196 of the Cr PC, 1973](#) mandates that a complaint for such offence should be expressly authorised by the Government, and if not, the Court cannot take cognizance of such offence against the accused person. Committal proceedings taken over the final report laid before the Court without production of order of sanction satisfying the statutory mandate is clearly unsustainable.⁹⁷

⁹². Subs. by Act 4 of 1898, section 4, for section 124A. Earlier section 124A was inserted by Act 27 of 1870, section 5.

⁹³. The words "Her Majesty or" omitted by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A.O. 1937 were omitted by the A.O. 1948.

64. 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.
65. The words "or British Burma" omitted by the A.O. 1948. Earlier the words "or British Burma" were inserted by the A.O. 1937.
66. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life or any shorter term" (w.e.f. 1 January 1956).
67. Advocate Manuel PJ v State, 2012 (4) Ker LT 708 .
68. Nazir Khan v State of Delhi, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] : JT 2003 (1) SC 200 : 2003 Cr LJ 5021 .
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87. Foster, 198.
88. Suresh Chandra Sanyal, (1912) 39 Cal 606 . Recovery of seditious material in the shape of letters is enough though they were not written by the person carrying them. Raghubir Singh v State of Bihar, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
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90. Alexander M Sullivan, (1868) 11 Cox 44, 51.
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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 .
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- 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 ^{98.}[Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with ^{99.}[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.^{100.} "One Sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory".^{101.} This section, however, does not affect India's right as sovereign nation to offer political asylum to a deposed ruler.

^{98.} Subs. by the A.O. 1950, for "Queen".

^{99.} Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

^{100.} M & M 105.

^{101.} Jameson, (1896) 2 QB 425 , 430.

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[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 ^{102.} [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.

^{102.} Subs. by the A.O. 1950, for "Queen".

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

³¹[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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- 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 prisoner¹ or prisoner of war², voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with ¹⁰³[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.¹⁰⁴.

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.¹⁰⁵.

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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- 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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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 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 ¹⁰⁶[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 ¹⁰⁷[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".

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

¹⁰⁷. 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.

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 131] Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.

Whoever abets the committing of mutiny by an officer, soldier,^{1.} [sailor or airman], in the Army, ^{2.} [Navy or Air Force] of the ^{3.} [Government of India] or attempts to seduce any such officer, soldier, ^{4.} [sailor or airman] from his allegiance or his duty, shall be punished with ^{5.} [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.

^{6.} [Explanation.—In this section the words "officer", ^{7.} ["soldier", ^{8.} ["sailor"] and "airman"] include any person subject to ^{9.} [the Army Act, ^{10.} [the Army Act, 1950^{11.}], ^{12.} [the Naval Discipline Act, ^{13.} [***] the Indian Navy (Discipline) Act, 1934 (34 of 1934)^{14.}], ^{15.} [the Air Force Act or ^{16.} [the Air Force Act, 1950]]], as the case may be].]

COMMENT—

Aiding mutiny, seduction from duty.—The first part of this section relates to the offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny, or which, supposing actual mutiny follows, is not the cause of that mutiny.

The offence of 'mutiny' consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the government or civil authorities rather than against military superiors seem also to constitute mutiny.^{17.}

1. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor"
2. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".
3. Subs. by the A.O. 1950, for "Queen".
4. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".
5. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).
6. Ins. by Act 27 of 1870, section 6.
7. Subs. by Act 10 of 1927, section 2 and Sch. I, for "and soldier".
8. Ins. by Act 35 of 1934, section 2 and Sch.
9. Subs. by Act 10 of 1927, section 2 and Sch. I, for "Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. 5 of 1869".

10. Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Army Act, 1911](#)" (w.e.f. 1-4-1951).
11. Now see the [Navy Act, 1957](#) (62 of 1957).
12. Ins. by Act 35 of 1934, section 2 and Sch.
13. The words "or that Act as modified by" omitted by the A.O. 1950.
14. Now see the [Navy Act, 1957](#) (62 of 1957).
15. Subs. by Act 14 of 1932, section 130 and Sch., for "or the [Air Force Act](#)".
16. Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Air Force Act, 1932](#)" (w.e.f. 1-4-1951).
17. M&M 112.

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 132] Abetment of mutiny if mutiny is committed in consequence thereof.

Whoever abets the committing of mutiny by an officer, soldier, ^{18.}[sailor or airman] in the Army, ^{19.}[Navy or Air Force] of the ^{20.}[Government of India], shall, if mutiny be committed in consequence of that abetment, be punished with death or with ^{21.}[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

^{18.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

^{19.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

^{20.} Subs. by the A.O. 1950, for "Queen".

^{21.} Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 133] Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.

Whoever abets an assault by an officer, soldier, ^{22.} [sailor or airman], in the Army, ^{23.} [Navy or Air Force] of the ^{24.} [Government of India], on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT—

Abetment of assault, etc.—This section punishes the abetment of an assault which is not committed. The next section punishes similar abetment where the offence is committed.

^{22.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

^{23.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

^{24.} Subs. by the A.O. 1950, for "Queen".

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 134] **Abetment of such assault, if the assault is committed.**

Whoever abets an assault by an officer, soldier, ²⁵ [sailor or airman], in the Army, ²⁶ [Navy or Air Force] of the ²⁷ [Government of India], on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

Where abetted assault committed.—This section punishes the abetment of an assault when such assault is committed in consequence of that abetment. It stands in the same relation to section 133 as section 132 does to section 131.

²⁵. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

²⁶. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

²⁷. Subs. by the A.O. 1950, for "Queen".

THE INDIAN PENAL CODE

CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 135] Abetment of desertion of soldier, sailor or airman.

Whoever abets the desertion of any officer, soldier, ^{28.}[sailor or airman], in the Army, ^{29.}[Navy or Air Force] of the ^{30.}[Government of India], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

Abetment of desertion.—The desertion abetted under this section need not take place. Mere abetment is made punishable.

28. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

29. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

30. Subs. by the A.O. 1950, for "Queen".

THE INDIAN PENAL CODE

CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 136] Harbouuring deserter.

Whoever, except as hereinafter expected, knowing or having reason to believe that an officer, soldier, ^{31.}[sailor or airman], in the Army, ^{32.}[Navy or Air Force] of the ^{33.}[Government of India], has deserted, harbours such officer, soldier, ^{34.}[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

COMMENT—

Harbouuring deserter.—A person harbouuring a deserter is an 'accessory after the fact'. The gist of the offence is concealment of a deserter to prevent his apprehension. Exception is made only in the case of a wife.

The word 'harbour' is defined in section 52A.

^{31.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

^{32.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

^{33.} Subs. by the A.O. 1950, for "Queen".

^{34.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 137] Deserter concealed on board, merchant vessel through negligence of master.

The master or person in charge of a merchant vessel, on board of which any deserter from the Army, ³⁵[Navy or Air Force] of the ³⁶[Government of India] is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

COMMENT—

Concealment on board.—This section punishes the master or person in charge of a merchant ship on board of which a deserter has concealed himself. The master is liable even though he is ignorant of such concealment. But some negligence or laxity in the maintenance of discipline on the part of the master has to be made out.

³⁵. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

³⁶. Subs. by the A.O. 1950, for "Queen".

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 138] **Abetment of act of insubordination by soldier, sailor or airman.**

Whoever abets what he knows to be an act of insubordination by an officer, soldier,^{37.} [sailor or airman], in the Army, ^{38.} [Navy or Air Force] of the ^{39.} [Government of India], shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT—

Abetment of insubordination.—In this section it is expressed as part of the definition of the offence that the abettor knows the quality of the act abetted, that is, he knows it to be an act of insubordination.

37. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

38. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

39. Subs. by the A.O. 1950, for "Queen".

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**CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR
FORCE**

[s 138A] *[Repealed]*

**[Application of foregoing sections to the Indian Marine Service.] Repealed by s. 2 and
Sch. of Act XXXV of 1934.**

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CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 139] Persons subject to certain Acts.

No person subject to ⁴⁰[the Army Act, ⁴¹[the Army Act, 1950, the Naval Discipline Act, ⁴²[⁴³[***] the Indian Navy (Discipline) Act, 1934⁴⁴], ⁴⁵[the Air Force Act or ⁴⁶[the Air Force Act, 1950]]]], is subject to punishment under this Code for any of the offences defined in this Chapter.

COMMENT—

Persons subject to these special Acts are punishable under those Acts and not under the [Penal Code](#).

⁴⁰. Subs. by Act 10 of 1927, section 2 and Sch. I, for "any Article of War for the Army or Navy of the Queen, or for any part of such Army or Navy".

⁴¹. Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Army Act](#), 1911" (w.e.f. 1-4-1951).

⁴². Ins. by Act 35 of 1934, section 2 and Sch.

⁴³. The words "or that Act as modified" omitted by the A.O. 1950.

⁴⁴. Now see the [Navy Act, 1957](#) (62 of 1957).

⁴⁵. Subs. by Act 14 of 1932, section 130 and Sch., for "or the [Air Force Act](#)".

⁴⁶. Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Air Force Act](#), 1932" (w.e.f. 1-4-1951).

THE INDIAN PENAL CODE

CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 140] **Wearing garb or carrying token used by soldier, sailor or airman.**

Whoever, not being a soldier, ^{47.}[sailor or airman], in the Military, ^{48.}[Naval or Air] service of the ^{49.}[Government of India], wears any garb or carries any token resembling any garb or token used by such a soldier, ^{50.}[sailor or airman] with the intention that it may be believed that he is such a soldier, ^{51.}[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT—

Wearing garb or carrying token.—The gist of the offence herein made penal is the intention of the accused wearing the dress of a soldier for the purpose of inducing others to believe that he is in service at the present time. Merely wearing a soldier's garb without any specific intention is no offence. Cast-off uniforms of soldiers are worn by many men. Actors put on different military uniforms.

^{47.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

^{48.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

^{49.} Subs. by the A.O. 1950, for "Queen".

^{50.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

^{51.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

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) harbouring 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 141] Unlawful assembly.

An assembly of five or more¹ persons is designated an "unlawful assembly", if the common object² of the persons composing that assembly is—

***First.*—To overawe by criminal force, or show of criminal force, ¹[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or**

***Second.*—To resist the execution of any law, or of any legal process; or *Third.*—To commit any mischief or criminal trespass, or other offence; or**

***Fourth.*—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or**

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

1. Subs. by the A.O. 1950, for The Central or any Provincial Government or Legislature.

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) harbouring 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 142] Being member of unlawful assembly.

Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

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) harbouring 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 143] Punishment.

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT—

Unlawful assembly.—An 'assembly' is a company of persons assembled together in a place, usually for a common purpose. Court is concerned with an 'unlawful assembly'. Wherever five or more persons commit a crime with a common object and intent, then each of them would be liable for commission of such offence, in terms of sections 141 and 149, Indian Penal Code, 1860 (IPC, 1860). It is not possible to define the

constituents or dimensions of an offence under section 149 *simpliciter* with regard to dictionary meaning of the words 'unlawful assembly' or 'assembly'.² An assembly of five or more persons having as its common object any of the five objects enumerated under section 141 of [IPC](#) is deemed to be an unlawful assembly. Membership of an unlawful assembly is itself an offence punishable under section 143, whereas other species of the said offence are dealt with under section 143–145 of [IPC](#). Similarly, sections 146–148 of [IPC](#) deals with the offence of rioting which is defined to be use of force or violence by any member thereof. Section 149 makes every member of an unlawful assembly liable for offence that may be committed by any member of the unlawful assembly in prosecution of the common object of that assembly or for commission of any offence that the members of the assembly knew to be likely to be committed in prosecution of the common object of the assembly.³ To bring a case within [section 149 of IPC](#) some essential features must be present. First, there must be an existence of an unlawful assembly within the meaning of [section 141 of IPC](#). This is a mixed question of fact and law.⁴

The underlying principle of section 141 is that law discourages tumultuous assemblage of men to preserve the public peace. Section 141 defines what an 'unlawful assembly' is. Section 142 gives the connotations of 'a member of an unlawful assembly'. Section 143 punishes tumultuous assemblies as they endanger public peace. It does not require that the purpose of the unlawful assembly should have been fulfilled.

The essence of an offence under this section is the combination of five or more persons, united in the purpose of committing a criminal offence, and the consensus of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit.⁵ Unlike the Indian law contained in [section 141, IPC, 1860](#), an unlawful assembly at common law need to have only three or more persons who must assemble together for the common purpose of committing an offence involving use of violence, or for achieving a lawful or unlawful object in such a manner so as to lead to a reasonable apprehension of a breach of peace as a direct result of their conduct.⁶ Thus, under [section 141, IPC](#), especially under sub-section (3) thereof, use of violence or likelihood of breach of the peace is not at all a *sine qua non* for an offence of unlawful assembly but this is so under the common law. So under the common law, even if the purpose of the assembly is unlawful, the offence of being an unlawful assembly would not be committed if there is no likelihood of breach of the peace and this would be so even if the unlawful common purpose is carried out.

[s 143.1] Ingredients.—

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 Government, or
 - (b) the State Government, or
 - (c) the Legislature, or
 - (d) any public servant in the exercise of lawful power;
2. to resist the execution of law or legal process;
3. to commit mischief, criminal trespass, or any other offence;
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.

1. 'Five or more'.— The [Constitution](#) Bench in *Mohan Singh's case*⁷. held that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The Supreme Court has endorsed the view that the number of injuries caused and the number of persons who were inflicted with those injuries, (in this case, three persons were attacked and they sustained 13, 12 and 7 injuries respectively) can give a clue to the fact that more than three persons must necessarily have participated in the attack.⁸.

[s 143.2] Effect of acquittal of some accused:

In *Mohan Singh v State of Punjab*,⁹. the Supreme Court considered the question of acquittal of two of the accused charged for the offence under section 302 read with section 149, on the conviction of the remaining three accused. If five or more persons are named in the charge as forming an unlawful assembly and the evidence adduced by the prosecution proves that charge against all of them that is a very clear case where section 149 could be invoked. "It is however not necessary that five or more persons must be convicted before a charge under section 149 could be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under section 302 read with section 149, if the charge is that persons before the court along with others named, constituted an unlawful assembly. Other persons so named may not be available for trial along with their companions for the reason that they have absconded. In such a case, the fact that less than five persons are before the court does not make section 149 inapplicable. Therefore, in order to bring home a charge under section 149, it is not necessary that five or more persons must necessarily be brought before the court and convicted ..." In view of the decision of the [Constitution](#) Bench in *Mohan Singh's case*,¹⁰. even after acquittal of the two accused from all the charges levelled against them, if there is any material that they were members of the unlawful assembly, the conviction under section 302 can be based with the aid of section 149.¹¹

Where two of the six accused persons were acquitted without any finding that some other known or unknown persons also were involved in the assault, the remaining four accused persons could not be said to be members of an unlawful assembly.¹² Where a group of persons, differently armed, assaulted a man with the common object of killing him and all the assailants accused except one were acquitted, it was held that the remaining sole accused could not be convicted and sentenced under section 302 with the aid of section 149. The court cannot carve out a new case.¹³ If out of an unlawful assembly consisting of seven named persons four are acquitted, the other three cannot be convicted of rioting as members of an unlawful assembly.¹⁴ They may, however, be convicted of the principal offence with the aid of [section 34, IPC, 1860](#).¹⁵ Where presence of eight persons in the course of assault was established, four of them were given benefit of doubt but there was no finding anywhere to the effect that only

four persons had taken part in the assault, conviction of the remaining four on the charge of forming unlawful assembly was not illegal.¹⁶

2. 'Common object'.— The common object of an unlawful assembly depends firstly on whether such object can be classified as one of those described in section 141; secondly, such common object need not be the product of prior concert but may form on spur of the moment, finally, nature of such common object is a question of fact to be determined by considering the nature of arms, nature of assembly, behaviour of members, etc.¹⁷ Mere presence in an assembly does not make a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of the unlawful assembly or unless the case falls under section 142.¹⁸ Thus, merely because some persons assembled, all of them cannot be condemned '*ipso facto*' as being members of that unlawful assembly.¹⁹ At the same time it cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of section 141.²⁰ Further the prosecution has to prove that the commission of the offence was by any member of an unlawful assembly and such offence must have been committed in prosecution of the common object of the unlawful assembly or such that the members of the assembly knew that it was likely to be committed.²¹ The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage.²²

Section 142 postulates that whoever, being aware of facts which render any assembly an unlawful one, intentionally joins the same would be a member thereof. Whether an assembly is unlawful one or not, would depend on various factors, the principal amongst them being a common object formed by the members thereof to commit an offence specified in one or the other clauses contained in section 141.²³ In a free fight between two groups resulting in death of one person and injuries to several others on both the sides, it was held that the formation of an unlawful assembly was not impossible but the common object of such an assembly cannot be determined on the basis of serious injury by one of them.²⁴ The accused along with about six-eight others forcibly entered into the office of a union leader and assaulted him but the victim did not receive any serious injury inside the union office and managed to escape. Later on in the open space some members of the crowd surrounded and attacked him and dealt fatal blows. It was held that the accused who entered the union office did not share the common object of committing murder of the deceased. They were convicted under sections 326/149.²⁵ Where the accused forming an unlawful assembly assaulted the deceased but the injury caused by only one accused proved to be fatal and the injuries caused by the others were found to be simple, it was held that the common object of the unlawful assembly was only to cause grievous hurt and only the accused who caused fatal injury was liable to be convicted for murder and others under section 326/149.²⁶

The Supreme Court observed on the facts of a case that given the circumstances in which the assembly came together and given that all parties were aware that among them, certain members carried weapons like guns and spear, even if it was held that common object of assembly was not to cause death, it would not be an unreasonable inference that all accused knew that the offence of culpable homicide was likely to be

committed in prosecution of such an armed assault on another group which was not prepared to withstand such an attack, bringing about application of second portion of section 149. Therefore, it was held, that any of the accused found to have participated in the assault should be held guilty under section 141 and 149.²⁷

[s 143.3] Determination of Common object:

Determination of the common object of an unlawful assembly or the determination of the question whether a member of the unlawful assembly knew that the offence that was committed was likely to be committed is essentially a question of fact that has to be made keeping in view the nature of the assembly, the arms carried by the members and the behaviour of the members at or near the scene and a host of similar or connected facts and circumstances that cannot be entrapped by any attempt at an exhaustive enumeration.²⁸ It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime.²⁹

[s 143.4] Second clause—Resisting Law or Legal Process.—

Resistance to some law, or legal process, connotes some overt act, and mere words, when there is no intention of carrying them into effect, are not sufficient to prove an intention to resist.³⁰ When an order is lawfully made under the provisions of a statute, that order is law, and resistance to the execution of that law is an offence.³¹

Under this clause the act resisted must be a legal act. Where a number of persons resisted an attempt to search a house which was being made by officers, who had not the written order investing them with the power to do so, it was held that the persons resisting the attempted search were not guilty of this offence.³² Assembling together for the common object of rescuing a friend from unlawful police detention has been held by the Supreme Court as not constituting an unlawful assembly.³³

[s 143.5] Third clause.—Committing Criminal Trespass, Mischief, other offence.—

This clause specifies only two offences, viz., mischief and criminal trespass, but the words 'or other offence' seem to denote that all offences are included though only two are enumerated in a haphazard way. In *Manga @ Man Singh v State of Uttarakhand*, the Supreme Court while considering the application of principle of 'ejusdem generis' to section 141 'third' clause, observed that:

We fail to appreciate as to how simply because the offences mischief or criminal trespass are used preceding the expression "other offence" in Section 141 'third', it should be taken that such offence would only relate to a minor offence of mischief or trespass and that the expression "other offence" should be restricted only to that extent. As pointed out by us above, the offence of mischief and trespass could also be as grave as that of an offence of murder, for which the punishment of life imprisonment can be imposed as provided for under Sections 438, 449, 450 etc. Therefore, we straight away hold that the argument of learned senior counsel for the Appellants to import the principle of 'ejusdem generis' to Section 141 'third', cannot be accepted.³⁴

[s 143.6] Suleman Bakery Case:

It is a case related to the communal riots of Mumbai in early 1993. Government imposed curfew and the Special Operation Squad (SOS) was called to control the communal riots on information of stone pelting, throwing of glass bottles, acid bulbs and firing from the terrace of Suleman Bakery. It was argued that at any rate SOS was an unlawful assembly on account of the **third clause of section 141 of IPC, 1860**, and hence, all the discharged accused persons were members of the unlawful assembly and had to be at least charged and inquired into by the courts below. It was argued that the assembly of the police at least till the time they broke open the door was a lawful move, as it was their duty but they should not have broken open the door and trespassed the Suleman bakery; and all those who entered Suleman bakery formulated an unlawful assembly as they illegally trespassed into the Suleman bakery. Since A-1, *Shri Tyagi*, had ordered them to break open the doors and he was a part of that unlawful assembly who had the common object. The Supreme Court held that they were all the members of the SOS and had the duty to quell the riots. They were not doing anything illegal in coming out and trying to control the riots. Court rejected the argument by holding that a trespass becomes a criminal trespass if it is with an intention to annoy or to do something illegal which is not the case here. There was no question of the so-called entry amounting to criminal trespass.³⁵.

[s 143.7] Fourth clause—Application of Criminal Force.—

The act falling within the purview of this clause is made punishable owing to the injurious consequences which it is likely to cause to the public peace. This clause does not take away the right of private defence of property. It does not affect clause 2 of section 105, which allows a person to recover the property carried away by theft. It is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim.³⁶.

Where five or more persons assemble for maintaining by force or show of force a right which they *bona fide* believe they possess, and not for enforcing by such force or show of force a right or supposed right of theirs, they do not constitute an unlawful assembly.³⁷. An assembly of five or more persons cannot be designated as an unlawful assembly under this section if its object is to defend property by the use of force within the limits prescribed by law.³⁸. But when a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate, by unlawful force, their rights or supposed rights, no question of self-defence arises. Neither side is trying to protect itself, but each side is trying to get the better of the other.³⁹.

[s 143.8] Fifth clause—Compelling persons to act or omission.—

This clause is very comprehensive and applies to all the rights a man can possess, whether they concern the enjoyment of property or not. There is no reference to 'any right or supposed right' as in the preceding clause.

[s 143.9] Explanation.—

An assembly which is lawful in its inception may become unlawful by the subsequent act of its members.⁴⁰ It may turn unlawful all of a sudden and without previous concert among its members.⁴¹ But illegal acts of one or two members, not acquiesced in by the others, do not change the character of the assembly.⁴² The law on the point as stated above is approved by the Supreme Court in *Moti Das*.⁴³

[s 143.10] Being member of unlawful assembly.—

Section 142 shows that it is sufficient for the offence of riot to be proved against an individual that the individual should remain in an unlawful assembly as soon as he is aware that the assembly is unlawful. The word "continues" in the section means physical presence as a member of the unlawful assembly, that is, to be physically present in the crowd.⁴⁴ This, however, should not be interpreted to mean that mere presence as a curious onlooker or bystander at the scene of the unlawful assembly without sharing its common object would make a person liable under [section 142, IPC, 1860](#), for being a member of an unlawful assembly.⁴⁵ Thus common object cannot be attributed to a person from his mere presence at the scene of the occurrence. There must be some other direct or circumstantial evidence to justify that inference.⁴⁶

For being a member of unlawful assembly it is not necessary that a person must commit some overt act towards the commission of the crime. The test is whether he knows of its common object and continues to keep its company due to his own free will.⁴⁷ Thus, where a large procession of *Kannadigas*, taken out to voice protest against *Maharashtrians*, turned violent, started pelting stones and attacking police officers; the procession turned into an unlawful assembly the moment it developed the common object of causing damage to property and injuries to police officers. Thereafter, every person who continued as a member of the assembly became liable for the offence committed by the processionists by virtue of [section 149 of IPC, 1860](#).⁴⁸ If some unidentified members of an unlawful assembly behaved in an unruly manner, the other members in the procession cannot be held guilty of the offence by foisting vicarious liability, merely because they were in the procession.⁴⁹

[s 143.11] CASES.—Enforcement of right by use of criminal force.—Dispute regarding possession of land.—

Where there was a dispute of long standing between the accused and certain other parties regarding possession of certain land, and the accused went to sow the land with indigo, accompanied by a body of men armed with sticks who kept off the opposite party by brandishing their weapons while the land was sowed, it was held that they were guilty of this offence.⁵⁰ Where the accused, who were in possession of the disputed land, went upon it in a large body armed with sticks, prepared in anticipation of a fight, and were reaping the paddy grown by them, when the complainant's party came up and attempted to cut the same, whereupon a fight ensued and one man was seriously wounded and died subsequently, it was held that the common object was not to enforce a right but to maintain undisturbed the actual enjoyment of a right and that the assembly was not therefore unlawful.⁵¹

2. *State of Haryana v Shakuntla*, (2012) 5 SCC 171 [LNIND 2012 SC 1259] : JT 2012 (4) SC 287 : AIR 2012 (SCW) 2952 : 2012 Cr LJ 2850 .
3. *Bharat Soni v State of Chhattisgarh*, 2013 Cr LJ 486 (SC) : 2013 (1) Mad LJ (Cr) 94 : 2013 (1) Crimes 66 .
4. *Gurmail Singh v State of Punjab*, 2013 (4) SCC 228 [LNIND 2012 SC 864] : 2013 (2) SCC (Cr) 369.
5. *Matti Venkanna*, (1922) 46 Mad 257.
6. Stephen, *Digest of Criminal Law*, Article 90.
7. *Mohan Singh's case*, AIR 1963 SC 174 [LNIND 1962 SC 118] : (1963) 1 Cr LJ 100 .
8. *Suresh Pal v State of UP*, AIR 1981 SC 1161 : 1981 Cr LJ 624 : 1981 All LJ 562 : 1981 Supp SCC 6 .
9. *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] : 1963 (1) Cr LJ 100
10. *Supra*.
11. *Shaji v State*, (2011) 5 SCC 423 [LNIND 2011 SC 481] : AIR 2011 SC 1825 [LNIND 2011 SC 481] : 2011 Cr LJ 2935 (SC). See also *Roy Fernandes v State of Goa*, (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 (SC).
12. *Subran v State of Kerala*, 1993 Cr LJ 1387 (SC) : AIR 1993 SCW 1014 : (1993) 3 SCC 32 [LNIND 1993 SC 162] , 39.
13. *Ram Chandra Chaudhary v State of UP*, 1992 Cr LJ 1488 (All). Over a dozen persons prosecuted, others acquitted, only two convicted of whom one died, the remaining one convict entitled to acquittal on the same grounds, see *Malkiat Singh v State of Punjab*, 1994 Cr LJ 623 : AIR 1993 SCW 4071 .
14. *Motiram*, (1960) 62 Bom LR 514 ; *Kartar Singh*, AIR 1961 SC 1787 [LNIND 1961 SC 210] : 1961 (2) Cr LJ 853 .
15. *Ram Tahal*, 1972 Cr LJ 227 (SC); *Amir Hussain*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 ; *Methala Potturaju v State of AP*, (1992) 1 SCC 49 [LNIND 1991 SC 448] : AIR 1991 SC 2214 [LNIND 1991 SC 448] : 1991 Cr LJ 3133 : AIR 1991 SC 2214 [LNIND 1991 SC 448] .
16. *Sahebrao Kisan Jadhav v State of Maharashtra*, 1992 Cr LJ 339 (Bom) : 1992 (1) Bom CR 423 [LNIND 1991 BOM 410] .
17. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 .
18. *KM Ravi v State of Karnataka*, (2009) 16 SC 337 ; *Baladin*, AIR 1956 SC 181 : 1956 Cr LJ 345 . See also *Masaltı v State of UP*, AIR 1965 SC 202 [LNIND 1964 SC 173] : (1965) 1 Cr LJ 226 ; and *Bishambar*, AIR 1971 SC 2381 : 1971 Cr LJ 1700 ; followed in *Babu Hamidkhan Mestry v State of Maharashtra*, (1995) 2 Cr LJ 2355 (Bom) cited in *Binay Kumar Singh v State of Bihar*, AIR 1997 SC 322 [LNIND 1996 SC 2707] : 1997 AIR SCW 78 : (1997) 1 SCC 283 [LNIND 1996 SC 2707] : 1997 Cr LJ 362 , to the effect that where a larger number of persons are accused of committing a crime and are charged with the aid of section 149, the court should be extremely careful in scrutinising the evidence and there should be two, three or more witness who should be consistent. This ruling was applied in *Kamaksha Rai v State of UP*, AIR 2000 SC 53 [LNIND 1999 SC 885] : 2000 Cr LJ 178 . See also *Thankappan Mohanan v State of Kerala*, 1990 Cr LJ 1477 ; *Chinu Patel v State of Orissa*, 1990 Cr LJ 248 (Ori).
19. *Uday Singh v State of MP*, AIR 2017 SC 393 .
20. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] ; (2009) 2 SCC (Cr) 289.
21. *Uday Singh v State of MP*, AIR 2017 SC 393 .

22. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] : (2009) 2 SCC (Cr) 289.
23. *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431.
24. *Amrik Singh v State of Punjab*, 1993 AIR SCW 2482 : 1993 Cr LJ 2857 : 1994 Supp (1) SCC 320 .
25. *SP Sinha v State of Maharashtra*, AIR 1992 SC 1791 : 1992 Cr LJ 2754 : 1993 Supp (1) SCC 658 .
26. *Thakore Dolji Vanvirji v State of Gujarat*, AIR 1992 SC 209 : 1992 Cr LJ 3953 .
27. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 . There was no right of private defence in the circumstances, the accused persons were aggressors and such persons cannot claim benefit of private defence.
28. *Bharat Soni v State of Chhattisgarh*, 2013 Cr LJ 486 (SC) 2013 (1) Mad LJ (Cr) 94 : 2013 (1) Crimes 66 .
29. *Rajendra Shantaram Todankar v State of Maharashtra*, AIR 2003 SC 1110 [LNIND 2003 SC 4] : 2003 (2) SCC 257 [LNIND 2003 SC 4] .
30. *Abdul Hamid*, (1922) 2 Pat 134 (SB).
31. *Ramendrachandra Ray*, (1931) 58 Cal 1303 .
32. *Narain*, (1875) 7 NWP 209.
33. *State of UP v Niyamat*, (1987) 1 SCC 434 : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1987 Cr LJ 1881 .
34. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 .
35. *Noorul Huda Maqbool Ahmed v Ram Deo Tyagi*, (2011) 7 SCC 95 [LNIND 2011 SC 570] : 2011 Cr LJ 4264 : (2011) 3 SCC (Cr) 31.
36. *Gulam Hoosein*, (1909) 11 Bom LR 849 .
37. *Veerabadra Pillai v State*, (1927) 51 Mad 91.
38. *Mathu Pandey*, (1970) 1 SCR 358 [LNIND 1969 SC 516] : AIR 1970 SC 27 [LNIND 1969 SC 516] .
39. *Prag Dat*, (1898) 20 All 459 ; *Kabiruddin*, (1908) 35 Cal 368 ; *Maniruddin*, (1908) 35 Cal 384 . See also *Onkarnath*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] ; *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] .
40. *Khemee Singh*, (1864) 1 WR (Cr) 18; *Lokenath Kar*, (1872) 18 WR (Cr) 2.
41. *Ragho Singh*, (1902) 6 Cal WN 507.
42. *Dinobundo Rai*, (1868) 9 WR (Cr) 19.
43. *Moti Das*, AIR 1954 SC 657 at p 659.
44. *Sheo Dayal v State*, (1933) 55 All 689 .
45. *Baladin*, 1956 Cr LJ 345 : AIR 1956 SC 181 ; *Hanuman Singh*, 1969 Cr LJ 359 (All); *Md Shariff*, 1969 Cr LJ 1351 (Bom); *Musakhan*, 1976 Cr LJ 1987 : AIR 1976 SC 2566 ; *Muthu Naicker v State of WB*, 1978 Cr LJ 1713 (SC). To the same effect, *State of Karnataka v Mallu Kallappa Patil*, 1994 Cr LJ 952 : AIR 1994 SC 784 : 1994 Supp (3) SCC 352 .
46. R Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, p 862. See also *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431; *Rattiram v State of MP through Inspector of Police*, 2013 Cr LJ 2353 (SC) : 2013 AIR (SCW) 2456.

47. *Apren Joseph*, 1972 Cr LJ 1162 (Ker); See also *Balwant Singh*, 1972 Cr LJ 645 : AIR 1972 SC 860 [LNIND 1972 SC 94] .
48. *Kutubuddin Hasansab Mahat*, 1977 Cr LJ NOC 155 (Kant); See also *Moti Das*, 1954 Cr LJ 1708 : AIR 1954 SC 657 ; *Sukha*, 1956 Cr LJ 923 : AIR 1956 SC 513 [LNIND 1956 SC 30] ; *Chandrika Prasad*, 1972 Cr LJ 22 : AIR 1972 SC 109 [LNIND 1971 SC 453] .
49. *Jayendra Shantaram Dighe v State of Maharashtra*, 1992 Cr LJ 2796 (Bom).
50. *Peary Mohun Sircar*, (1883) 9 Cal 639 .
51. *Silajit Mahto*, (1909) 36 Cal 865 .

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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) harbouring 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 144] Joining unlawful assembly armed with deadly weapon.

Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

Armed with deadly weapons.—This is an aggravated form of the offence mentioned in the last section. The risk to public tranquillity is aggravated by the intention of using force evinced by carrying arms. The enhanced punishment under this section can only

be inflicted on that member of an unlawful assembly who is armed with a weapon of offence.

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- (5) harbouring 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 145] Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

Joining or continuing with unlawful assembly.—

This section is connected with section 151, *infra*. [Section 188 of IPC, 1860](#) provides for the disobedience of any lawful order promulgated by a public servant. Sections 145 and 151 deal with special cases as the disobedience may cause serious breach of the peace. As to the powers of the police to disperse an unlawful assembly, see [section 129, Criminal Procedure Code](#).

[s 145.1] CASES.—

Where an assembly did not by its own conduct become an unlawful assembly by developing common object within the meaning of [section 141, IPC, 1860](#), its members could not be convicted under [section 145, IPC](#), by merely joining or continuing as its members.⁵² It may, however, be added here that members of such an assembly, even though not unlawful, could be prosecuted under [section 151, IPC](#), if the order of dispersal had been lawfully given in the *bona fide* exercise of police powers under [section 129, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), with a view to preventing a breach of the peace.⁵³

52. *Jagmohan*, 1977 Cr LJ 1394 (Ori).

53. R Deb, *Op Cit*, vol II, pp 834–835; See also *Duncan*, *supra*.

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) harbouring 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 146] Rioting.

Whenever force or violence is used by an unlawful assembly,¹ or by any member thereof, in prosecution of the common object² of such assembly, every member of such assembly is guilty of the offence of rioting.

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CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

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- (5) harbouring 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 147] Punishment for rioting.

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

Rioting.—A riot is an unlawful assembly in a particular state of activity, which activity is accompanied by the use of force or violence. It is only the use of force that distinguishes rioting from an unlawful assembly.⁵⁴ Under the Common law when members of an unlawful assembly actually carry out their unlawful common purpose

with violence, so as to cause alarm, they are guilty of riot. For a successful prosecution of a riot case the prosecution must prove:—

- (i) that there were five or more persons;
- (ii) that they had a common purpose;
- (iii) that they had begun to execute such purpose;
- (iv) that they intended to help one another by force, if necessary;
- (v) that they had shown such degree of violence which would alarm at least one person of reasonable courage.

This last mentioned fact need not be proved by calling a person, who has been so alarmed but it may be made out from facts and circumstances of the case in hand.⁵⁵. The ingredients mentioned in item numbers (iv) and (v) above are not to be found at all in [section 146 of IPC, 1860](#). Where some youths exceeding three were found demolishing a wall but disappeared the moment the caretaker of the building appeared at the scene, it was held that they could not be convicted of the offence of riot under the common law as there was no evidence of show of violence sufficient to alarm one person of reasonable firmness and courage.⁵⁶. In the Indian context in this very case the offence of rioting was complete the moment the youths used force to demolish the wall for it was not necessary in the Indian law to use force or violence against a person, far less to cause alarm to a person of reasonable courage and firmness. Force or violence against an inanimate object too comes within the purview of [section 146, IPC, 1860](#).⁵⁷.

[s 147.1] Ingredients.—

The following are the essentials of the offence of rioting:—

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

1. 'Force or violence is used by an unlawful assembly'.—The word 'violence' is not restricted to force used against persons only, but extends also to force against inanimate objects.⁵⁸. The words 'force' and 'violence' in this section connote different and distinct concepts. 'Force' is narrowed down by the definition under section 350 to persons while the word 'violence' includes violence to property and other inanimate objects.⁵⁹.

The use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful, constitutes rioting.⁶⁰. Where a member of an unlawful assembly in prosecution of the common object of the assembly throws down a man and then causes him bodily hurt, the offence of rioting under this section is complete as soon as the man is thrown down by using force and the hurt subsequently caused would come under section 323 or section 325.⁶¹. The essential question in a case under section 147 is whether there was an unlawful assembly of five or more persons. The identity of the persons comprising the assembly is a matter relating to the determination of the guilt of the individual accused and even when it is possible to convict less than five persons only, section 147 still applies, if upon the

evidence in the case the Court is able to hold that the person or persons who have been found guilty were members of an assembly of five or more persons, known or unknown, identified or unidentified.⁶². It has been held by the Supreme Court that this section is not attracted where the act in question was done in pursuit of a lawful object. In this case the investigating police party was being led by the witness to a spot for recovering the dead-body. The witness tried to run away and was beaten up with a *lathi*. He died shortly thereafter. The Supreme Court did not sustain the conviction of the police personnel under this section.⁶³.

2. 'In prosecution of the common object'.—Acts done by some members of an unlawful assembly outside the common object of the assembly or of such a nature as the members of the assembly could not have known to be likely to be committed in prosecution of that object are only chargeable against the actual perpetrators of those acts.⁶⁴. It is obligatory on the part of the court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under second part of [section 149, IPC, 1860](#), if the offence was such as the members knew was likely to be committed. Further inference has to be drawn as what was the number of persons; how many of them were merely passive witnesses; what were their arms and weapons. Number and nature of injuries is also relevant to be considered.⁶⁵.

[s 147.2] 'Resistance to illegal warrant'.—

Resistance to the execution of an illegal warrant within reasonable bounds does not amount to rioting; but when the right of resistance is exceeded and a severe injury, not called for, is inflicted, the person who inflicts the injury may be convicted of such injury.⁶⁶.

[s 147.3] 'Sudden quarrel'.—

If a number of persons assembled for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit 'riot' in the legal sense of the word.⁶⁷.

[s 147.4] 'Fundamental principles in cases of mammoth rioting'.—

(1) Notwithstanding the large number of rioters or of the persons put up in Court for rioting, and the consequent difficulty for the prosecution to name the specific acts attributed to each of the accused, the Court must see to it that all the ingredients required for unlawful assembly and rioting are strictly proved by the prosecution before convicting the particular accused persons.⁶⁸. (2) Spectators, wayfarers, etc., attracted to the scene of the rioting by curiosity, should not be, by reason of their mere presence at the scene of rioting and with the rioters, held to be members of the unlawful assembly or rioters. But of course, if they are proved to have marched with the rioters for a long distance, when the rioters were shouting tell-tale slogans and pelting stones, it will be for them to prove their innocence under [section 106 of the Indian Evidence Act, 1872](#). (3) It will be very unsafe, in the case of such a large mob of rioters, to rely on the evidence of a *single witness* speaking to the presence of an accused in that mob for convicting him, especially when no overt act of violence, or shouting of slogan, or organising the mob, or giving orders to it or marching in procession with it, or other similar thing is proved against him. In a big riot by hundreds of persons, it is very easy even to mistake one person for another, and to implicate honestly really innocent

persons, and even, to mistake persons seen elsewhere as having been seen there. An ordinary rule of caution and prudence will require that an accused person identified only by one witness, and not proved to have done any overt act, etc., as described above, should be acquitted, by giving him the benefit of the doubt. (4) Where there are acute factions based on either agrarian disputes and troubles or on political wrangling and rivalry or on caste divisions or on divisions of the "haves" and the "have-nots," the greatest care must be exercised before believing the evidence of a particular witness belonging to one of these factions against an accused of the opposite view. This principle becomes of special importance when there are no overt acts, etc., proved, and when there are only one or two witnesses speaking to the presence of the accused among the rioters, and they belong to the classes or factions opposed to the accused. (5) Mere *followers* in rioting deserve a much more lenient sentence than leaders, who mislead them into such violent acts, by emotional appeals, slogans and cries.⁶⁹.

[s 147.5] Offence Compoundable:

When an offence is compoundable under [section 320 of Cr PC, 1973](#), and where the accused is liable under [section 34](#) or [149 of IPC \(45 of 1860\)](#) it may be compounded in like manner.⁷⁰

[s 147.6] CASES.—

Where several Hindus, acting in concert, forcibly removed an ox and two cows from the possession of a Mohammedan, not for the purpose of causing 'wrongful gain' to themselves or 'wrongful loss' to the owner of the cattle, but for the purpose of preventing the killing of the cows, it was held that they were guilty of rioting.⁷¹ There was a dispute about the possession of a certain land between the complainant and the accused. The complainant dug a well with a view to cultivate the said land. The accused forcibly entered on the land and damaged the well. It was held that the accused were guilty under this section as an accused person is not entitled to go upon his own land and by violence destroy the property of the complainant, even though a trespasser.⁷²

[s 147.7] No unlawful assembly.—

The accused on receiving information that the complainant's party were about to take forcible possession of a plot of their land, collected a number of men, some of whom were armed, and went to the land. While they were engaged in ploughing, the complainant's party came up and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt. It was held that the accused were justified in taking such precautions as they thought were required to prevent the aggression, and that they were not members of an unlawful assembly.⁷³

[s 147.8] Free fight.—

In a free fight there cannot be said to be any formation of an unlawful assembly and common intention. Each accused will be responsible for his individual act.⁷⁴

[s 147.9] Separate trials.—

Where two opposite factions commit a riot, it is illegal to treat both parties as constituting one unlawful assembly and to try them together, as they cannot have one common object within the meaning of section 141; each party should be tried separately.^{75.}

54. *Rasul*, (1888) PR No. 4 of 1889.
55. *Sharp, Johnson*, (1957) 1 QB 522 , per Lord Goddard, CJ.
56. *Field v Metropolitan Police Receiver*, (1907) 2 KB 853 .
57. *Kalidas*, 48 Cr LJ 351 (Cal).
58. *Samaruddi*, (1912) 40 Cal 367 .
59. *Lakshmiammal v Samiappa*, AIR 1968 Mad 310 [LNIND 1967 MAD 171] ; *Kalidas*, 48 Cr LJ 351 (Cal).
60. *Koura Khan v State*, (1868) PR No. 34 of 1868; *Ramadeen Doobay*, (1876) 26 WR (Cr) 6.
61. *Parmeshwar*, (1940) 16 Luck 51 .
62. *Kapildeo Singh*, (1949–1950) FCR 834 : 52 Bom LR 512.
63. *Maiku v State of UP*, AIR 1989 SC 67 : 1989 Cr LJ 360 : 1989 Supp (1) SCC 25 .
64. *Agra*, (1914) PR No. 37 of 1914. *Vishal Singh v State of MP*, AIR 1998 SC 308 [LNIND 1997 SC 1362] : 1998 Cr LJ 505 . See also *Kania v State of Rajasthan*, 1998 Cr LJ 50 (Raj). *Bhanwarlal v State of Rajasthan*, 1998 Cr LJ 3489 (Raj), fight between main accused and deceased over possession of land, other persons who were present at the spot and played no role could not be roped in.
65. *Ramachandran v State*, (2011) 9 SCC 257 [LNIND 2011 SC 854] : AIR 2011 SC 3581 [LNIND 2011 SC 854] : (2011) 3 SCC (Cr) 677.
66. *Uma Charan Singh*, (1901) 29 Cal 244 .
67. *Khajah Noorul Hoosein v C Fabre-Tonnerre*, (1875) 24 WR (Cr) 26; *State of UP v Jodha Singh*, AIR 1989 SC 1822 : 1989 Cr LJ 2113 : (1989) 3 SCC 465 , a verbal quarrel converting itself into armed group conflict, held not punishable under this section or section 108.
68. See *Sherey v State of UP*, 1991 Cr LJ 3289 : AIR 1991 SC 2246 , where the Supreme Court observed that it would be safe to convict only those whose presence was consistently established by the evidence appearing from the stage of the First Information Report and to whom covert acts of violence were attributed. *Kutumbaka Krishna Mohan Rao v Public Prosecutor*, AIR 1991 SC 314 : 1991 Cr LJ 1711 : 1991 Supp (2) SCC 509 , how presence is to be established. *Budhwa v State of MP*, AIR 1991 SC 4 [LNIND 1990 SC 580] : 1990 Cr LJ 2597 , where the conviction of only four out of fifteen accused was upheld because evidence established only their participation in the attack.
69. *Arulanandu*, (1952) Mad 728. See also *Toseswar Chutia v State of Assam*, 2002 Cr LJ 1465 (Gau); *Bhima v State of Maharashtra*, AIR 2002 SC 3086 [LNIND 2002 SC 528] (Bom).
70. Section 320 (3), Cr PC, 1973.
71. *Raghunath Rai v State*, (1892) 15 All 22 .

72. *Abdul Hussain*, (1943) Kar 7 . See *Ajab v State of Maharashtra*, AIR 1989 SC 827 : 1989 Cr LJ 954 : (1989) Supp (1) SCC 601 .
73. *Pachkauri*, (1897) 24 Cal 686 ; *Fateh Singh*, (1913) 41 Cal 43 . *K Ashokan v State of Kerala*, AIR 1998 SC 1974 [LNIND 1998 SC 223] : 1998 Cr LJ 2834 , names of miscreants not mentioned by eye-witnesses in the FIR, miscreants mentioned in the investigation report which included certain names in different ink. False implication could not be ruled out. Benefit of doubt to accused persons. *State of UP v Dan Singh*, 1997 Cr LJ 1159 : AIR 1997 SC 1654 [LNIND 1997 SC 162] , the members of marriage party of a scheduled caste, were assaulted by villagers by sticks and stones. Some of them were burnt alive inside the house of the victims. The accused persons were held liable to be convicted under sections 147, 302/149, 436/149, 323/149 and sections 307/149. *Lakhu Singh v State of Rajasthan*, 1997 Cr LJ 3638 (Raj), *lathi* is not a deadly weapon, *lathi* bearing accused could not be convicted under section 148. Conviction altered to one under section 147.
74. *Mangal Singh v State of MP*, 1996 Cr LJ 1908 (MP).
75. *Hossein Buksh*, (1880) 6 Cal 96 ; *Bachu Mullah v Sia Ram Singh*, (1886) 14 Cal 358 ; *Chandra Bhuiya*, (1892) 20 Cal 537 .

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) harbouring 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 148] Rioting armed with deadly weapon.

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

Rioting with deadly weapons.—Similar to section 144, this section is an aggravated form of the offence mentioned in the previous section. Enhanced punishment is

provided for the person who is armed with a deadly weapon while committing the offence of rioting. This section cannot be read with section 149.⁷⁶.

Where out of the 45 accused persons convicted by the High Court 36 had been identified as members of the assembly by a solitary witness, the Supreme Court said that it was not safe to place reliance in reference to the accused about whom no other witness said that they were a part of the assembly. Their conviction was held to be unsustainable. So far as the remaining accused were concerned, the prosecution had proved the charge against them under section 148 and therefore their acquittal by the High Court was not justified.⁷⁷.

Where several persons assaulted the victim, the court said that it was not necessary that the death of the victim must be attributed to a particular injury or to a particular assailant. All of them are liable for conviction for causing death of the victim with the common object of the unlawful assembly.⁷⁸.

[s 148.1] Charge under section 147/148; Conviction under section 149.—

The Constitution Bench in *Mahadev Sharma v State of Bihar*,⁷⁹ held that if a charge had been framed under section 147 or section 148 and that charge had failed against any of the accused then section 149 could not have been used against him. The area which is common to sections 147 and 149 is the substratum on which different degrees of liability are built and there cannot be a conviction with the aid of section 149 when there is no evidence of such substratum. The accused have been expressly charged for the offence punishable under [section 148, IPC, 1860](#), and have been acquitted thereunder, they cannot be legally convicted for the offence punishable under [section 302](#) read with [section 149, IPC](#). It is so because the offence of rioting must occur when members are charged with murder as the common object of the unlawful assembly. The offences under sections 147 and 148 are distinct offences.⁸⁰ [Section 148, IPC](#) creates liability on persons armed with deadly weapons and is a distinct offence and there is no requirement in law that members of unlawful assembly have also to be charged under [section 148, IPC](#) for legally recording their conviction under [section 302](#) read with [section 149, IPC](#). However, where an accused is charged under [section 148, IPC](#) and acquitted, conviction of such accused under [section 302](#) read with [section 149, IPC](#) could not be legally recorded.⁸¹.

76. *Vasu Pillai v State*, 1956 Cr LJ 1358 ; *Nand Kishore v State*, AIR 1961 Ori. 29 [LNIND 1959 ORI 52] ; *Re VS Reddy*, (1963) 2 Cr LJ 70 .

77. *State of AP v Rayaneedi Sitharamaiah*, (2008) 16 SCC 179 [LNIND 2008 SC 2492] . *Mohd Ishaq v S Kazam Pasha*, (2009) 12 SCC 748 [LNIND 2009 SC 1173] : 2009 Cr LJ 3063 , a mob 60–70 persons armed with deadly weapons entered a house and forcibly removed household articles and took them away on a lorry, person at whose instance they acted, held liable.

78. *Nand Kishore v State of Bihar*, 2000 Cr LJ 5079 (Pat). See also *Raju v State of Rajasthan*, (2007) 10 SCC 289 [LNIND 2007 SC 591] .

79. *Mahadev Sharma v State of Bihar*, AIR 1966 SC 302 [LNIND 1965 SC 143] : 1965 (1) SCR 18 : 1966 Cr LJ 1971 .

80. *Vinubhai Ranchhodhbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300].
81. *Ankoos v Public Prosecutor High Court of AP*, (2010) 1 SCC 94 [LNIND 2010 SC 713] : JT 2009 (14) SC 6 [LNIND 2009 SC 1959] : AIR 2010 SC 566 [LNIND 2009 SC 1959] : 2010 Cr LJ 861 : (2010) 1 SCC (Cr) 460.

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) harbouring 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 149] Every member of unlawful assembly guilty of offence committed in prosecution of common object.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object¹ 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 same assembly, is guilty of that offence.

COMMENT—

Liability of every member.—The Supreme Court has held that this section does not create a separate offence but only declares the vicarious liability of all the members of

an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object.⁸² However, Benches of a smaller strength in some cases⁸³ have observed that section 149 creates a specific and distinct offence. Thus the law declared therein by the Benches of a smaller strength cannot be taken as correct legal position.⁸⁴ This section creates a specific and distinct offence.⁸⁵ It is not the intention of the legislature in enacting section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object.⁸⁶ A plain reading of the section shows that the provision is in two parts. The first part deals with cases in which an offence is committed by any member of the assembly "in prosecution of the common object" of that assembly. The second part deals with cases where the commission of a given offence is not by itself the common object of the unlawful assembly but members of such assembly 'knew that the same is likely to be committed in prosecution of the common object of the assembly'.⁸⁷ This section makes both the categories of persons, those who have committed the offence as also those who were members of the same assembly liable for the offences under [section 149, IPC, 1860](#), provided the other requirements of the section are satisfied. That is to say, if an offence is committed by any person of an unlawful assembly, which the members of that assembly knew to be likely to be committed, every member of such an assembly is guilty of the offence. The law is clear that membership of unlawful assembly is sufficient to hold such participating members vicariously liable. For mulcting liability on the members of an unlawful assembly under section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient.⁸⁸ Whenever the court convicts any person or persons of any offence with the aid of section 149, a clear finding regarding the common object of the assembly must be given and the evidence disclosed must show not only the nature of the common object but also that the object was unlawful. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same under section 149.⁸⁹ In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed would not be sufficient to prove common object.⁹⁰ Where the moot question as to common objective is proved all the members of unlawful assembly would be vicariously liable for the acts done by the said assembly and thus the separate roles played by all the accused persons need not be examined.⁹¹ Section 149 makes it abundantly clear that 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 such an assembly, is guilty of that offence, however if a person is a mere bystander, and no specific role is attributed to him, he may not come under the wide sweep contemplated under section 149.⁹² Further where the member had no knowledge of the unlawful object of the assembly or after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and after having failed to do so, he disassociated himself from the assembly, the mere participation of him in such an assembly would not be made him liable.⁹³

The section constitutes a substantive offence.⁹⁴

The Supreme Court reiterated the ambit and scope of this principle of liability as follows:

Section 149 IPC provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence was likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf.⁹⁵. "Common object" means the purpose or design shared by all the members which may be formed at any stage. It has to be ascertained from the acts and conduct of the individuals concerned and surrounding circumstances.⁹⁶. Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous.⁹⁷.

[s 149.1] Ingredients.—

The section has the following essentials—

1. There must be an unlawful assembly.
2. Commission of an offence by any member of an unlawful assembly.
3. Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed. If these three elements are satisfied, then only a conviction under [section 149, IPC, 1860](#), may be substantiated, and not otherwise.⁹⁸. Section 149 shall not apply to a person who is merely present in any unlawful assembly, unless he actively participates in offence or does some overt act with the necessary criminal intention or shares the common object of the unlawful assembly.⁹⁹.

[s 149.2] Sudden action of one of the member in the assembly; all are not liable:

To the question whether the sudden action of one of the members of the unlawful assembly constitutes an act in prosecution of the common object of the unlawful assembly namely preventing of erection of fence in question and whether the members of the unlawful assembly knew that such an offence was likely to be committed by any member of the assembly Supreme Court answered in the negative.¹⁰⁰. As a consequence, the effect of [section 149 of IPC, 1860](#), may be different on different members of the same unlawful assembly. Decisions of the Supreme Court in *Gangadhar Behera v State of Orissa* and *Bishnalias Bhiswadeb Mahato v State of WB*,¹⁰¹ similarly explained and reiterated the legal position on the subject.

[s 149.3] Sections 34 and 149.—

There is a difference between object and intention, for though their object is common, the intention of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of section 34, is replaced in section 149 by membership of the

assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap, but section 149 cannot at any rate relegate section 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all".¹⁰² [Section 34 of IPC, 1860](#) refers to cases in which several persons both do an act and intend to do that act: it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases section 149 of the Code may be applicable but section 34 is not.¹⁰³ On the other hand, if five or more persons both do an act and intend to do it, both section 34 and section 149, may apply, since the term "member" in the singular includes the plural also (section 9). In this connection see detailed discussion and cases under sub-head "Distinction between [section 34](#) and [section 149, IPC, 1860](#)," under section 34 *ante*.

[s 149.4] Scope.—

This section is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. It is divided into two parts: (1) an offence committed by a member of an unlawful assembly in prosecution of the common object of that assembly; and (2) an offence such as the members of that assembly knew to be likely to be committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object.¹⁰⁴ The section applies equally in cases where offences are committed by single member of the assembly and in cases where offences are committed by two or more members of the assembly acting in furtherance of a common intention.¹⁰⁵

Once the Court can find that an offence has been committed by some member or members of an unlawful assembly in prosecution of the common object, then whether the principal offender has been convicted for that offence or not, upon the plain wording of this section, the other members may be constructively convicted of that offence, provided they are found to have had the necessary intention or knowledge. It is not correct to say that when a member of an unlawful assembly is to be found constructively guilty of an offence under this section, it must be the same offence of which the principal is convicted and not some other offence.¹⁰⁶

Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of this section may be different on different members of the same unlawful assembly.¹⁰⁷

Before this section can be called in aid, the Court must find with 'certainty' that there were at least five persons sharing the common object. A finding that three of them 'may or may not have been there' betrays uncertainty on this vital point and it consequently becomes impossible to allow the conviction to rest on this uncertain foundation. This is not to say that five persons must always be convicted before this section can be applied. It is possible in some cases for Judges to conclude that though five were unquestionably there the identity of one or more is in doubt. In that case, the conviction of the rest with the aid of this section would be good.¹⁰⁸ Non-applicability

of section 149, IPC, 1860, is no bar in convicting the accused persons under section 302, IPC read with section 34 of IPC, if the evidence discloses commission of offence in furtherance of common intention of them all. It would depend on the facts of each case as to whether section 34 or section 149 of IPC or both the provisions are attracted.¹⁰⁹. Where the accused, forming an unlawful assembly, chased and killed a man by inflicting multiple injuries on his body with sharp edged weapons, it was held that circumstances and transaction taken as a whole were sufficient to invoke section 34 or section 149.¹¹⁰.

No judgment can be cited as a precedent however similar the facts may be. Each case must rest on its own facts.¹¹¹.

The persons acting in self-defence of property cannot be members of an unlawful assembly.¹¹².

1. 'In prosecution of the common object'.—The expression "in prosecution of common object" has to be strictly construed as equivalent to "in order to attain the common object". There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of section 149, IPC, 1860, may be different on different members of the same assembly.¹¹³. The word "knew" as used in the second branch of section 149 implied something more than "possibility" and it cannot bear the sense of "might have known". An offence committed in prosecution of common object would generally be the offence which the members of the assembly knew was likely to be committed.¹¹⁴. This phrase means that the offence committed was *immediately* connected with the common object of the unlawful assembly, of which the accused were members. The act must be one which must have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. Where the common object is established, the unlawful assembly does not cease to be so by merely splitting itself into two groups for launching the attack. Section 149, IPC, 1860, would be clearly applicable to such a case.¹¹⁵.

The words "in prosecution of the common object" do not mean "during the prosecution of the common object of the assembly". It means that the offence committed was immediately connected with the common object of the assembly or the act is one which upon the evidence appears to have been done with a view to accomplish the common object attributed to the members of the assembly. The words "in prosecution of the common object" have to be strictly construed as equivalent to "in order to attain common object".¹¹⁶. In the present case,¹¹⁷ the common object of unlawful assembly was to kill a particular person. Two members of the assembly went after him. Sensing danger, he ran into the adjoining room to fetch a spear to defend himself. His wife blocked his way and he could not come out. Frustrated, as they were, the two members of the assembly gunned down two young girls of their intended victim who were then playing in the courtyard outside the house. The conviction of the rest of the members for this murder was set aside as this was neither their common object, nor incidental to that, nor necessary for its attainment.

Vicarious responsibility can be fastened only on proof that the ultimate act was done in pursuance of common object.¹¹⁸.

Even where the common object is not developed at the initial stage, it may develop on the spot, *eoinstanti*. Thus, where it appeared that members of a party divided

themselves into small groups and waited for the victim and simultaneously pounced upon him and jointly removed his body, the fact that they did not assemble at one place under any plan, but came there separately, was considered by the Supreme Court to be not of much importance because at the sensitive moment they seemed to be acting in an organised way.¹¹⁹ Where, however, the agreement specifically was only to give a thrashing to the victim, but one of them pulled out a knife and stabbed the victim, it was held that neither at the initial stage nor at the execution stage, could it be said that there was the object to cause a fatal injury so as to make all others liable for the death.¹²⁰

[s 149.5] Change of object.—

Members who shared the original common intention may not be liable when some members adopted a subsequently developed and aggravated common object and acted on it.¹²¹

[s 149.6] CASES.—Prosecution of common object.—

While membership of an unlawful assembly itself is an offence under [section 143, IPC, 1860](#), use of force by members of the unlawful assembly gives rise to the offence of rioting which is punishable either under [section 147](#) or [section 148, IPC](#). Membership of the 4 accused in the unlawful assembly and use of force with dangerous weapons is borne out by the evidence on record. The said facts would make the acquitted accused liable for the offence under [section 148 of IPC, 1860](#).¹²² Where a small compact body of men armed with clubs, and headed by a man carrying a gun, endeavoured to take forcible possession of certain lands, and one of the opponents was shot by their leader, it was held that they were guilty of murder.¹²³

Where in a faction- ridden village the members of one party seeing someone of the other party alighting from a bus emerged together to attack him, it could be easily said that they shared the common object to assault one of their enemies and at that stage the assembly turned into an unlawful assembly.¹²⁴ Where several persons assaulted and caused injuries to the deceased, however except one incised injury on the head, all were lacerated injuries on legs, common object of the unlawful assembly was held to cause grievous hurt and not murder and conviction of the accused was altered from sections 302/ 149 to sections 326/149.¹²⁵ Where the accused, being members of an unlawful assembly and being armed with sharp edged weapons, used only the blunt sides of their weapons, they were held to share the common object of causing grievous hurt and not murder.⁵⁷ Accused persons variously armed entered a police wireless station after breaking open doors and windows and assaulted inmates. Their individual acts were not known. It was held that all the accused persons must be deemed to have shared the common object of lurking house trespass and could be convicted under sections 149/455.¹²⁶ Where two innocent young girls were killed in a very gruesome manner just only to teach a lesson to their mother over a property dispute, every member of the killing team was held to be equally guilty deserving the maximum penalty of death, it being a case of the "rarest of rare" category.¹²⁷ Where the death of a police officer was caused while he was arresting the accused and those who caught hold of him intended only to prevent him from performing his duty, but the main accused suddenly killed him, it was held that the common object of the unlawful assembly was to deter police from performing their duty and not to commit murder. Their conviction was altered from one under sections 302/149 to one under section

353/149.¹²⁸ Several persons entered into a conspiracy to commit dacoity during the course of which one of the accused fired a shot which missed the target and hit one of his accomplices who died. The other accused fired a shot and killed one of the inmates of the house. The accused killing the inmate was convicted under sections 302 and 398. The three others were punished under section 398/149, their common object being dacoity and not murder.¹²⁹

The accused persons were armed with *lathis* and guns. They declared on entry into the threshing floor mill that they had come to take away the paddy and, if the owner resisted, they would take life out of him. In these circumstances they caused death. s conviction under section 300 read with section 149 was held to be not illegal.¹³⁰

There is no requirement for conviction under the section of assigning definite roles to the accused persons.¹³¹

[s 149.7] Identification of all the five not necessary.—

The section does not require that all the five persons must be identified. Presence of five persons is required to be established with the common object of doing an act. The fact that all of them could not be identified would not affect the application of the section. The eye-witnesses identified only four of them but testified that others were present with weapons at the time and place of occurrence.

[s 149.8] Unlawful assembly and the right of private defence.—

As long as the accused persons exercised their right of private defence, their assembly could not be described as unlawful. But only those accused persons who shared the object of doing something in excess of the right of private defence were liable to conviction with the help of section 149.¹³² Where the accused persons were acting in the exercise of the right of private defence, the Supreme Court said that they could not be said to have constituted an unlawful assembly. Only one of them caused an injury after the right of private defence had ceased to be available to them. They could not be convicted under section 148 with the aid of section 149.¹³³

[s 149.9] Overt act on the part of each and every member not necessary.—

The presence of the accused as a part of the unlawful assembly is sufficient for his conviction. The fact that the accused was present at the place of occurrence as a part of the unlawful assembly was not disputed. That was held to be sufficient to hold him guilty even if no overt act was attributed to him.¹³⁴ This principle may not apply where the presence is such that merely by its reason the person concerned does not become a member of the assembly. This happened in a case in which the names of only 4 persons were mentioned in the complaint. Five other persons were not mentioned because they kept standing at the back without any participation in the incident. But they were also roped in under section 149. The Supreme Court held that they could not be regarded as members of the assembly. Their conviction was impermissible.¹³⁵ Once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. Mere membership of the unlawful assembly is sufficient and every member is vicariously liable for the acts done by others either in the prosecution of the common

object of the unlawful assembly or such as the members of the unlawful assembly knew were likely to be committed.¹³⁶.

[s 149.10] Inference of common object.—

The common object of the unlawful assembly has to be inferred from the membership, the weapons used and the nature of the injuries as well as other surrounding circumstances. Intention of members of unlawful assembly can be gathered by nature, number and location of injuries inflicted. In the instant case, repeated gun shots fired by one of accused person on the person of deceased and the injuries caused by lathis by other accused persons on the complainant and his second brother on their heads, clearly demonstrate the objective to cause murder of these persons.¹³⁷. Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous.¹³⁸. The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly is impermissible.¹³⁹.

[s 149.11] Identification of common object.—

The identification of the common object essentially requires an assessment of the state of mind of the members of the unlawful assembly. Proof of such mental condition is normally established by inferential logic. If a large number of people gather at a public place at the dead of night armed with deadly weapons like axes and fire arms and attack another person or group of persons, any member of the attacking group would have to be a moron in intelligence if he did not know murder would be a likely consequence.¹⁴⁰.

[s 149.12] No common object.—

A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. It was held that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under this section, be made liable for the subsequent murder.¹⁴¹. Where the accused persons rushed to the house of K with a view to injure K or inmates of his house but one of the accused attacked M, a woman working in the house causing grievous injuries to her, the other accused persons could not be held vicariously liable with the help of [section 149, IPC, 1860](#), as it was not their common object nor had they any animus against M.¹⁴². An unlawful assembly of 50 persons was alleged to have caused two deaths. There were no specific allegations against some of them, or that any [criminal act](#) was done by them in furtherance of common intention. It was held that they could not be convicted with the aid of either section 34 or section 149.¹⁴³. When an accused leaves the place of occurrence and thus ceases to be a member of the unlawful assembly, he cannot be convicted vicariously with the aid of [section 149, IPC](#), for the murder which is committed subsequent to his leaving the scene of crime.¹⁴⁴. Where one member fired

on being supplied with a bullet by another only the member supplying the bullet was held liable under section 302/149 and others were convicted only under [section 325/194, IPC](#).¹⁴⁵ After a heated exchange of words, the accused went home and came back with a gun accompanied by others who also armed and immediately opened fire at the victim causing his death. Others did not fire at the victim. They fired indiscriminately at others injuring some people. Things happened in a very short span of time. It was held that the others could not have formed an unlawful assembly with the main accused with a common object. The main culprit alone was convicted of murder.¹⁴⁶ Where people collected outside a police-station to voice their protest over police- inaction in connection with the murder of a child, such an assembly could not possibly have any common object to commit criminal trespass, arson, looting, etc., and as such none could be convicted with the aid of [section 149, IPC, 1860](#).¹⁴⁷ All the accused, armed only with *lathis*, caused multiple injuries to a man who died. All the injuries caused were simple in nature and were on non-vital parts of the body of the deceased, it could not be said that their common object was to kill the deceased. They were held liable to be convicted under section 304, Part II/149 and not under section 302/149.¹⁴⁸

Where the common object of an unlawful assembly was to cause hurt to prosecution witnesses, and the daughter of a witness who came out from inside the house only to save her father sustained an injury at the hands of one of the accused and died, it was held that there could be no common object in the circumstances to commit murder. They were held to be guilty under section 323 read with section 149.¹⁴⁹

[s 149.13] Unlawful assembly and single witness.—

In a case involving an unlawful assembly with a large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of sole eyewitness unless that the court is of the view that testimony of such eye witness is not reliable. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner or in the case of a riot.¹⁵⁰

Direct evidence is generally not available. The existence of common object has to be gathered from the act committed and results flowing from them.¹⁵¹

[s 149.14] Conviction for section 302 *simpliciter*, when the charge was for section 302 read with section 149 of IPC, 1860:

The Supreme Court in *Nanak Chand v State of Punjab*,¹⁵² considered the question whether there could be a conviction for the offence under section 302 *simpliciter*, when the charge was for the offence under [section 302](#) read with [section 149](#) of [IPC](#). It was held that when there is no separate charge for the offence under section 302 *simpliciter* and charge is only for the offence under section 302 read with 149, the conviction for the offence under section 302 *simpliciter* is not sustainable. In *Suraj Pal v State of UP*,¹⁵³ 19 accused were tried for the offences under sections 148, 307 and 302 read with [section 149 of IPC](#). Sessions Court convicted all the accused. In appeal to the High Court, ten accused were acquitted. Conviction and sentence of one accused was affirmed for the offence under sections 148, 307 and 302. Holding that absence of specific charges against the appellant under [sections 307](#) and [section 302, IPC](#) in respect of which he was sentenced is a very serious lacuna as framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence is the foundation for a conviction and sentence. The question was referred to

the Five Judge **Constitution** Bench, to determine whether there was a conflict of view between *Nanak Chand's* case (*supra*) and *Suraj Pal's* case (*supra*) and if so to determine it in *Willie Slaney v State of Madhya Pradesh*.¹⁵⁴ The **Constitution** Bench held that there was no conflict of views in the two decisions. It was held that the observations in *Nanak Chand* (*supra*), have to be appreciated on close examination of facts. Their Lordships considered the effect of a charge for constructive liability and its difference with a charge for the offence *simpliciter* and held that there was no prejudice and that the conviction is not invalid because of the nature of the charge. A three Judge Bench in *Subran v State*,¹⁵⁵ held that when the charge is under **section 302** read with **section 149** of **IPC**, without a specific charge having been framed for the offence under **section 302 of IPC**, as envisaged in law, an accused cannot be convicted for the substantive offence under **section 302 of IPC**, their Lordships did not consider the **Constitution** Bench decision in *Willie Slaney's* case (*supra*). Later in the review judgment, *Subran v State*, 1993 (3) SCC 722 , their lordships reviewed the same as follows:

On a review of the judgment, we find that the opinion expressed is capable of being misinterpreted. The opinion expressed therein was required to be confined to the peculiar facts of the case, but it tends to give an impression as if it is a general exposition of law, which it was not meant to be.

The legal position in the light of the **Constitution** Bench decision in *Willie Slaney*¹⁵⁶ is clear. If the charge framed discloses the overt act committed by a particular accused, though the charge is for the offence under **section 302** read with **section 149 of IPC, 1860**, and the accused faced trial with the knowledge that the prosecution case is that he committed the particular overt act which caused the death, non-framing of a distinct charge for the offence under section 302 will not cause prejudice to the accused, even though the charge framed was under **section 302** read with **section 149, IPC**. In such a case, even though the charge is for the offence under **section 302** read with **section 149 of IPC** and there is not even an alternate charge for the offence under section 302 *simpliciter*, when the charge discloses the overt act by a particular accused which caused the death of the victim, if the evidence establishes that, that particular accused inflicted that particular injury which caused the death, he could definitely be convicted for the offence under section 302 *simpliciter*. Even though there is no specific charge for section 302 *simpliciter* and the charge is for the offence under **section 302** read with **149 of IPC**, there could be a conviction under section 302 *simpliciter*.

[s 149.15] Where no charge framed as substantive offence with aid of either section 34 and section 149.—

Where participation of all the ten accused in the alleged assault on the deceased has been proved by the evidence of witnesses, but no charge insofar as the substantive offence under **section 302, IPC, 1860**, or under **section 307, IPC** with the aid of either **section 34, IPC** and **section 149, IPC** had been framed and also the evidence on record is not sufficient to attribute any specific injury suffered by the deceased to any particular accused, acquittal of the accused of the offences under **section 302, IPC** or under **section 307, IPC** is perfectly justified.¹⁵⁷

[s 149.16] Free fight and overt act.—

It has been held by the Supreme Court that in a case involving free fight, a conviction by resorting to **section 149** is not permissible. No particular accused person can be convicted under **section 149** unless it can be shown that he caused injuries.¹⁵⁸

[s 149.17] Sentencing.—

The presence of the appellant accused and their participation in the incidence was established. Their conviction under section 326 read with sections 149, 148 was confirmed. But considering their age and the fact that their participation in the incident was minimal, the sentence of six years R1 was reduced to two years R1, confirming the sentence of one year under section 148.¹⁵⁹.

[s 149.18] Group rivalries.—

In the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the court with regard to the participation of any of those who have been roped in, the court would be obliged to give the benefit of doubt to them.¹⁶⁰. However, when there are eyewitnesses including injured witness who fully support the prosecution case and proved the roles of different accused, prosecution case cannot be negated only on the ground that it was a case of group rivalry. Group rivalry is double edged sword.¹⁶¹.

[s 149.19] Inference from dangerous weapon.—

Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous.¹⁶².

82. *Vinubhai Ranchhodhbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300].

83. *Sheo Mahadeo Singh v State of Bihar*, (1970) 3 SCC 46 ; *Lalji v State of UP*, 1989 (1) SCC 437 [LNIND 1989 SC 26] ; *Lakhan Mahto*, AIR 1966 SC 1742 [LNIND 1966 SC 61] .

84. *Vinubhai Ranchhodhbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300].

85. *Lakhan Mahto*, AIR 1966 SC 1742 [LNIND 1966 SC 61] : 1966 Cr LJ 1349 .

86. *Kuldeep Yadav v State of Bihar*, 2011 (5) SCC 324 [LNIND 2011 SC 403] : AIR 2011 SC 1736 [LNIND 2011 SC 403] : 2011 Cr LJ 2640 : (2011) 2 SCC (Cr) 632.

87. *Roy Fernandes v State of Goa*, (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 .

88. *Vinubhai Ranchhodhbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300].

89. *Waman v State of Maharashtra*, (2011) 7 SCC 295 [LNIND 2011 SC 564] : AIR 2011 (SCW) 4973 : 2011 Cr LJ 4827 : AIR 2011 SC 3327 [LNIND 2011 SC 564] : (2011) 3 SCC (Cr) 83; *Bhudeo Mandal v State of Bihar*, (1981) 2 SCC 755 [LNIND 1981 SC 177] : 1981 SCC (Cr) 595, *Ranbir Yadav v State of Bihar*, (1995) 4 SCC 392 [LNIND 1995 SC 389] : 1995 SCC (Cr) 728, *Allauddin Mian v State of Bihar*, (1989) 3 SCC 5 [LNIND 1989 SC 236] : 1989 SCC (Cr) 490, *Rajendra*

Shantaram Todankar v State of Maharashtra, (2003) 2 SCC 257 [LNIND 2003 SC 4] : 2003 SCC (Cr) 506 and *State of Punjab v Sanjiv Kumar*, (2007) 9 SCC 791 [LNIND 2007 SC 797] : (2007) 3 SCC (Cr) 578.

90. *Kuldip Yadav v State of Bihar*, 2011 (5) SCC 324 [LNIND 2011 SC 403] : AIR 2011 SC 1736 [LNIND 2011 SC 403] : 2011 Cr LJ 2640 : (2011) 2 SCC (Cr) 632.

91. *Iqbal v State of UP*, AIR 2017 SC 1127 [LNIND 2017 SC 73].

92. *Vyas Ram @ Vyas Kahar v State of Bihar*, 2014 Cr LJ 50 : (2013) 12 SCC 349 [LNIND 2013 SC 861].

93. *Kattukulangara Madhavan v Majeed*, AIR 2017 SC 2004 [LNIND 2017 SC 158].

94. *Sunil Balkrishna Bheir v State of Maharashtra*, (2007) 14 SCC 598 [LNIND 2007 SC 669] : 2007 Cr LJ 3277 .

95. *Munivel v State of TN*, 2006 Cr LJ 2133 .

96. *Hori Lal v State of UP*, (2006) 13 SCC 79 [LNIND 2006 SC 1086] : 2007 Cr LJ 1181 . See also *State of Punjab v Sanjeev Kumar*, (2007) 9 SCC 791 [LNIND 2007 SC 797] : AIR 2007 SC 2430 [LNIND 2007 SC 797] ; *Purusuram Pandey v State of Bihar*, AIR 2004 SC 5068 [LNIND 2004 SC 1075] : 2005 SCC (Cr) 113, restatement of ingredients and principle on which the provision is based.

97. *Najabhai Desurbhai Wagh v Valerabhai Deganbhai Vagh*, 2017 (1) Crimes 270 (SC), (2017) 3 SCC 261 [LNIND 2017 SC 46].

98. *Vijay Pandurang Thakre v State of Maharashtra*, AIR 2017 SC 897 . *Gurmail Singh v State of Punjab*, 2013 (4) SCC 228 [LNIND 2012 SC 864] : 2013 (2) SCC (Cr) 36; *State of Maharashtra v Kashiram*, (2003) 10 SCC 434 [LNIND 2003 SC 716] : AIR 2003 SC 3901 [LNIND 2003 SC 716] , two parts of sections 149 explained and distinguished, the expression "in prosecution of common object" and the word "knew" in section 149, their meaning also explained. *Rajendra Shantaram Todankar v State of Maharashtra*, (2003) 2 SCC 257 [LNIND 2003 SC 4] : AIR 2003 SC 1110 [LNIND 2003 SC 4] : 2003 Cr LJ 1277 , two clauses of the section explained, inference about knowledge of likelihood of crime, when can be drawn, explained.

99. *Vijay Pandurang Thakre v State of Maharashtra*, AIR 2017 SC 897 .

100. *Roy Fernandes v State of Goa*, 2012 (2) Scale 68 [LNIND 2012 SC 86] : JT 2012 (2) SC 457 : AIR 2012 (SCW) 1238 : (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 .

101. *Gangadhar Behera v State of Orissa*, 2002 (8) SCC 381 [LNIND 2002 SC 645] and *Bishnaalias BhiswadebMahato v State of WB*, 2005 (12) SCC 657 [LNIND 2005 SC 873]

102. *Barendra Kumar Ghosh*, (1924) 52 IA 40 , 52 : 27 Bom LR 148 : 52 Cal 197.

103. *Aniruddha Mana*, (1924) 26 Cr LJ 827 , 829. Where the purpose was to show force and not to cause death, common intention was ruled out and the conviction was converted from under sections 302/34 to one under 302/149, *Jai Narain v State of UP*, 1995 Cr LJ 2335 (All).

104. *Sabid Ali*, (1873) 20 WR (Cr) 5 : 11 Beng LR 347, **approved** by the Supreme Court in *Mazaji*, AIR 1959 SC 572 [LNIND 1958 SC 169] ; *Krishnaraao*, (1903) 5 Bom LR 1023 ; *Fatnaya*, (1941) 23 Lah 470.

105. *Legal Remembrancer, Bengal v Golok Tikadar*, (1943) 1 Cal 181 .

106. *UN Singh v State*, (1946) 25 Pat 215.

107. *Jahiruddin*, (1894) 22 Cal 306 , **approved** by the Supreme Court in *Shambhu Nath*, AIR 1960 SC 725 : 1960 Cr LJ 1114 .

108. *Dalip Singh*, AIR 1953 SC 364 [LNIND 1953 SC 61] : 1953 Cr LJ 1465 ; See also *Dharam Pal*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *State of UP v Ranjha Ram*, AIR 1986 SC 1959 [LNIND 1986 SC 271] : 1986 Cr LJ 1906 : (1986) 4 SCC 99 [LNIND 1986 SC 271] ; *Amar Singh v State of Punjab*, AIR 1987 SC 826 : 1987 Cr LJ 706 : (1987) 1 SCC 679 , see further *Gopeteshwar Nath Ojha v State of Bihar*, AIR 1986 SC 1649 : 1986 Cr LJ 1242 . *Hoshiar Singh v*

State of Punjab, AIR 1992 SC 191 [LNIND 1991 SC 568] : 1992 Cr LJ 510 , the acquittal of some would not warrant the acquittal of the rest; *Sahebrao Kisan Jadhav v State of Maharashtra*, 1992 Cr LJ 339 , presence of eight in the course of an assault was established but four were acquitted due to weak evidence, conviction of the rest for unlawful assembly not illegal. The cases of *Amar Singh v State of Punjab*, AIR 1987 SC 826 ; and *Maina Singh v State of Punjab*, AIR 1976 SC 1084 [LNIND 1976 SC 97] : (1976) 3 SCR 651 [LNIND 1976 SC 97] , were followed by the Supreme Court in *K Nagamalleswara Rao v State of AP*, 1991 Cr LJ 1365 : AIR 1991 SC 1075 [LNIND 1991 SC 150] : (1991) 2 SCC 532 [LNIND 1991 SC 150] , so as to come to the conclusion that where all others were acquitted and the evidence against the remaining four was also not reliable as to any overt acts done by them, their conviction was not sustainable. *Darshan Singh v State of Punjab*, 1990 Cr LJ 2684 : AIR 1991 SC 66 , prosecution theory that an 80-year-old man went in advance to hold the deceased, not acceptable. *State of Assam v Bhelu Sheikh*, 1989 Cr LJ 879 : AIR 1989 SC 1097 , no evidence to show that the accused caused injury, even dying declaration not recorded when the injured lived for seven days. *Saudagar Singh v State of Haryana*, AIR 1998 SC 28 [LNIND 1997 SC 890] : 1998 Cr LJ 62 , persons not named in the FIR as members of unlawful assembly were let off, the gun wielding accused persons fired gun shots, convicted for murder. *Komal v State of HP*, AIR 2002 SC 3057 [LNIND 2002 SC 518] , prosecution case of murder with common object proved, conviction. See also *Sajjan Sharma v State of Bihar*, (2011) 2 SCC 206 [LNIND 2011 SC 33] : AIR 2011 SC 632 [LNIND 2011 SC 33] : 2011 Cr LJ 1169 : (2011) 1 SCC (Cr) 660.

109. *Birbal Choudhary v State of Bihar*, AIR 2017 SC 4866 [LNIND 2017 SC 2898].

110. *Bolineedi Venkataramaiah v State of AP*, AIR 1994 SC 76 : 1994 Cr LJ 61 : 1994 Supp (3) SCC 732 . *Chanda v State of UP*, (2004) 5 SCC 141 [LNIND 2004 SC 582] : AIR 2004 SC 2451 [LNIND 2004 SC 582] : 2004 All LJ 1871 : 2004 Cr LJ 2536 , common object as specified in section 141 must be proved for inflicting constructive liability, but proof of any overt act is not necessary. The court stated consideration for ascertaining common object, when and how it comes into existence and when it becomes modified or abandoned. *Madan Singh v State of Bihar*, (2004) 4 SCC 622 [LNIND 2004 SC 427] : AIR 2004 SC 3317 [LNIND 2004 SC 427] . *Dani Singh v State of Bihar*, 2004 Cr LJ 3328 , there must be common object as stated in section 141 and person actuated by it. *Charan Singh v State of UP*, (2004) 4 SCC 205 [LNIND 2004 SC 308] : AIR 2004 SC 2828 [LNIND 2004 SC 308] .

111. *Rudrappa Ramappa Jainpur v State of Karnataka*, (2004) 7 SCC 422 [LNIND 2004 SC 738] : AIR 2004 SC 4148 [LNIND 2004 SC 738] . *Amzad Ali v State of Assam*, 2003 Cr LJ 3545 : (2003) 6 SCC 270 [LNIND 2003 SC 570] , applicability in the context of section 302.

112. *Shyam Singh v State of UP*, 1992 Cr LJ 1632 (All). *Ram Dhani v State*, 1997 Cr LJ 2286 (All) dispute over land, complainant party resorted to cutting crop grown by the accused party. The latter were more than five in number and assembled to prevent the cutting. The court held that they could not be said to form an unlawful assembly.

113. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] : (2009) 2 SCC (Cr) 289.

114. *Gangadhar Behera v State of Orissa*, 2003 Cr LJ 41 : AIR 2002 SC 3633 [LNIND 2002 SC 645] . *Chanda v State of UP*, (2004) 3 SCC 141 : AIR 2004 SC 2836 [LNIND 2004 SC 1556] , the expression "in prosecution of common object" and the word "knew" as used in section 149 were explained and distinguished.

115. *Jagdeo Singh*, 1981 Cr LJ 166 : AIR 1981 SC 648 .

116. *Jit Singh v State*, (1957) Pun 950; *Mizaji*, (1959) Supp (1) SCR 940 : AIR 1959 SC 572 [LNIND 1958 SC 169] : 1959 Cr LJ 777 . *Satbir Singh v State of UP*, (2009) 13 SCC 790 [LNIND

2009 SC 450] : AIR 2009 SC 2163 [LNIND 2009 SC 450] : (2009) 3 All LJ 786; *Ashok Kumar v State of TN*, 2006 Cr LJ 2931 : AIR 2006 SC 2419 [LNIND 2006 SC 360] : (2006) 10 SCC 157 [LNIND 2006 SC 360].

117. *Ibid*, and see *Lalji v State of UP*, AIR 1989 SC 754 [LNIND 1989 SC 26] : (1989) 1 SCR 130 [LNIND 1989 SC 26] : 1989 Cr LJ 850 , the members cannot be acquitted only because of lack of evidence of precise participation. Earlier to this, in *Ram Bilas Singh v State of Bihar*, 1964 (1) Cr LJ 573 : (1963) 1 SCWR 743 : (1964) 1 SCR 775 [LNIND 1963 SC 22] , the Supreme Court observed: "It is true that in order to convict persons vicariously under section 34 or section 149 it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more was or were done in furtherance of the common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly. **Following** this and the above **cited** Supreme Court cases in *Nagina Sharma v State of Bihar*, 1991 Cr LJ 1195 , the Patna High Court held that the gang of persons who came fully armed to capture a booth and to prevent voters from voting and causing eight deaths in the process were all responsible for the deaths in question. See at pp 1231–1233.

118. *Allauddin Mian v State of Bihar*, AIR 1989 SC 1456 [LNIND 1989 SC 236] : 1989 Cr LJ 1466 . *Ramappa Halappa Pujar v State of Karnataka*, (2007) 13 SCC 31 [LNIND 2007 SC 561] , the fact of benefit of doubt to some accused person could not give advantage to others on whose part some other act was evident.

119. *Vithal Bhimshah Koli v State of Maharashtra*, AIR 1983 SC 179 [LNIND 1982 BOM 340] : 1983 Cr LJ 340 : (1983) 1 SCC 431 . See also *Jawahar v State of UP*, AIR 1991 SC 273 : 1991 Cr LJ 376 , equal conviction of the accused who was only holding the deceased by the neck while others struck.

120. *Suratlal v State of MP*, AIR 1982 SC 1224 [LNIND 1980 SC 121] : 1982 Cr LJ 1577 : (1982) 1 SCC 488 [LNIND 1980 SC 121] . *Mohamed Arif v State of Gujarat*, AIR 1997 SC 105 [LNIND 1996 SC 1604] : 1997 Cr LJ 65 ; conviction of all the accused except one who was not identified by the eye-witness and given benefit of doubt. *Ganga Singh v State of UP*, 2000 Cr LJ 1695 (All), unlawful assembly, fodder belonging to informant burnt, death ensued from lathi blows, incident 21 years old. Accused persons grew into men of 55–60 years. They were sentenced to three years RI and fine of Rs. 5,000 each. *Vikram v State of Maharashtra*, (2007) 12 SCC 332 [LNIND 2007 SC 617] : (2008) 1 SCC (Cr) 362 : AIR 2007 SC 1893 [LNIND 2007 SC 617] : 2007 Cr LJ 3193 , whether in a given case common object has been made out depends upon facts and circumstances, conduct of the parties and the manner in which the occurrence had taken place has some bearing on the question.

121. *Bhimrao v State of Maharashtra*, (2003) 3 SCC 37 [LNIND 2003 SC 167] : AIR 2003 SC 1493 [LNIND 2003 SC 167] : 2003 Cr LJ 1204 .

122. *Raju v State of Rajasthan*, 2013 (2) SCC 233 [LNIND 2013 SC 25] : 2013 Cr LJ 1248 (SC). See also *Shyam Babu v State of UP*, JT 2012 (8) SC 377 [LNIND 2012 SC 536] : AIR 2012 (SCW) 4846 : (2012) 8 SCC 651 [LNIND 2012 SC 536] : AIR 2012 SC 3311 [LNIND 2012 SC 536] : 2012 Cr LJ 4550 : 2012 (8) Scale 535 [LNIND 2012 SC 536] .

123. *Hari Singh*, (1878) 3 CLR 49 . *Haricharan v State of Rajasthan*, AIR 1998 SC 244 [LNIND 1997 SC 1350] : 1998 Cr LJ 398 , accused appeared armed with weapons. They stopped the bus, put the gun on the chest of the driver threatening him if he tried to move. They caught hold of the deceased. One of them fired two shots and the other attacked with his weapon. Their conviction under section 300 read with section 149 was held to be proper. *Mahantappa v State of Karnataka*, AIR 1999 SC 314 [LNIND 1998 SC 1018] : 1999 Cr LJ 450 , the accused persons assaulted their victim with a sword, threw his body into a hut and set it on fire. Their conviction

under section 300 read with section 149 was held to be proper. Some others who were also tried with them did not seem to have been members, they could have been bystanders. They were given the benefit of doubt. *Bhagwan Singh v State of UP*, (1992) 4 SCC 85 , the accused persons were on inimical terms with the complainant party, came to the spot armed with deadly weapons and attacked claiming three lives, it was held that they shared common object. *Rachapalliabulu v State of AP*, (2002) 4 SCC 208 [LNIND 2002 SC 267] : 2000 Cr LJ 2527 : AIR 2002 SC 1805 [LNIND 2002 SC 267] , assailants came together as fully armed, caused two deaths, held to have shared common object. *Pratapaneni Ravi Kumar v State of AP*, AIR 1997 SC 2810 [LNIND 1997 SC 892] : 1997 Cr LJ 3505 , all those who assaulted the victim were members of unlawful assembly and death was caused in prosecution of common object, all of them guilty irrespective of the fact whether they had participated in beating the deceased. *State of Rajasthan v Ani*, AIR 1997 SC 1023 [LNIND 1997 SC 35] , armed accused person killed two and attempted to cause one more death, they were earlier involved in other riots. Conviction, but two accused were acquitted because evidence showed no connection with the incident. *Satbir v Surat Singh*, AIR 1997 SC 1160 : (1997) 4 SCC 192 , two accused persons, though present, could not be said with certainty to have shared the common intention to commit murder, benefit of doubt. *Siddique v State of UP*, 1998 Cr LJ 3829 (All), unlawful assembly causing death in business rivalry, conviction. *State of Rajasthan v Nathu*, (2003) 5 SCC 537 [LNIND 2003 SC 479] , murder, vicarious liability.

124. *Muthu Naicker v State of WB*, 1978 Cr LJ 1713 : AIR 1978 SC 1647 [LNIND 1978 SC 188] . From numbers, situs and nature of wounds it could be hold that all five accused persons had definite intention to commit murder of victim. *State of Assam v Golbar Hussain*, 2012 Cr LJ 4649 (Gau).

125. *Kartar Singh v State of Punjab*, AIR 1996 SC 1406 [LNIND 1996 SC 307] : 1996 Cr LJ 1722 . In *Ramesh v State of Haryana*, AIR 2011 SC 169 [LNIND 2010 SC 1016] : 2011 Cr LJ 80 : (2010) 12 SCR 799 : (2010) 13 SCC 409 [LNIND 2010 SC 1016] : (2011) 1 SCC (Cr) 1176, the evidence show that the appellants variously armed, including the firearms assembled at one place and, thereafter, came to the place of occurrence and started assault together and when protested by the deceased, one of the members of the unlawful assembly shot the deceased dead and some of them caused injury by firearm, gandasa, *lathi*, etc., to others. All of them have come and left the place of occurrence together. Appellant held to be members of the unlawful assembly and offence have been committed in pursuance of the common object. Each of them shall be liable for the offence committed by any other member of the assembly. Also see *Ranjit Singh v State of MP*, AIR 2011 SC 255 [LNIND 2010 SC 1057] : 2011 Cr LJ 283 : (2011) 4 SCC 336 [LNIND 2010 SC 1057] : (2011) 2 SCC (Cr) 227.

126. *C Chellappan*, 1979 Cr LJ 1335 : AIR 1979 SC 1761 .

127. *Asharfi Lal v State of UP*, AIR 1987 SC 1721 [LNIND 1987 SC 346] : 1987 Cr LJ 1885 : (1987) 3 SCC 224 [LNIND 1987 SC 346] . See also *Lalji Singh v State of UP*, AIR 1985 SC 1266 : 1985 Cr LJ 1488 , charges under sections 302, 147, 148 and 149; and *Dalip Singh v State of UP*, 1985 SCC (Cr) 486 : 1985 Supp SCC 471 : AIR 1986 SC 316 , charges under the same sections, established. *Kishan Singh v State of Rajasthan*, 1995 Cr LJ 2027 (Raj), circumstances of the case established unlawful assembly as well as common object. *Poonma Ram v State of Rajasthan*, 1995 Cr LJ 359 (Raj), unlawful assembly, death caused, but requisite intention for murder not proved, conviction for culpable homicide and for forming unlawful assembly. *Luku Pulke v State of Orissa*, 1995 Cr LJ 1207 (Ori), acquittal because of contradictory statements of witnesses as to participation. *Gajanan v State of Maharashtra*, 1996 Cr LJ 2887 : AIR 1996 SC 3332 , the accused persons caused death by assault and beating, also beating others who came to rescue, showed common object of causing death.

128. *Sheikh Ajyub v State of Maharashtra*, 1995 Cr LJ 420 : 1994 Supp (2) SCC 269 .
129. *Joseph v State of Karnataka*, 1993 Cr LJ 3538 : 1993 AIR SCW 2900. *State of UP v Man Singh*, AIR 2003 SC 62 [LNIND 2002 SC 657] , seven persons were variously armed, they attacked and killed their victim whose severed body was thrown by them into river. The witnesses recovered the body immediately after the attackers left. This established their presence at the spot. The reversal of conviction by the High Court because of poor visibility caused by fog was held to be improper. *Shrawan Bhadaji Bhirad v State of Maharashtra*, AIR 2003 SC 199 [LNIND 2002 SC 701] : 2003 Cr LJ 398 , seven persons armed with swords, attacked their victim causing multiple injuries which were found to be sufficient to cause death, but saved by a team of doctors. Conviction of the accused under the section was held to be proper. *Alla Chinna Apparao v State of AP*, 2003 Cr LJ 17 : AIR 2002 SC 3648 [LNIND 2002 SC 647] , the victim was attacked by accused persons who hacked his neck on two sides with coconut cutting knives. Eye-witnesses. Conviction under section 300
130. *Umesh Singh v State of Bihar*, AIR 2000 SC 2111 [LNIND 2000 SC 871] : 2000 Cr LJ 3167 .
131. *Ram Dular Rai v State of Bihar*, (2003) 12 SCC 352 [LNIND 2003 SC 1032] : AIR 2004 SC 1043 [LNIND 2003 SC 1032] : 2004 Cr LJ 635 ; *Chand v State of UP*, (2004) 5 SCC 141 [LNIND 2004 SC 582] : AIR 2004 SC 2451 [LNIND 2004 SC 582] : 2004 All LJ 1871 : 2004 Cr LJ 2536 , number of convicted persons less than five. Eight persons were named. Two of them held pistols. Shot fired but did not hit the victim. The other's shot proved fatal. Unlawful assembly was there. Acquittal of some of them on a technical ground did not wipe out application of section 149.
132. *Kashirma v State of MP*, (2002) 1 SCC 71 [LNIND 2001 SC 2369] .
133. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] ; *Siyaram v State of MP*, (2009) 4 SCC 792 [LNIND 2009 SC 577] : (2009) 2 SCC (Cr) 602 : 2009 Cr LJ 2071 , statement of principles to be followed by the appellate court in considering an appeal against acquittal. See also *State of Maharashtra v Tulshiram Bhanudas Kamble*, (2007) 14 SCC 627 [LNIND 2007 SC 3167] : AIR 2007 SC 3042 [LNIND 2007 SC 3167] : (2007) Cr LJ 4319 .
134. *Yunis v State of MP*, AIR 2003 SC 539 [LNIND 2002 SC 784] : 2003 Cr LJ 817 ; *Re Ram Pravesh Sharma*, 2003 Cr LJ NOC 180 (Jhar) : 2003 AIR Jhar HCR 220.
135. *State of MP v Mishrilal*, 2002 Cr LJ 2312 (SC).
136. *State of UP v Kishanpal*, (2008) 16 SCC 73 [LNIND 2008 SC 1608] . *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431, rule of prudence should be applied. Something more than the persons concerned being cited as accused in a witness box would be necessary. The court must have before it some materials to form an opinion that they had shared the common object. *Sheo Prasad Bhor v State of Assam*, (2007) 3 SCC 120 [LNIND 2007 SC 19] : AIR 2007 SC 918 [LNIND 2007 SC 19] : 2007 Cr LJ 1423 , assignment of independent parts to each member not necessary; if one is a member of the assembly, assault and death caused by any one of them would make others liable.
137. *Ganga Ram Sah v State of Bihar*, AIR 2017 SC 655 [LNIND 2017 SC 31] .
138. *Najabhai Desurbhai Wagh v Valerabhai Deganbhai Vagh*, (2017) 3 SCC 261 [LNIND 2017 SC 46] : 2017 (1) Crimes 270 (SC).
139. *Vinubhai Ranchhodhbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .
140. *Vinubhai Ranchhodhbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .
141. *Kabil Singh*, (1869) 3 Beng LR (A Cr J) 1. See also *State of Gujarat v Bharwad*, 1990 Cr LJ 2531 (Guj), common object to belabour the members of a particular community, all liable under sections 324 and 326 and not for murder. *Teja v State of MP*, 1990 Cr LJ 262 , common object to

insult, guilty under section 326 and not under section 302 though death was caused. *Ramesh Baburao Devaskar v State of Maharashtra*, (2008) Cr LJ 372 : (2007) 13 SCC 501 [LNIND 2007 SC 1213] , name of only one accused mentioned in the FIR, PWs did not attribute any overt act to the remaining accused persons, thus, there was some substance in the contention that others did not share the common object.

142. *Kshudiram*, 1972 Cr LJ 756 : AIR 1972 SC 1221 . See also *Bharwad Bhikha Natha*, 1977 Cr LJ 1160 : AIR 1977 SC 1768 ; *K Neelakanthe*, 1978 Cr LJ 780 : AIR 1978 SC 1021 [LNIND 1978 SC 55] ; *Bhudeo Mondla v State of Bihar*, 1981 Cr LJ 725 : AIR 1981 SC 219 : (1981) 2 SCC 755 [LNIND 1981 SC 177] .

143. *Jhapsa Kabari v State of Bihar*, AIR 2002 SC 312 [LNIND 2001 SC 2762] . *Jadu Sahani v State*, 1999 Cr LJ 593 : 1999 AIR SCW 3985, no enmity between the conflicting groups, death caused by one of them as an individual act, only he was convicted for murder. *State of Punjab v Harjit Singh*, AIR 2002 SC 3040 [LNIND 2002 SC 501] , mere participation in the crime with others is not sufficient to attribute common object or common intention to one of them of the others involved in the incident. One accused person can be made liable criminally for the acts and deeds of others only on proof of the subjective elements in common intention by the objective test.

144. *Nawab Ali*, 1974 Cr LJ 921 : AIR 1974 SC 1228 [LNIND 1974 SC 117] . See also *Ram Anjore*, 1975 Cr LJ 249 : AIR 1975 SC 185 [LNIND 1975 SC 87] ; *Badruddin v State*, 1981 Cr LJ 729 : AIR 1981 SC 1223 .

145. *Fatte*, 1980 Cr LJ 829 : AIR 1979 SC 1504 . In a similar case, the assailant giving the fatal blow was convicted under section 302 but co-accused under sections 326/149, *Ram Swarup v State of Haryana*, AIR 1993 SC 2436 [LNIND 1993 SC 487] : 1993 Cr LJ 3540 : 1993 Supp (4) SCC 344 . *Sukhbir Singh v State of Haryana*, AIR 2002 SC 1168 [LNIND 2002 SC 134] , a sweeper while working in a street happened to throw splashes of mud on the face of the accused. He abused the sweeper. The latter's father slapped the accused. He went away threatening and came back with others, but fatal injuries to the sweeper's father were inflicted by him alone, others kept only standing. Held individual act and not a common object: *Kajal Sen v State of Assam*, AIR 2002 SC 617 [LNIND 2002 SC 31] , fatal blows given by main accused. Others could not be convicted for offences punishable under section 302 read with sections 148 and 149. *Tamaji Govind Misal v State of Maharashtra*, AIR 1998 SC 174 [LNIND 1997 SC 1211] : 1998 Cr LJ 340 , the motive of the accused party was to remove *babul* trees from the land of the complainant party whatever be the cost and cause injuries which might become necessary. But some of them started assaulting immediately on reaching the spot. Others might not have known that the matter would go to the extent of murder, they were punished under sections 326/149 and not 300/149. *Atmaram Zongarazi v State of Maharashtra*, AIR 1997 SC 3573 [LNIND 1997 SC 1079] : 1997 Cr LJ 4406 , proof showed only one man striking and not others, others acquitted. *Chandubhai Malubhai Parmar v State of Gujarat*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 , inter-community riot, accused armed with guns causing deaths, convicted under sections 300/149, but those who were busy only in burning property could not be convicted with others under section 300/149. *Naurangi Mahto v State*, 2001 Cr LJ 1525 (Jhar), no common object attributed to those who were just only present at the moment and had done no overt act. Incident took place at the spur of the moment. *Naththoo Ram v State of UP*, 2000 Cr LJ 3870 (All), injuries caused with blunt side of the weapon. It could not be said that the common object of the unlawful assembly was to cause death. Conviction was altered from under sections 302/149 to section 326/149.

State of UP v Rasid, AIR 2003 SC 1243 [LNIND 2003 SC 295] , accused persons who entered the house and caused death, convicted for murder, but those remained posted outside given benefit

of doubt. *Basisth Roy v State of Bihar*, AIR 2003 SC 1439 [LNIND 2003 SC 162] , witnesses attributed overt act only to two out of 13 accused persons, convicted, others given benefit of doubt and acquitted. *Jayantibhai Bhankarbhai v State of Gujarat*, AIR 2002 SC 3569 [LNIND 2002 SC 565] , five convicted, only one appealed, he was acquitted, the Supreme Court allowed the conviction of the non-appealing convicts to stand.

146. *Parusuram Pandey v State of Bihar*, AIR 2004 SC 5068 [LNIND 2004 SC 1075] : (2004) 13 SCC 189 [LNIND 2004 SC 1075] .

147. *Mohan Lal*, 1982 Cr LJ 1898 (All).

148. *Sarman v State of MP*, AIR 1993 SC 400 : 1993 Cr LJ 63 : 1993 Supp (2) SCC 356 . Where the only common object discovered on evidence was to beat the victim and not to cause death, others were held not liable to be convicted for murder but only under section 149/324; *Gopa Ram v State of Rajasthan*, 1996 Cr LJ 2987 (Raj).

149. *State of Karnataka v Bhojappa*, 1994 Cr LJ 1543 (Kant). See also *Anant Kumar v State of MP*, AIR 1994 SC 1639 : (1994) 2 Cr LJ 1585 , no specific acts were attributed to two of the accused persons who also had no knowledge whether the others carried knives or that they were likely to cause injuries, such two accused acquitted. *Bhimrao v State of Maharashtra*, 2003 Cr LJ 1204 : AIR 2003 SC 1493 [LNIND 2003 SC 167] , the accused came to the house of the victim with a common object, those who entered the house executed a different, held, their act could not be attributed to those who were standing outside. *State of Rajasthan v Sheo Singh*, 2003 Cr LJ 1569 : AIR 2003 SC 1783 [LNIND 2003 SC 231] , a joint project of murder could not be proved. *Basisth Roy v State of Bihar*, 2003 Cr LJ 1301 : AIR 2003 SC 1439 [LNIND 2003 SC 162] : (2003) 9 SCC 52 [LNIND 2003 SC 162] , murder on account of land dispute between the complainant and deceased party, specific overt acts of lathi blows and gun shots were attributed only to two of the accused persons, others could not be convicted for the same because there was no proof of a shared common object to that effect. *Bharosi v State of MP*, AIR 2002 SC 3299 [LNIND 2002 SC 567] , six accused persons armed with lathis attacked the victim, death was due to one head injury attributed to the main accused, others did not intend nor had any knowledge. They were held to be not guilty of murder. They were guilty under section 147 for their individual acts. *Kishan Pal v State of UP*, 2001 Cr LJ 2875 (All), unlawful assembly, eight members of a family slaughtered in a day light attack. Witnesses untrustworthy. Acquittal.

Cases of no proof.—*Balkunth Mahto v State of Bihar*, 2003 Cr LJ 2135 (Jhar), the accused persons attacked the deceased at midnight while he was asleep along with three other persons. Two of them became hostile. The medical report was that death must have been instantaneous with injury and so the deceased could not have named anybody. The persons sleeping there could not have identified the assailants because of dark night. Evidence doubtful, acquittal. *Sunil Balkrishna Bhoil v State of Maharashtra*, (2007) 14 SCC 398 : 2007 Cr LJ 3277 , unlawful assembly originally formed to assault the victim, all of sudden accused two stabbed him causing death, common object held to be not applicable, rest of them guilty of only house trespass under section 452. They had been in custody for a long period. They were set at liberty. *Munna Chanda v State of Assam*, 2006 Cr LJ 1632 : AIR 2006 SC 3555 [LNIND 2006 SC 128] : (2006) 3 SCC 752 [LNIND 2006 SC 128] , prior concert is not required, common object can develop at the spur of the moment, the deceased in this case, on being assaulted, fled, he was chased by some members of the party but who gave the fatal blow was not clear. Membership of two of the accused could not be proved nor any overt act could be attributed to them. They could not have been convicted under sections 302/149.

150. *Ranjit Singh v State of MP*, AIR 2011 SC 255 [LNIND 2010 SC 1057] : 2011 Cr LJ 283 : (2011) 4 SCC 336 [LNIND 2010 SC 1057] : (2011) 2 SCC (Cr) 227. See also *Jhapsa Kabari v State of Bihar*, AIR 2002 SC 312 [LNIND 2001 SC 2762] at p 314, where YK Sabharwal, J explained the position of a solitary witness.
151. *Charan Singh v State of UP*, (2004) 4 SCC 205 [LNIND 2004 SC 308] : AIR 2004 SC 2828 [LNIND 2004 SC 308].
152. *Nanak Chand v State of Punjab*, AIR 1955 SC 274 [LNIND 1955 SC 3] : 1955 (1) SCR 1201 [LNIND 1955 SC 3] : 1955 Cr LJ 721 .
153. *Suraj Pal v State of UP*, AIR 1955 SC 419 [LNIND 1955 SC 17] : 1955 (1) SCR 1332 [LNIND 1955 SC 17] : 1955 Cr LJ 1004 .
154. *Willie Slaney v State of MP*, AIR 1956 SC 116 [LNIND 1955 SC 90] : 1955 (2) SCR 1140 [LNIND 1955 SC 90] : 1956 Cr LJ 291 .
155. *Subran v State*, 1993 (3) SCC 32 [LNIND 1993 SC 162] : 1993 SCC (Cr) 583 : 1993 Cr LJ 1387 : 1993 (2) Crimes 15 [LNIND 1993 SC 162] .
156. (*supra*).
157. *State of Rajasthan v Hazi Khan*, AIR 2017 SC 4001 .
158. *Kanwarlal v State of MP*, 2003 Cr LJ 62 : AIR 2002 SC 3690 [LNIND 2002 SC 558] .
159. *Shri Krishan v State of UP*, (2007) 15 SCC 557 .
160. *Eknath Ganpat Aher v State of Maharashtra*, (2010) 6 SCC 519 [LNIND 2010 SC 466] .
161. *Sudha Renukaiah v State of AP*, AIR 2017 SC 2124 [LNIND 2017 SC 197] .
162. *Najabhai Desurbhai Wagh v Valerabhai Deganbhai Vagh*, (2017) 3 SCC 261 [LNIND 2017 SC 46] : 2017 (1) Crimes 270 (SC).

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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) harbouring 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 150] Hiring, or conniving at hiring, of persons to join unlawful assembly.

Whoever hires or engages or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

COMMENT—

This section brings within the reach of the law those who are really the originators and instigators of the offences committed by hired persons. It deals with the case of those who are neither abettors of nor participators in the offence committed by an unlawful assembly.

The section creates a specific offence. It intends to embrace all those who hire, promote or connive at the employment of persons and render them punishable as principal participants. Under the section, a person, though not actually a member of an unlawful assembly himself, may be held guilty of being a member of the assembly and may be held liable for the offence which may be committed by the assembly to the same extent as if he had himself committed that offence. But this is possible only when it is found that he hired or engaged or employed or promoted or connived at the hiring, engagement or employment by any other person to join or become a member of the assembly. There must have been an unlawful assembly which was composed of persons so hired, etc., and an offence committed in the course of that assembly for which he becomes equally liable. The word "promotes" denotes acceleration or inducement. Though the word "employ" or "employment" is used, it does not mean recruitment. It would mean calling of the service of the hired person without any recruitment as a servant or agent to commit the offence.¹⁶³

^{163.} *Vinit v State of Maharashtra*, 1994 Cr LJ 1791 at pp 1804–1805, certain persons, who constituted an unlawful assembly, were hired to eliminate a particular person. The eliminators and their procurer were both held equally liable.

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) harbouring 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 151] Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

COMMENT—

Effect of command to disperse.—Section 145 punishes the continuance in an unlawful assembly after it has been commanded to disperse. In this section the assembly need not be an 'unlawful assembly' but if it is likely to cause a disturbance of the public peace, then joining or continuing in such assembly after it has been commanded to disperse is punishable. [Section 129 of the Criminal Procedure Code](#) confers on a Magistrate and an officer in charge of a police-station the power to disperse an unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace. A bare reading of [section 129, Cr PC, 1973](#), would make it abundantly clear that a lawful procession or assembly cannot be regarded as likely to cause a breach of the peace when it is admitted that not they but some other body of persons is bent on attacking them. Whether an assembly is likely to cause a disturbance of public peace has to be judged from its own acts and behaviour and not from the behaviour of another hostile group whose physical opposition may cause a breach of the peace.¹⁶⁴ "Thus, if an assembly other than an unlawful assembly behaves in such a manner as to provoke a breach of the peace by its own conduct or action, there would be a justification to order it to disperse under the powers given by [section 129 of the Criminal Procedure Code](#). But if a religious assembly or procession remains peaceful in the enjoyment of its legitimate rights and privileges under the law, it should not be ordered to disperse merely because a body of antagonistic persons take it into their heads to attack it with a view to provoke a riot. In such a case, it is rather that body of aggressive persons that constitutes an unlawful assembly and requires to be sternly dealt with under the law".¹⁶⁵ So where a peaceful group of persons who were cutting crop on their own land refused to disperse on being commanded to do so by an Inspector of Police merely because another hostile group objected to the harvesting of the crop, it was held that as these persons were not commanded lawfully to disperse under [section 129, Cr PC, 1973](#), they could not be convicted under [section 151, IPC, 1860](#).¹⁶⁶ In order to bring a case within the mischief of this section there must be clear evidence to show that the assembly had been "lawfully commanded" to disperse. Thus where the police officers in their evidence said that they had merely warned the two warring factions, it could not be said that the assembly had been commanded to disperse and as such there was no question of invoking [section 151, IPC](#), to prosecute the members of the assembly.¹⁶⁷

^{164.} *Yeshwant v State*, 34 Cr LJ 705; See also *Bealty v Gillbanks*, (1882) 9 QBD 308 ; *Kempe Gowda*, 1954 Cr LJ 490 (Mysore).

^{165.} R Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, p 834. See also *Re P Abdul Sattar*, 1961 (1) Cr LJ 291 (Mysore).

^{166.} *Kempe Gowda*, 1954 Cr LJ 490 (Mysore), *supra*.

^{167.} *Komma Neelakantha Reddy v State of AP*, AIR 1978 SC 1021 [LNIND 1978 SC 55] : (1978) 2 SCC 473 [LNIND 1978 SC 55] : 1978 (3) SCR 75 [LNIND 1978 SC 55] : 1978 Cr LJ 780 : (1978) 1 SCC (Cr) 285.

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CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

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- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
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- (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) harbouring 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 152] Assaulting or obstructing public servant when suppressing riot, etc.

Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

Assault or obstruction of public servant.—The last section punished disobedience to the order of a public servant commanding an assembly to disperse. This section

punishes more severely persons who assault a public servant endeavouring to disperse an unlawful assembly. It is intended to prevent the use of force on a public servant in order to prevent him from discharging his duty.

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CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

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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) harbouring 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 153] Wantonly giving provocation with intent to cause riot—.

Whoever malignantly,¹ or wantonly,² by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

if rioting be committed; if not committed.

and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT—

Provocation for rioting.—A person, who maliciously or recklessly gives provocation to another by doing an illegal act knowing that such provocation will incite the other to rioting, is punishable under this section. The offence under this section involves some act of origination of a riot by doing an illegal act infuriating to the feelings of those who ultimately come to riot. The expression "gives provocation" connotes such idea. This section is intended to apply to such provocative words or acts as do not amount directly to instigation or abetment.¹⁶⁸ A mere chance provocation is not sufficient to justify conviction under this section.¹⁶⁹ The section is divided into two parts. If rioting is committed the punishment is more severe.

[s 153.1] Essential Ingredients:

- (a) The 'act' imputed against the accused is illegal,
- (b) He has done such act malignantly or wantonly, and,
- (c) He has given provocation to any person intending or knowing that such provocation will cause the offence of rioting.¹⁷⁰

1. 'Malignantly'.— implies a sort of general malice.¹⁷¹ The adverbs 'maliciously' and 'malignantly' are synonymous. Malice is not, as in ordinary speech, only an expression of hatred or ill-will to an individual, but means an unlawful act done intentionally without just cause or excuse.¹⁷² Malignant means extreme malevolence or enmity; violently hostile or harmful.

2. 'Wantonly'.— means recklessly, thoughtlessly, without regard for right or consequences. This word gives to the offence contained in this section a far larger, vaguer and more comprehensive scope, than would be implied by the word 'malignantly' standing alone. It occurs only in this section of the Code, while the word 'malignantly' occurs once again in section 270.

[s 153.2] CASES.—

The affixing of the poster exhorting for boycotting the election, even if it is objectionable, is not sufficient to show that by such affixture provocation is given to any person for causing the offence of rioting. Howsoever deplorable be the act of affixing the poster, to constitute the offence under [section 153 of IPC, 1860](#), over and above the provocation that is likely to give cause for rioting, it has to be shown that the act — affixing of the poster — is illegal.¹⁷³

Where the accused wrote a pamphlet in praise of a person who was opposed to the High Priest of the Borah community in certain matters, but his real intention appeared to be to show a grave insult to the High Priest, an insult which was likely to inflame the feelings of the followers of the High Priest and to lead to a riot, it was held that he was guilty under this section.¹⁷⁴ Where a bride and bridegroom belonging to depressed classes rode in palanquins through a village in spite of the protests of high caste Hindus, it was held that this was not an illegal act for which they could be convicted under this section.¹⁷⁵ Where the accused unfastened the string of the National flag after flag-hoisting ceremony and tried to trample on it, it was held that the accused was guilty under this section as the act of the accused was deliberately insulting to the flag

and thereby the accused intended to wound the feelings and sentiments of the other persons present.¹⁷⁶.

168. *Ahmed Hasham*, (1932) 35 Bom LR 240 , 57 Bom 329.

169. *Dr RC Chowala*, AIR 1966 Ori 192 [LNIND 1965 ORI 73] . *Aroon Purie v HL Varma*, 1999 Cr LJ 983 (Bom), in a debate on secularism, remarks were passed by some speakers touching sentiments of others. It was held that a true publication of such remarks would not come within the ambit of section 153, though they might constitute defamation. See also *Baragur Ram Chandrappa v State of Karnataka*, 1998 Cr LJ 3639 (Kant–DB).

170. *Raju Thomas @ John Thomas v State*, 2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499 ; See also *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 .

171. *Kahanji*, (1893) 18 Bom 758, 775.[2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499].

172. *Bromage v Prosser*, (1825) 4 B&C 247. [2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499].

173. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 . See also *Raju Thomas @ John Thomas v State*, 2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499 .

174. *Rahimatalli Mahomedalli*, (1919) 22 Bom LR 166 .

175. *Jasnami*, (1936) 58 All 934 .

176. *Indra Singh v State*, AIR 1962 MP 292 [LNIND 1957 MP 82] . *Rajendra v State of Rajasthan*, 2006 Cr LJ 173 (Raj).

THE INDIAN PENAL CODE

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

IV. Affray (sections 159, 160).

177. [s 153A] Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

(1) **Whoever—**

- (a) **by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or**
- (b) **commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or**

castes or communities, and which disturbs or is likely to disturb the public tranquillity, ^{178.}[or]

^{179.}[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.

Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

COMMENT—

Promoting enmity.—This section replaces the old section. Sub-section (1)(c) has been newly inserted by Act 31 of 1972. This section provides for enhanced punishment for offences committed in a place of worship and making offences under this section cognisable. Under this section promoting enmity between different groups on grounds such as, place of birth, or residence are included and it also makes promotion of disharmony or feelings of ill-will an offence punishable under it. The provision in clause (b) of sub-section (1) to the section includes acts prejudicial to the maintenance of harmony between different regional groups and sub-section (2) provides for enhanced punishment for any offence specified in sub-section (1) when it is committed in a place of worship, etc. With communal and fissiparous tendencies on the increase this section has now gained an added importance. The object of section 153-A is to prevent breaches of the public tranquillity which might result from excited feelings of enmity between classes of people. Absence of malicious intention is a relevant factor to judge whether the offence is committed.^{180.}

Section 153A of IPC, 1860, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under [section 153A of IPC](#) and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused.^{181.} The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under [section 153A IPC](#) and the prosecution has to prove the existence of *mens rea* in order

to succeed. In this case, the prosecution has not been able to establish any *mens rea* on the part of the appellants as envisaged by the provisions of [section 153A IPC](#), by their raising casually the slogans a couple of times. The offence under [section 153A IPC](#) is, therefore, not made out.¹⁸²

There must either be the intention to promote such feelings, or such feelings should be promoted as the result of words spoken or written. The words promotes or tends to promote feelings of enmity are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or parts of the purpose of the accused to promote such feelings, and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient.¹⁸³ The word classes includes any definite and ascertainable class of people. Capitalists do not constitute a class within the meaning of this section.¹⁸⁴ To bring any body of persons within the description of a class of people, the body of persons must possess a certain degree of importance numerically, and must be ascertained with certainty and distinguished from any other class. Every group of persons cannot be designated as a class.¹⁸⁵ The classes contemplated must be not merely clearly defined and separable but also numerous. A small and limited group of *Zamindars* cannot be regarded as constituting a class.¹⁸⁶ Petitioner published a sentence "Oriya is a younger sister of Bengal" in his book. Subsequently petitioner published an apology in newspaper and deleted the controversial statement. In view of this it cannot be said that alleged sentence published to defame Oriya language or promote hatred between different linguistic groups. Criminal proceeding are quashed.¹⁸⁷

The police force of the State cannot be brought within the purview of the term "community".¹⁸⁸

[s 153A.1] Political Thesis.—

This section cannot be used even if an article causes or tends to cause hatred or enmity between different political classes like the capitalists and the labour class or between persons believing in different forms of Government, e.g., a democratic or totalitarian rule. A bare reading of clause (a) of section 153A will show that a person will be guilty under this section only where by words, either spoken or written, he promotes or attempts to promote feelings of enmity or hatred between different religious, racial, linguistic groups or castes or communities on grounds of religion, race, language, caste or community, etc., and not otherwise.¹⁸⁹ But where the author in the guise of presenting a political thesis or historical truth wrote two articles describing the Muslims as a basically violent race and further described today's Muslims as the descendants of foul Moghuls rulers who were lustful perverts, rapists and murderers, it was held that both the articles promoted feelings of enmity between Hindus and Muslims and came within the mischief of [section 153A IPC, 1860](#), whether or not the Moghuls were really so.¹⁹⁰ In fine, this section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but only such writings as directly promote feelings of hatred or enmity between classes. But if a publication advocates forcible overthrow of all existing social conditions, and aims at promoting class hatred and enmity, it comes under the purview of this section.¹⁹¹

1. Historical Account.—If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under [section 153-A of IPC, 1860](#), that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under section 153-A. It is no defence to a charge under [section 153-A of IPC](#) that the writing contains a truthful account of past events or is otherwise supported by good authority.¹⁹²

But it would be no offence if the author adheres to the historical part of his narrative, however unpalatable it may be to the members of the other community, but if he uses language which shows malice and is bound to annoy the members of the other community so as to degrade them in the eyes of the other classes, he is promoting feelings of enmity and hatred and is liable to be dealt with under this section and section 295-A.¹⁹³ It is, therefore, important to remember that criminality under section 153A does not attach to the thing said or done but to the manner in which it is said or done. If the words spoken or written are couched in temperate language and do not have the tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow.¹⁹⁴ This appears also to be the law in England in regard to blasphemous libel. Thus, in *Lemon's case* Lord Diplock observed:

To publish opinion denying the truth of the established church or even of Christianity itself was no longer held to amount to the offence of blasphemous libel so long as such opinions were expressed in temperate language and not in terms of offence, insult or ridicule.¹⁹⁵

So what is said or written is not so important as how it is said or written or with what intent it is said or written. Where, therefore, the article did not intend or exhibit any insult to any religion but read as a whole projected a scholarly historical thesis showing as to how in pre-Islamic times the ancient Hindu culture and Hindu religion were in vogue in Arabia and how Islamic culture, religion and art were greatly influenced by Indian culture and religion, it could not be said that the article came within the mischief of [section 153A, IPC, 1860](#), or [section 95, Cr PC, 1973](#). The scope of [section 153A, IPC](#), cannot be enlarged to such an extent with a view to thwart history or historical events.¹⁹⁶

Where an article in a newspaper bears a meaning that is calculated to produce hatred and enmity between two classes, the natural inference from the publication of such an article is that the person who published it had the malicious intention that it should produce such hatred and enmity.¹⁹⁷ A Hindu, who ridicules the Prophet of the Mohammedans not out of any eccentricity but in the prosecution of a propaganda started by a class of persons who are not Mohammedans, promotes feelings of enmity and hatred between Hindus and Mohammedans, and is liable to punishment under the section.¹⁹⁸ In order to ascertain the intention of the accused, the offending article must be read as a whole and the circumstances attending that publication must also be taken into account.¹⁹⁹

An FIR was filed against the author, publisher and printer of the book "Shivaji: Hindu King in Islamic India" on the ground that certain passage were objectionable. This led to blackening of the face of a local scholar, ransacking of a research institute and destruction of manuscripts, etc. The members of the institute had helped the author made contributions to enable the author to complete the work. The author was an American professor based in the USA. He tendered apology, by fax and the publishers immediately withdrew all the copies from the market. In proceedings against the author, etc., it was held that the book was purely a scholarly pursuit. There was no intention or motive to create trouble for the author and others. The State was directed not to proceed against them. The Supreme Court explained the gist of the offence under the section as follows:

The gist of the offence under section 153-A is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under [section 153-A IPC, 1860](#), and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of to fall within the ambit of section 153-A must be read as a whole. One

cannot rely on strongly worded and isolated passage for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

The effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of the ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

The common feature in both the sections, viz., sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.²⁰⁰ In *State of Maharashtra v Sangharaj Damodar Rupawate*,²⁰¹ the Supreme Court again considered the question whether a notification issued by the Maharashtra Government to forfeit the book "Shivaji: Hindu King in Islamic India". It was held that the notification does not identify the communities between which the book had caused or is likely to cause enmity. It cannot be found out from the notification as to which communities got outraged by the publication of the book or it had caused hatred and animosity between the particular communities or groups—statement in the notification to the effect that the book is 'likely to result in breach of peace and public tranquillity and in particular between those who revere Shri Chhatrapati Shivaji Maharaj and those who may not' is too vague a ground to satisfy the aforesaid tests. The order quashing the notification was upheld by the Supreme Court.

In *Ramesh Chotalal Dalal v UOI*,²⁰² the Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of [section 153A of IPC, 1860](#), would not apply to it. It was also not prejudicial to the national integration falling under [section 153B of IPC](#). Approving the observations of Vivian Bose, J in *Bhagvati Charan Shukla v Provincial Government*,²⁰³ the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the clapham omnibus". Again in *Bilal Ahmed Kaloo v State of AP*,²⁰⁴ it was held that the common feature in both the sections, viz., sections 153A and 505 (2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

2. Scurrilous attack on basic religious books.—Section 153A certainly affords protection to the basic religious books of all the religions against scurrilous attacks. In *Chandanmal Chopra v State of WB*,²⁰⁵ it was alleged that the Koran, the basic religious book of Muslim religion promotes religious disharmony by advocating destructions of idols, etc., and thereby outrages not only the religious feelings of non-Muslims but also encourages hatred, disharmony, feeling of enmity between different religious communities in India, and the petitioner sought for directing the State of West Bengal to forfeit every copy of Koran. It was also alleged that the publication of Koran amounts to commission of offences punishable under [sections 153A and 295A of IPC, 1860](#). In support of their contention the petitioners quoted some isolated passages from the Koran. In rejecting this contention the High Court of Calcutta held that sections 153A and 295A of the Code have no application in the present case. The book is the basic text book of the Mohammedans and is held sacred by them like Bible to Christians and Gita, Ramayana and Mahabharata to Hindus. Because of Koran no public tranquillity

has been disturbed up to now and there is no reason to apprehend such disturbance in future. On the other hand the action of the petitioners may be said to have attempted to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will amongst different religions, i.e., Muslims on the one hand and non-Muslims on the other within the meaning of [section 153A, IPC, 1860](#). Forfeiture of Koran would go against the Preamble of the [Constitution](#) and violate [Article 25 of the Constitution](#) which guarantees freedom of conscience and religion to one and all.

3. Evidence of hatred, etc., not needed.—A Special Bench of the Bombay High Court has held that under this section it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. Intention to promote enmity or hatred, apart from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for a person must be presumed to intend the natural consequences of his act. If a writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under this section that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under this section.²⁰⁶.

Immediately after the demolition of Babri masjid and violent riots in Bombay, editorials appeared in the Marathi newspaper 'Samna' which were in high flown and caustic language but were not directed against the Muslim Community as a whole but only against anti-national elements amongst them and also against the attitude of police, army and Government. The articles were held to be not coming within the mischief of section 153-A and section 153-B.²⁰⁷.

[s 153A.2] Previous Sanction:

Previous sanction under [section 196 Cr PC, 1973](#), is a must before taking cognizance of the offences under [section 153](#) and [153B IPC, 1860](#).²⁰⁸

177. Subs. by Act 35 of 1969, sec. 2, for section 153A (w.e.f. 4-9-1969). Earlier section 153A was substituted by Act 41 of 1961, sec. 2 (w.e.f. 12-9-1961).

178. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

179. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

180. *The Trustees of Safdar Hashmi Memorial Trust v Govt of Nct of Delhi*, [2001 Cr LJ 3689](#) (Del).

181. *Manzar Sayeed Khan v State of Maharashtra*, [\(2007\) 5 SCC 1 \[LNIND 2007 SC 437\]](#) : AIR 2007 SC 2074 [[LNIND 2007 SC 437](#)] : 2007 Cr LJ 2959 .

182. *Balwant Singh v State of Punjab*, [AIR 1995 SC 1785 \[LNIND 1995 SC 1420\]](#) : (1995) 3 SCC 214 [[LNIND 1995 SC 1420](#)] : (1995) 1 SCC (Cr) 432.

183. *Ram*, (1924) Kant 31. Mens rea is a necessary requirement of this offence. *State (Delhi Admin) v Shrikanth Shastri*, [1987 Cr LJ 1583](#) .

184. *Maniben Kara*, [\(1932\) 34 Bom LR 1642](#) ; *Nepal Chandra Bhattacharya*, [\(1939\) 1 Cal 299](#) .

185. *Narayan Vasudev Phadke*, [\(1940\) 42 Bom LR 861](#) .

186. *Banomali Maharana*, (1942) 22 Pat 48.
187. *Express Publications (Madurai) Ltd v State of Orissa*, 2006 Cr LJ 2548 (Ori).
188. *Hardik Bharatbhai Patel v State of Gujarat*, 2016 Cr LJ 225 (Guj) : 2015 (4) Crimes 462 (Guj).
189. *Shiv Kumar*, 1978 Cr LJ 701 (All).
190. *Baburao Patel*, 1980 Cr LJ 529 : AIR 1980 SC 763 [LNIND 1980 SC 84] .
191. *Gautam*, (1937) All 69 (SB).
192. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (FB) (Bom); *Gopal Godse v UOI*, AIR 1971 Bom 56 [LNIND 1969 BOM 50] .
193. *Harnam Das*, (1957) 1 All 528 (FB).
194. *Azizul Haque*, 1980 Cr LJ 448 (SC).
195. *Rex v Lemon*, (1971) 1 All ER 898 .
196. *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 (Bom—SB); *Nand Kishore Singh v State of Bihar*, 1985 Cr LJ 797 (Pat-SB).
197. *Kanchanlal Chunilal*, (1930) 32 Bom LR 585 .
198. *Shib Sharma*, (1941) 16 Luck 674 .
199. *Ghulam Sarwar*, AIR 1965 Pat 393 .
200. *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 ; *Sajjan Kumar v CBI*, (2010) 9 SCC 368 [LNIND 2010 SC 892] : (2010) 3 SCC (Cr) 1371 : (2010) 11 SCR 669 : 2011 AIR (SCW) 3730, Anti-Sikh Riots charges framed against Sajjan Kumar upheld by the SC. In *S Khushboo v Kanniammal*, JT 2010 (4) SC 478 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : (2010) 5 SCR 322 : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299, it is found that **section 153A IPC, 1860**, have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.
201. *State of Maharashtra v Sangharaj Damodar Rupawate*, (2010) 7 SCC 398 [LNIND 2010 SC 1557] : 2010 AIR (SCW) 4960 : (2010) 8 SCR 328 [LNIND 2010 SC 1557] : 2010 Cr LJ 4290 : (2010) 3 SCC (Cr) 401. In *Anand Chintamani Dighe v State of Maharashtra*, 2002 Cr LJ 8 (Bom), the Government of Maharashtra issued notification under section 95(1) of the Code declaring that every copy of the Marathi play entitled "Mee Nathuram Godse Bolto" be forfeited to the Government. The notification, *inter alia*, stated that the play in question contained derogatory references towards Mahatma Gandhi and certain communities and was likely to disturb public tranquillity and that it was written with a deliberate and malicious intention to outrage the feelings of the followers of Mahatma Gandhi, The publication would be punishable under **sections 153-A and 295-A of IPC, 1860**. The challenge to the notification was repelled by the Bombay High Court.
202. *Ramesh Chotalal Dalal v UOI*, AIR 1988 SC 775 [LNIND 1988 SC 74]
203. *Bhagvati Charan Shukla v Provincial Government*, AIR 1947 Nag 1 .
204. *Bilal Ahmed Kaloo v State of AP*, (1997) 7 SCC 431 [LNIND 1997 SC 1060] .
205. *Chandanmal Chopra v State of WB*, AIR 1986 Cal 104 [LNIND 1985 CAL 180] , 1986 Cr LJ 182 (Cal).
206. *Gopal*, (1969) 72 Bom LR 871 (SB).
207. *Joseph Bain D'Souza v State of Maharashtra*, 1995 Cr LJ 1316 Bom. The court **relied** on *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 but **distinguished**; *Babu Rao Patel v State (Delhi Admn)*, AIR 1980 SC 763 [LNIND 1980 SC 84] : 1980 Cr LJ 529 . Trustees of *Safdar Hashmi Memorial Trust v Govt of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the object of the provision is to prevent breaches of public tranquillity which might result from excited feelings of

enmity between classes of people. Malicious intention or *mens rea* has to be proved. *Mohd Khalid Hussain v State of AP*, [2000 Cr LJ 2949](#) (AP), offence of promoting enmity between people on the ground of religion. There was nothing to show the actual words uttered or acts committed. There were only vague allegations. FIR quashed. *Bilal Ahmed Kaloo v State of AP*, [1997 Cr LJ 4091 : AIR 1997 SC 3483 \[LNIND 1997 SC 1060\]](#), inciting the feelings of one group without any reference to another, attracts neither section 153A nor section 505.

208. *Swaraj Thackeray v State of Jharkhand*, [2008 Cr LJ 3780](#) (Jhar); *Shailbhadra Shah v Swami Krishna Bharti*, [1981 Cr LJ 113](#) (Guj).

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) harbouring 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).

177. [s 153A] Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

(1) **Whoever—**

- (a) **by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or**
- (b) **commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or**

castes or communities, and which disturbs or is likely to disturb the public tranquillity, ^{178.}[or]

^{179.}[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.

Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

COMMENT—

Promoting enmity.—This section replaces the old section. Sub-section (1)(c) has been newly inserted by Act 31 of 1972. This section provides for enhanced punishment for offences committed in a place of worship and making offences under this section cognisable. Under this section promoting enmity between different groups on grounds such as, place of birth, or residence are included and it also makes promotion of disharmony or feelings of ill-will an offence punishable under it. The provision in clause (b) of sub-section (1) to the section includes acts prejudicial to the maintenance of harmony between different regional groups and sub-section (2) provides for enhanced punishment for any offence specified in sub-section (1) when it is committed in a place of worship, etc. With communal and fissiparous tendencies on the increase this section has now gained an added importance. The object of section 153-A is to prevent breaches of the public tranquillity which might result from excited feelings of enmity between classes of people. Absence of malicious intention is a relevant factor to judge whether the offence is committed.^{180.}

Section 153A of IPC, 1860, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under [section 153A of IPC](#) and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused.^{181.} The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under [section 153A IPC](#) and the prosecution has to prove the existence of *mens rea* in order

to succeed. In this case, the prosecution has not been able to establish any *mens rea* on the part of the appellants as envisaged by the provisions of [section 153A IPC](#), by their raising casually the slogans a couple of times. The offence under [section 153A IPC](#) is, therefore, not made out.¹⁸²

There must either be the intention to promote such feelings, or such feelings should be promoted as the result of words spoken or written. The words promotes or tends to promote feelings of enmity are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or parts of the purpose of the accused to promote such feelings, and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient.¹⁸³ The word classes includes any definite and ascertainable class of people. Capitalists do not constitute a class within the meaning of this section.¹⁸⁴ To bring any body of persons within the description of a class of people, the body of persons must possess a certain degree of importance numerically, and must be ascertained with certainty and distinguished from any other class. Every group of persons cannot be designated as a class.¹⁸⁵ The classes contemplated must be not merely clearly defined and separable but also numerous. A small and limited group of *Zamindars* cannot be regarded as constituting a class.¹⁸⁶ Petitioner published a sentence "Oriya is a younger sister of Bengal" in his book. Subsequently petitioner published an apology in newspaper and deleted the controversial statement. In view of this it cannot be said that alleged sentence published to defame Oriya language or promote hatred between different linguistic groups. Criminal proceeding are quashed.¹⁸⁷

The police force of the State cannot be brought within the purview of the term "community".¹⁸⁸

[s 153A.1] Political Thesis.—

This section cannot be used even if an article causes or tends to cause hatred or enmity between different political classes like the capitalists and the labour class or between persons believing in different forms of Government, e.g., a democratic or totalitarian rule. A bare reading of clause (a) of section 153A will show that a person will be guilty under this section only where by words, either spoken or written, he promotes or attempts to promote feelings of enmity or hatred between different religious, racial, linguistic groups or castes or communities on grounds of religion, race, language, caste or community, etc., and not otherwise.¹⁸⁹ But where the author in the guise of presenting a political thesis or historical truth wrote two articles describing the Muslims as a basically violent race and further described today's Muslims as the descendants of foul Moghuls rulers who were lustful perverts, rapists and murderers, it was held that both the articles promoted feelings of enmity between Hindus and Muslims and came within the mischief of [section 153A IPC, 1860](#), whether or not the Moghuls were really so.¹⁹⁰ In fine, this section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but only such writings as directly promote feelings of hatred or enmity between classes. But if a publication advocates forcible overthrow of all existing social conditions, and aims at promoting class hatred and enmity, it comes under the purview of this section.¹⁹¹

1. Historical Account.—If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under [section 153-A of IPC, 1860](#), that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under section 153-A. It is no defence to a charge under [section 153-A of IPC](#) that the writing contains a truthful account of past events or is otherwise supported by good authority.¹⁹²

But it would be no offence if the author adheres to the historical part of his narrative, however unpalatable it may be to the members of the other community, but if he uses language which shows malice and is bound to annoy the members of the other community so as to degrade them in the eyes of the other classes, he is promoting feelings of enmity and hatred and is liable to be dealt with under this section and section 295-A.¹⁹³ It is, therefore, important to remember that criminality under section 153A does not attach to the thing said or done but to the manner in which it is said or done. If the words spoken or written are couched in temperate language and do not have the tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow.¹⁹⁴ This appears also to be the law in England in regard to blasphemous libel. Thus, in *Lemon's case* Lord Diplock observed:

To publish opinion denying the truth of the established church or even of Christianity itself was no longer held to amount to the offence of blasphemous libel so long as such opinions were expressed in temperate language and not in terms of offence, insult or ridicule.¹⁹⁵

So what is said or written is not so important as how it is said or written or with what intent it is said or written. Where, therefore, the article did not intend or exhibit any insult to any religion but read as a whole projected a scholarly historical thesis showing as to how in pre-Islamic times the ancient Hindu culture and Hindu religion were in vogue in Arabia and how Islamic culture, religion and art were greatly influenced by Indian culture and religion, it could not be said that the article came within the mischief of [section 153A, IPC, 1860](#), or [section 95, Cr PC, 1973](#). The scope of [section 153A, IPC](#), cannot be enlarged to such an extent with a view to thwart history or historical events.¹⁹⁶

Where an article in a newspaper bears a meaning that is calculated to produce hatred and enmity between two classes, the natural inference from the publication of such an article is that the person who published it had the malicious intention that it should produce such hatred and enmity.¹⁹⁷ A Hindu, who ridicules the Prophet of the Mohammedans not out of any eccentricity but in the prosecution of a propaganda started by a class of persons who are not Mohammedans, promotes feelings of enmity and hatred between Hindus and Mohammedans, and is liable to punishment under the section.¹⁹⁸ In order to ascertain the intention of the accused, the offending article must be read as a whole and the circumstances attending that publication must also be taken into account.¹⁹⁹

An FIR was filed against the author, publisher and printer of the book "Shivaji: Hindu King in Islamic India" on the ground that certain passage were objectionable. This led to blackening of the face of a local scholar, ransacking of a research institute and destruction of manuscripts, etc. The members of the institute had helped the author made contributions to enable the author to complete the work. The author was an American professor based in the USA. He tendered apology, by fax and the publishers immediately withdrew all the copies from the market. In proceedings against the author, etc., it was held that the book was purely a scholarly pursuit. There was no intention or motive to create trouble for the author and others. The State was directed not to proceed against them. The Supreme Court explained the gist of the offence under the section as follows:

The gist of the offence under section 153-A is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under [section 153-A IPC, 1860](#), and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of to fall within the ambit of section 153-A must be read as a whole. One

cannot rely on strongly worded and isolated passage for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

The effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of the ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

The common feature in both the sections, viz., sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.²⁰⁰ In *State of Maharashtra v Sangharaj Damodar Rupawate*,²⁰¹ the Supreme Court again considered the question whether a notification issued by the Maharashtra Government to forfeit the book "Shivaji: Hindu King in Islamic India". It was held that the notification does not identify the communities between which the book had caused or is likely to cause enmity. It cannot be found out from the notification as to which communities got outraged by the publication of the book or it had caused hatred and animosity between the particular communities or groups—statement in the notification to the effect that the book is 'likely to result in breach of peace and public tranquillity and in particular between those who revere Shri Chhatrapati Shivaji Maharaj and those who may not' is too vague a ground to satisfy the aforesaid tests. The order quashing the notification was upheld by the Supreme Court.

In *Ramesh Chotalal Dalal v UOI*,²⁰² the Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of [section 153A of IPC, 1860](#), would not apply to it. It was also not prejudicial to the national integration falling under [section 153B of IPC](#). Approving the observations of Vivian Bose, J in *Bhagvati Charan Shukla v Provincial Government*,²⁰³ the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the clapham omnibus". Again in *Bilal Ahmed Kaloo v State of AP*,²⁰⁴ it was held that the common feature in both the sections, viz., sections 153A and 505 (2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

2. Scurrilous attack on basic religious books.—Section 153A certainly affords protection to the basic religious books of all the religions against scurrilous attacks. In *Chandanmal Chopra v State of WB*,²⁰⁵ it was alleged that the Koran, the basic religious book of Muslim religion promotes religious disharmony by advocating destructions of idols, etc., and thereby outrages not only the religious feelings of non-Muslims but also encourages hatred, disharmony, feeling of enmity between different religious communities in India, and the petitioner sought for directing the State of West Bengal to forfeit every copy of Koran. It was also alleged that the publication of Koran amounts to commission of offences punishable under [sections 153A and 295A of IPC, 1860](#). In support of their contention the petitioners quoted some isolated passages from the Koran. In rejecting this contention the High Court of Calcutta held that sections 153A and 295A of the Code have no application in the present case. The book is the basic text book of the Mohammedans and is held sacred by them like Bible to Christians and Gita, Ramayana and Mahabharata to Hindus. Because of Koran no public tranquillity

has been disturbed up to now and there is no reason to apprehend such disturbance in future. On the other hand the action of the petitioners may be said to have attempted to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will amongst different religions, i.e., Muslims on the one hand and non-Muslims on the other within the meaning of [section 153A, IPC, 1860](#). Forfeiture of Koran would go against the Preamble of the [Constitution](#) and violate [Article 25 of the Constitution](#) which guarantees freedom of conscience and religion to one and all.

3. Evidence of hatred, etc., not needed.—A Special Bench of the Bombay High Court has held that under this section it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. Intention to promote enmity or hatred, apart from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for a person must be presumed to intend the natural consequences of his act. If a writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under this section that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under this section.²⁰⁶.

Immediately after the demolition of Babri masjid and violent riots in Bombay, editorials appeared in the Marathi newspaper 'Samna' which were in high flown and caustic language but were not directed against the Muslim Community as a whole but only against anti-national elements amongst them and also against the attitude of police, army and Government. The articles were held to be not coming within the mischief of section 153-A and section 153-B.²⁰⁷.

[s 153A.2] Previous Sanction:

Previous sanction under [section 196 Cr PC, 1973](#), is a must before taking cognizance of the offences under [section 153](#) and [153B IPC, 1860](#).²⁰⁸

177. Subs. by Act 35 of 1969, sec. 2, for section 153A (w.e.f. 4-9-1969). Earlier section 153A was substituted by Act 41 of 1961, sec. 2 (w.e.f. 12-9-1961).

178. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

179. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

180. *The Trustees of Safdar Hashmi Memorial Trust v Govt of Nct of Delhi*, [2001 Cr LJ 3689](#) (Del).

181. *Manzar Sayeed Khan v State of Maharashtra*, [\(2007\) 5 SCC 1 \[LNIND 2007 SC 437\]](#) : AIR 2007 SC 2074 [[LNIND 2007 SC 437](#)] : 2007 Cr LJ 2959 .

182. *Balwant Singh v State of Punjab*, [AIR 1995 SC 1785 \[LNIND 1995 SC 1420\]](#) : (1995) 3 SCC 214 [[LNIND 1995 SC 1420](#)] : (1995) 1 SCC (Cr) 432.

183. *Ram*, (1924) Kant 31. Mens rea is a necessary requirement of this offence. *State (Delhi Admn) v Shrikanth Shastri*, [1987 Cr LJ 1583](#) .

184. *Maniben Kara*, [\(1932\) 34 Bom LR 1642](#) ; *Nepal Chandra Bhattacharya*, [\(1939\) 1 Cal 299](#) .

185. *Narayan Vasudev Phadke*, [\(1940\) 42 Bom LR 861](#) .

186. *Banomali Maharana*, (1942) 22 Pat 48.

187. *Express Publications (Madurai) Ltd v State of Orissa*, [2006 Cr LJ 2548](#) (Ori).

188. *Hardik Bharatbhai Patel v State of Gujarat*, [2016 Cr LJ 225](#) (Guj) : 2015 (4) Crimes 462 (Guj).

189. *Shiv Kumar*, 1978 Cr LJ 701 (All).
190. *Baburao Patel*, 1980 Cr LJ 529 : AIR 1980 SC 763 [LNIND 1980 SC 84] .
191. *Gautam*, (1937) All 69 (SB).
192. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (FB) (Bom); *Gopal Godse v UOI*, AIR 1971 Bom 56 [LNIND 1969 BOM 50] .
193. *Harnam Das*, (1957) 1 All 528 (FB).
194. *Azizul Haque*, 1980 Cr LJ 448 (SC).
195. *Rex v Lemon*, (1971) 1 All ER 898 .
196. *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 (Bom—SB); *Nand Kishore Singh v State of Bihar*, 1985 Cr LJ 797 (Pat-SB).
197. *Kanchanlal Chunilal*, (1930) 32 Bom LR 585 .
198. *Shib Sharma*, (1941) 16 Luck 674 .
199. *Ghulam Sarwar*, AIR 1965 Pat 393 .
200. *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 ; *Sajjan Kumar v CBI*, (2010) 9 SCC 368 [LNIND 2010 SC 892] : (2010) 3 SCC (Cr) 1371 : (2010) 11 SCR 669 : 2011 AIR (SCW) 3730, Anti-Sikh Riots charges framed against Sajjan Kumar upheld by the SC. In *S Khushboo v Kanniammal*, JT 2010 (4) SC 478 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : (2010) 5 SCR 322 : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299, it is found that section 153A IPC, 1860, have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.
201. *State of Maharashtra v Sangharaj Damodar Rupawate*, (2010) 7 SCC 398 [LNIND 2010 SC 1557] : 2010 AIR (SCW) 4960 : (2010) 8 SCR 328 [LNIND 2010 SC 1557] : 2010 Cr LJ 4290 : (2010) 3 SCC (Cr) 401. In *Anand Chintamani Dighe v State of Maharashtra*, 2002 Cr LJ 8 (Bom), the Government of Maharashtra issued notification under section 95(1) of the Code declaring that every copy of the Marathi play entitled "Mee Nathuram Godse Bolto" be forfeited to the Government. The notification, *inter alia*, stated that the play in question contained derogatory references towards Mahatma Gandhi and certain communities and was likely to disturb public tranquillity and that it was written with a deliberate and malicious intention to outrage the feelings of the followers of Mahatma Gandhi, The publication would be punishable under sections 153-A and 295-A of IPC, 1860. The challenge to the notification was repelled by the Bombay High Court.
202. *Ramesh Chotalal Dalal v UOI*, AIR 1988 SC 775 [LNIND 1988 SC 74]
203. *Bhagvati Charan Shukla v Provincial Government*, AIR 1947 Nag 1 .
204. *Bilal Ahmed Kaloo v State of AP*, (1997) 7 SCC 431 [LNIND 1997 SC 1060] .
205. *Chandanmal Chopra v State of WB*, AIR 1986 Cal 104 [LNIND 1985 CAL 180] , 1986 Cr LJ 182 (Cal).
206. *Gopal*, (1969) 72 Bom LR 871 (SB).
207. *Joseph Bain D'Souza v State of Maharashtra*, 1995 Cr LJ 1316 Bom. The court relied on *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 but distinguished; *Babu Rao Patel v State (Delhi Admn)*, AIR 1980 SC 763 [LNIND 1980 SC 84] : 1980 Cr LJ 529 . Trustees of *Safdar Hashmi Memorial Trust v Govt of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the object of the provision is to prevent breaches of public tranquillity which might result from excited feelings of enmity between classes of people. Malicious intention or mens rea has to be proved. *Mohd Khalid Hussain v State of AP*, 2000 Cr LJ 2949 (AP), offence of promoting enmity between people on the ground of religion. There was nothing to show the actual words uttered or acts committed. There were only vague allegations. FIR quashed. *Bilal Ahmed Kaloo v State of AP*,

[1997 Cr LJ 4091](#) : AIR 1997 SC 3483 [LNIND 1997 SC 1060] , inciting the feelings of one group without any reference to another, attracts neither section 153A nor section 505.

208. *Swaraj Thackeray v State of Jharkhand*, [2008 Cr LJ 3780](#) (Jhar); *Shailesh Shah v Swami Krishna Bharti*, [1981 Cr LJ 113](#) (Guj).

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) harbouring 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).

209. [s 153-AA] Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.

Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144-A of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation.—"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes fire - arms, sharp edged weapons, lathis, dandas and sticks.]

COMMENT.—

Cr PC (Amendment) Act 2005—clause 44.—This clause amends **IPC** as follows, namely:—

Clause 16 is intended to enable the District Magistrate to prohibit mass drill (or training) with arms in public places. A new section 153-AA is, therefore, being added to the **Indian Penal Code** to prescribe punishment with imprisonment upto six months and fine upto two thousand rupees for the contravention of the prohibitory order. [Notes on Clauses].

209. Ins. by **Cr PC (Amendment) Act, 2005** (25 of 2005), section 44(a).

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- (5) harbouring 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).
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- (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).

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- (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).

210. [s 153B] Imputations, assertions prejudicial to national integration.

- (1) **Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—**
 - (a) **makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or**
 - (b) **asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or**

- (c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,
- shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- (2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

COMMENT—

Prejudicing national integration.—This section has been newly added by Act 31 of 1972. This is a cognizable and non-bailable offence.

[s 153B.1] Sanction for prosecution.—

The allegation was that of instigating Hindus to convert to Christianity. The Court said that the previous sanction of the Central Government was necessary. But it was necessary for the court to take cognizance of the offence. The bar of sanction does not apply against registration of a criminal case or investigation by a police agency. The police asserted the accused and produced him before the Magistrate. The Magistrate remanded him to judicial custody. The passing of order of remand did not amount to taking of cognizance.²¹¹.

^{210.} Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

* Effective date yet to be notified.

^{211.} *State of Karnataka v Pastor P Raju*, 2000 Cr LJ 4045 SC.

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) harbouring 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).

210. [s 153B] Imputations, assertions prejudicial to national integration.

- (1) **Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—**
 - (a) **makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or**
 - (b) **asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or**

- (c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,
- shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- (2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

COMMENT—

Prejudicing national integration.—This section has been newly added by Act 31 of 1972. This is a cognizable and non-bailable offence.

[s 153B.1] **Sanction for prosecution.**—

The allegation was that of instigating Hindus to convert to Christianity. The Court said that the previous sanction of the Central Government was necessary. But it was necessary for the court to take cognizance of the offence. The bar of sanction does not apply against registration of a criminal case or investigation by a police agency. The police asserted the accused and produced him before the Magistrate. The Magistrate remanded him to judicial custody. The passing of order of remand did not amount to taking of cognizance.²¹¹.

^{210.} Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

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- (5) harbouring 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 154] Owner or occupier of land on which an unlawful assembly is held.

Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

COMMENT—

Liability of owner or occupier of land used for unlawful assembly.— Many duties of the police are by law imposed on land-holders. The present section proceeds apparently upon a presumption that, in addition to any such duty, the owner or occupier of land is cognizant in a peculiar way of the designs of those who assemble on his land, and is able not only to give the police notice, but also to prevent and to disperse and suppress the assembly.²¹².

Section 45 of the Cr PC, 1973, casts upon the owners and occupiers of land the duty of preventing a riot on their lands.

Knowledge, on the part of the owner or occupier of the land, of the acts or intentions of the agent, is not an essential element of an offence under this section, and he may be convicted under it though he may be in entire ignorance of the acts of his agent or manager.²¹³. According to some Police Regulations the Police are required to serve a warning notice on the landlord, owner, occupier or his agent or other person claiming interest in landed property contemplated in this and the two subsequent sections so that they may adopt every means in their power to prevent the unlawful assembly or rioting taking place on such property.²¹⁴. This being a laudable objective there can possibly be no objection to the issuance of such a notice. It should, however, be remembered that a police-officer cannot and should not in the name of serving such a notice injunct the owner or occupier, even temporarily, from enjoying his property.²¹⁵. The police have no such power under the law. To make a person cognizant about his duties under the law is one thing and to restrain the owner from enjoying his property is entirely a different thing.

^{212.} M&M 128.

^{213.} *Kazi Zeamuddin Ahmed*, (1901) 28 Cal 504 ; *Payag Singh*, (1890) 12 All 550 .

^{214.} Rule 252, Bengal Police Regulations, vol I 1943, p 108.

^{215.} *MK Ibrahim*, 1979 Cr LJ 175 (Kant); *Indu Bhushan v State*, 1995 Cr LJ 1180 (Cal).

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- (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) harbouring 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 155] Liability of person for whose benefit riot is committed.

Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land, respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

COMMENT—

Liability of beneficiary of riot.—Under the preceding section the owner of land is punishable for the taking place of an unlawful assembly or riot on his land. This section requires that the unlawful assembly or riot should take place in the interest of the owner or any person claiming interest in the land. The section, therefore, imposes unlimited fine. The preceding section refers to an unlawful assembly, as well as a riot; this section refers to riot only.

The principle on which this and the following sections proceed is to subject to fine all persons in whose interest a riot is committed and the agents of such persons, unless it can be shown that they did what they lawfully could to prevent the offence.

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- (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 156] Liability of agent of owner or occupier for whose benefit riot is committed.

Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

COMMENT—

The provisions of the last two sections are made applicable by this section to the agent or manager of the owner or occupier of land.

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II. Rioting (sections 146, 147).

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- (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 157] Harbouring persons hired for an unlawful assembly.

Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT—

Harbouring hired persons.—Section 150 makes the hiring of persons to join an unlawful assembly punishable, whereas this section makes punishable the harbouring

of such hired persons. It has a wider application.

The section clearly refers to some unlawful assembly in the future and provides for an occurrence which may happen, not which has happened. An act of harbouring a person, with the knowledge that, in some time past, he had joined or was likely to have been a member of an unlawful assembly, is not an offence under this section.²¹⁶.

^{216.} *Radharaman Shaha*, (1931) 58 Cal 1401 .

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

II. Rioting (sections 146, 147).

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- (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 158] Being hired to take part in an unlawful assembly or riot;

Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

or to go armed.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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 two parts. Higher penalty is awarded where the accused is armed with a deadly weapon.

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- (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) 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.

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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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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:

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"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.

[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. [§ 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.]

4. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 3 (w.r.e.f. 3-2-2013).
5. Subs. by Act 22 of 2018, section 2, for "section 376B, section 376C, section 376D" (w.r.e.f. 21-4-2018).

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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. [§ 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.]

4. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 3 (w.r.e.f. 3-2-2013).
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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. [§ 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.]

4. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 3 (w.r.e.f. 3-2-2013).
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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.

6. [§ 166B] Punishment for non-treatment of victim.

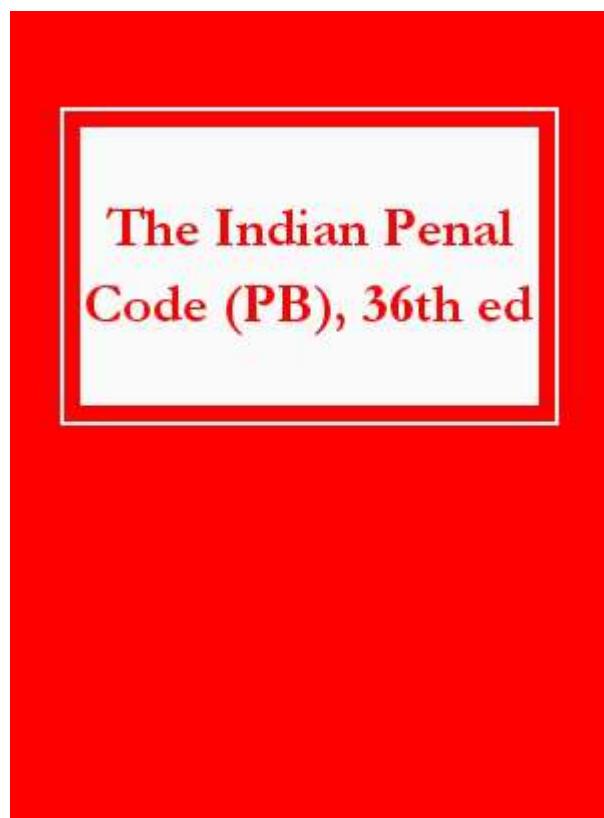
Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]

COMMENT—

Sections 166A and 166B are enacted based on the recommendations given by the Justice J.S. Verma Committee, constituted in the aftermath of the December 2012 Delhi Rape Case by the [Criminal Law \(Amendment\) Act, 2013](#) (Nirbhaya Act, 2013).

6. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 3 (w.r.e.f. 3-2-2013).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 6. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 3 (w.r.e.f. 3-2-2013). [[s 166B] Punishment for non-treatment of victim.

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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.

6. [§ 166B] Punishment for non-treatment of victim.

Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]

COMMENT—

Sections 166A and 166B are enacted based on the recommendations given by the Justice J.S. Verma Committee, constituted in the aftermath of the December 2012 Delhi Rape Case by the [Criminal Law \(Amendment\) Act, 2013](#) (Nirbhaya Act, 2013).

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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 167] Public servant framing an incorrect document with intent to cause injury.

Whoever, being a public servant, and being, as 7.[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

The preceding section deals generally with the disobedience of any direction of law; this section deals with a specific instance, viz., that of framing an incorrect document with intent to cause injury. It is similar to section 218, which deals also with cases of framing incorrect record or writing with intent to save person from punishment or property from forfeiture, whereas section 167 deals with cases of framing incorrect document only with intent to cause injury. In a case, the allegation that the accused, who is a Deputy Superintendent of Police, suppressed the statement recorded under [section 161 of the CrPC, 1973](#) in a criminal case registered by the police and produced a fabricated statement along with the charge sheet before the Magistrate. The Court held that section 167 is attracted only when a public servant prepares a document in a

manner which he thinks or believes to be incorrect. Essentially, the petitioner's allegation is that the accused suppressed the real statement prepared under [section 161 of the Criminal Procedure Code](#) and produced along with the charge sheet a fabricated statement. That comes only within the purview of section 193. Therefore, section 167 is not attracted to the allegations raised by the petitioner in his complaint.⁸

7. Subs. by the [Information Technology Act](#) (Act 21 of 2000), section 91 and First Schedule for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", w.e.f. 17-10-2000. The words "electronic record" have been defined in section 29A.

8. *Joseph v State of Kerala*, [2013 Cr LJ 749 : 2012 \(4\) KHC 157](#) .

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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 168] Public servant unlawfully engaging in trade.

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

COMMENT—

Public servant engaging in trade.—This section punishes those public servants who are legally bound not to engage in trade. If public servants were allowed to trade they would fail to perform their duties with undivided attention. Being in official position they could easily obtain unfair advantages over other traders.

The word 'trade' covers every kind of trade, business, profession, or occupation.⁹ This proposition of law no longer seems to be correct in view of the Supreme Court's decision in *Mahesh Kumar Dhirajlal's case*¹⁰, wherein their Lordships held that trade in its narrow sense means "exchange of goods for goods or for money with the object of making profit" and in its widest sense means "any business with a view to earn profit". Thus, where a tracer in the office of Sub-divisional Soil Conservation Officer took earned leave and during that period of leave obtained training as an Electrical Signal Maintainer from the Railway Administration, it was held that he could not be convicted under this section as he had not engaged himself in any trade even though he was

receiving stipend from the Railways during the period of his training.¹¹ Following this ruling, it has been held that engaging oneself as an agent of an insurance company on commission basis does not amount to engaging in trade.¹²

[s 168.1] Private Practice of Government Doctors.—

In *Kanwarjit Singh Kakkar v State of Punjab*,¹³ the Supreme Court examined the question whether the indulgence in private practice of Government Doctors would amount to indulgence in 'trade' while holding the post of a government doctor, so as to constitute an offence under [section 168 of the IPC, 1860](#). The Supreme Court held that "in our view, offence under [Section 168 of the IPC, 1860](#) cannot be held to have been made out against the appellants even under this Section as the treatment of patients by a doctor cannot by itself be held to be engagement in a trade as the doctors' duty to treat patients is in the discharge of his professional duty which cannot be held to be a 'trade' so as to make out or constitute an offence under [Section 168 of the IPC, 1860](#)".

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9. *Mulshankar Maganlal*, (1950) Bom 706 : [\(1950\) 52 Bom LR 648](#) .
 10. *State of Gujarat v Mahesh Kumar Dhirajlal*, [AIR 1980 SC 1167 \[LNIND 1980 SC 69\]](#) : 1980 Cr LJ 919 .
 11. *State of Gujarat v Mahesh Kumar Dhirajlal*, [AIR 1980 SC 1167 \[LNIND 1980 SC 69\]](#) : 1980 Cr LJ 919 . See also *Rasik Behari Mathur v State of Rajasthan*, [2007 Cr LJ 3108 \(Raj\)](#).
 12. *State of Maharashtra v Chandrakant Solanki*, [\(1995\) 1 Cr LJ 832 \(Bom\)](#).
 13. *Kanwarjit Singh Kakkar v State of Punjab*, [2011 CrLJ 3360 : SCC 158 : \(2012\) 1 SCC \(Cr\) 805.](#)

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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 169] Public servant unlawfully buying or bidding for property.

Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

COMMENT—

Buying or holding property.—This section is merely an extension of the principle enunciated in the last section. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase.

It is necessary that there should be some statutory law or rules or regulations framed under the law and not merely some administrative instructions or guidelines prohibiting public servants from purchasing certain property. In this case, a Code of Conduct was issued by the State Government in the exercise of its executive power under [Article 162 of the Constitution](#) under which Ministers were prohibited from buying Government properties. There were no mandatory terms providing for any action in case of non-compliance. It was held that the Code of Conduct did not have the effect of law. Its violation could not generate legal proceedings there being nothing unlawful illegal

within the meaning of section 43. The purchase of property of a Government company by a firm in which the then Chief Minister was a partner did not constitute an offence under section 169 in the absence of any law debarring the Chief Minister from making such a purchase.¹⁴

[s 169.1] TANSI land deal case.—

The allegation was that the Tamil Nadu Chief Minister, Ms. Jayalalithaa, while holding the chief minister's post, had violated the code of conduct and purchased 3.0786 acres of land and buildings to the state-owned Tamil Nadu State Industries Corporation for Jaya Publications. While reversing the conviction passed by the High Court, the Supreme Court held that the offence under [section 169 IPC, 1860](#) is incomplete without the assistance of some other enactment which imposes the legal prohibition required. Therefore, in order to come within the clutches of [section 169 IPC, 1860](#), there should be a law which prohibits a public servant from purchasing certain property and if he does it, it becomes an offence under [section 169 IPC, 1860](#). [Section 481 of the Criminal Procedure Code](#), [section 189 of the Railways Act, 1989](#) and [section 19 of the Cattle Trespass Act](#), 1871 and instances of that nature in several enactments are available in which persons mentioned therein shall not directly or indirectly purchase any property at a sale under those Acts. Similarly [section 136 of the Transfer of Property Act, 1882](#) provides that no Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims so dealt with by him as stated above. Thus, in these circumstances where a law has prohibited purchase of property or to bid at an auction, the prohibition contained therein will be attracted and will become an offence under [section 169 IPC, 1860](#). The Code of Conduct not having a statutory force and not enforceable in a Court of law, nor having any sanction or procedure for dealing with a contravention thereof by the Chief Minister, cannot be construed to impose a legal prohibition against the purchase of property of the Government so as to give rise to a criminal offence under [section 169 IPC, 1860](#).¹⁵

14. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023].

15. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023].

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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 170] Personating a public servant.

Whoever pretends to hold any particular office as a public servant,¹ knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act² under colour of such office,³ shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[s 170.1] Ingredients.—

The section requires two things—

1. A person (a) pretending to hold a particular office as a public servant, knowing that he does not hold such office, or (b) falsely personating any other person holding such office.
2. Such person in such assumed character must do or attempt to do an act under colour of such office.

COMMENT—

Personating public servant.—Mere personation is not an offence under this section. The person personating must do or attempt to do some act under colour of the office of the public servant whom he personates. Section 140 punishes the person who wears the garb or carries the token used by a soldier. This section punishes a person who does any act in the assumed character of a public servant.

1. 'Pretends to hold any particular office as a public servant'.—It must be an existing office. If it is uncertain who legally fills the office, a person doing an official act, in pursuance of what he honestly believes to be his lawful title to the office, does not come within this section.

2. 'Any act'.—It is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. The accused was arrested when he was demanding one anna's worth of fruit from a fruit-seller for one pie on the representation that he was a head constable, which in fact he was not. It was held that if he pretended to be a police-officer and tried as such police-officer to extort money or things from a fruit-seller, he was guilty of an offence under this section.¹⁶. A person who poses as a Government servant and by so doing obtains of another's services, which he would not otherwise have obtained and which the other person was bound to give on demand by a Government officer, commits an offence under this section.¹⁷.

3. 'Under colour of such office'.—An act is done 'under colour of an office,' if it is an act having some relation to the office, which the actor pretends to hold. If it has no relation to the office, as if A pretending to be a servant of Government, travelling through a district, obtains money, provisions, etc., the offence may amount to cheating under section 415, but is not punishable under this section.¹⁸. The act done under colour of office must be an act which could not have been done without assuming official authority.

Where the accused posed as a police officer and in that garb looted certain articles from the complainant and the stolen articles, one police ballot and monogram were recovered from him, his conviction under the section was held to be proper.¹⁹.

[s 170.2] Retired IAS officer using IAS with his name.—

To constitute an offence under section 170, a person must either pretend to hold a particular office as a public servant knowing that he does not hold such office or falsely personate any other person holding such office. Over and above that, that person in such assumed character must do or attempt to do an act under the colour of such office. There must be pretension or false personation to be a particular person, that too a public servant, which he is not, and then doing of or attempt to do some act under colour of such office of that public servant, to proceed against a person under [section 170 of the Indian Penal Code](#). Thus, where a retired IAS officer, had used IAS in his letterhead when he continued as Director of CAPE and also corresponded in that manner, is no ground to impute that he has committed an offence under [section 170 of the Penal Code](#).²⁰.

16. *Aziz-ud-din v State*, (1904) All 294 .

17. *Bashirullakhan*, (1942) Nag 484. *Ajitender Singh v State of Punjab*, **2000 Cr LJ 1827** (P&H) : 2000 (2) RCR (Criminal) 34, mere assumption of the character of a public servant is not enough, there must also be an attempt to commit an official act. *Jata Shanker Jha v State of Rajasthan*, **2000 Cr LJ 2108** (Raj) : **2000 (4) WLC 75** , accused personated as secret ASI in the Education Department used forged papers to divert the salary of others to himself. Conviction. *Pratap Singh v State*, **1998 Cr LJ 633** (P&H), acting under colour of office as *Lambardar*, offence under the section made out because the accused identified parties in sale deeds as an officer and also had certain sureties arrested.

18. M&M 142.

19. *Karuna Krishna Biswas v State of WB*, **1996 Cr LJ 2823** (Cal).

20. *Premachandra Kurup v State*, **2013 Cr LJ 1465** .

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.

[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.

Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

COMMENT—

Wearing garb or token of public servant.—Under this section the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing a garb, or carrying a token, with the intention or knowledge supposed, is sufficient. It is not necessary that something should pass in words. If any act is done then the preceding section will apply.

Under [section 140 IPC, 1860](#), wearing the garb or carrying the token of a soldier is made punishable.

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171A] "Candidate", "Electoral right", defined.

For the purposes of this Chapter—

2. [(a) "candidate" means a person who has been nominated as a candidate at an election;]¹

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at any election.

COMMENT—

Candidate, electoral right.—This chapter was introduced in the Code by the Indian Elections Offences and Inquiries Act (XXXIX of 1920). It seeks to make punishable under the ordinary penal law, bribery, undue influence, and personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election; and, further, to debar persons guilty of malpractices from holding positions of public responsibility for a specific period.³ This chapter has to be read along with the [Representation of the People Act, 1951](#) as it contains additional penalties for certain offences under this chapter, e.g., sections 171E and 171F of this Code. Thus, a conviction under [section 171E](#) or [section 171F, IPC, 1860](#), amounts to a disqualification under [section 8 of the Representation of the People Act, 1951](#).⁴

1. 'Election'.—'Election' is defined as including election to all classes of public bodies where such a system is prescribed by law (*vide* Explanation 3 to section 21 *supra*).

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

2. Subs. by Act 40 of 1975, section 9, for clause (a) (w.e.f. 6-8-1975).

3. Statement of Objects and Reasons. Gazette of India, 1920, Part V, p 135, section 4. *Bhupinder Singh v State, 1997 Cr LJ 1416* (P&H), accused snatched ballot papers from the custody of a polling officer and tore them. This amounted to use of criminal force.

4. For a comparison between the sections 171A to 171E with the provisions of [Representation of People Act, 1950](#). See *Indira Nehru Gandhi v Raj Narain, AIR 1975 SC 2299* [[LNIND 1975 SC 432](#)] : (1975) Supp SCC 1 : [1976 \(2\) SCR 347](#) [[LNIND 1975 SC 432](#)].

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

[s 171B] "Bribery".

(1) **Whoever—**

- (i) **gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or**
- (ii) **accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:**

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) **A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.**

(3) **A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.**

COMMENT—

Bribery.—This section defines the offence of bribery at an election.

'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. 'Gratification' is already explained in [section 161 of the Penal Code](#) and is not restricted to pecuniary gratifications or to gratifications estimated in money.⁵ Section 171-B(1)(i) of [Indian Penal Code](#) provides that if gratification is given to any person inducing him or any other person to exercise any electoral right, then it will amount to bribery. The term "Electoral right" defined under clause (b) of [section 171-A of Indian Penal Code](#) clearly indicates that the electoral right is of definite nature and it is to be exercised by individual. So, the gratification has to be given to an individual. Here, the offer is made to the party (RPI) and not to any individual. Furthermore, there is nothing in the offer which indicates that any influence is being brought on any individual with respect to exercising his electoral right, that means, to stand, or not to stand as, or to withdraw from being, a candidate or to vote or to refrain from voting at the election. Seeking support of a political party, during the course of election and making an offer to political party of some share in political

power for giving such support cannot be called as giving gratification as contemplated under [section 171-B of Indian Penal Code](#).⁶ The word 'gratification' should be deemed to refer only to cases where a gift is made of something which gives a material advantage to the recipient. There is hardly any need to say that giving of anything whose value is estimable in money is bribery. A gun licence gives no material advantage to its recipient. It might gratify his sense of importance if he has a gun licence in a village where nobody else has a gun licence. So might be the conferment of an honour like Padma Bhushan. A praise from a high quarter might gratify the sense of vanity of a person. But the word 'gratification' as used in section 123 (1) does not refer to such gratification any more than in [section 171-B of the Indian Penal Code](#).⁷

[s 171B.1] Sub-clause (2).—'Offers'.—

By this clause the attempt to corrupt is made equivalent to the complete act.

[s 171B.2] Treating.—

Treating will be bribery if refreshment is given or accepted with the intent required by law.⁸ The gist of the offence of treating is the corrupt inducement to the voter or to refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. 'Treating' is defined in section 171E.

[s 171B.3] Supreme Court on 'freebies'.—

In *S Subramaniam Balaji v Government of Tamil Nadu*,⁹ the Supreme Court held that freebies promised by political parties in their election manifestos shake the roots of free and fair polls, and directed the Election Commission to frame guidelines for regulating contents of election manifestos and undue influence at elections.

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

5. *Statement of Objects and Reasons*, Gazette of India, 1920, Part V, p 135, section 8.

6. *Deepak Ganpatrao v Government of Maharashtra*, 1999 Cr LJ 1224 (Bom).

7. *Iqbal Singh v Gurdas Singh*, AIR 1976 SC 27 [LNIND 1975 SC 354] : (1976) 3 SCC 284 [LNIND 1975 SC 354] : 1976 (1) SCR 884 [LNIND 1975 SC 354].

8. *Ibid.*

9. *S Subramaniam Balaji v Government of Tamil Nadu*, 6 Mad LJ 307 : 2013 (8) Scale 249 [LNIND 2013 SC 627].

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171C] Undue influence at elections.

- (1) **Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.**
- (2) **Without prejudice to the generality of the provisions of sub-section (1), whoever—**
 - (a) **threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or**
 - (b) **induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,**
shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).
- (3) **A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.**

COMMENT.—

Exercise of undue influence.—This section defines 'undue influence at elections'.

Undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand, or not to stand as, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the electors. The inducing or attempting to induce a person to believe that he will become the object of divine displeasure is also interference.¹⁰

Where an attempt or threat is proved, it is unnecessary to prove that any person was in fact prevented from voting because the offence is complete.

The expression 'free exercise of his electoral right' does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. This exercise of the right by the candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of an electoral right.¹¹ The Supreme Court has accepted the proposition that something more than a mere act of canvassing would be necessary and that something more is specified in clauses (a) and (b) of the section. Applying this to the facts, the court laid down that the appeal, even if true, of the Chairman of the Minorities Commission who happened to be the retired judge of the

Supreme Court, to the voters to cast their votes in favour of a particular candidate [who was returned], does not make out the offence enumerated in this section.¹² A message sent to the secretary of a party to boycott the election does not amount to interference within the meaning of this section as members of the party are still free to vote as they like.¹³

[s 171C.1] CASES.—

A candidate informed the voters that he was *Chalanti Vishnu* and representative of Lord Jagannath himself and that any person who did not vote for him would be a sinner against the Lord and the Hindu religion; it was held that such propaganda would amount to an offence under section 171F read with this section.¹⁴

The statement was made by a member of the ruling party to the Republican party of India (RPI) that if it supported the alliance in parliamentary elections, the latter would make one member of the RPI as Deputy Chief Minister of State. It was held that this did not amount to giving offer to any individual for inducing him to exercise his electoral right in a particular manner.¹⁵

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1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.
 10. *Ram Dial v Sant Lal*, AIR 1959 SC 855 [LNIND 1959 SC 73] : 1959 Supp (2) SCR 748 .
 11. *Shiv Kirpal Singh v VV Giri*, AIR 1970 SC 2097 [LNIND 1970 SC 367] : (1970) 2 SCC 567 [LNIND 1970 SC 367] . See also *M Anbalagan v State*, 1981 Cr LJ 1179 (Mad), *Babu Rao Patel*, AIR 1968 SC 904 [LNIND 1967 SC 314] : 1968 (2) SCR 133 [LNIND 1967 SC 314] .
 12. *Charan Lal Sahu v Giani Zail Singh*, AIR 1984 SC 309 [LNIND 1983 SC 371] : (1984) 1 SCC 390 [LNIND 1983 SC 371] .
 13. *M Anbalagan*, Supra.
 14. *Raj Raj Deb v Gangadhar*, AIR 1964 Ori 1 [LNIND 1962 ORI 29] : 1964 Cr LJ 57 .
 15. *Deepak Ganpatrao v Government of Maharashtra*, 1999 Cr LJ 1224 (Bom).

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171D] Personation at elections.

Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence or personation at an election:

16. [Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as proxy for such elector.]

COMMENT.—

Personation.—This section defines 'personation at elections'. It covers a person who attempts to vote in another person's name or in a fictitious name, as well as a voter who attempts to vote twice and any person who abets, procures, or attempts to procure, such voting.

The accused must have been actuated by a corrupt motive.^{17.}

What is to be proved in a prosecution for the offence under section 171-D is that the indictee "applied for voting (ballot) paper" in the name of any person. It is not the law that it must be proved invariably that he had voted or had attempted to vote in the election. All that need be proved is that the indictee had applied for a voting paper. The legislature appears to have carefully worded the statutory provision.^{18.} The applicant was accused of having abetted the personation of a voter at a Municipal election in that, not being himself acquainted with the person who came forward to vote, he had, on the advice of others, put his name to a "signature sheet" in token that the thumb mark made by the voter was that of the person entitled to vote under a certain name on the electoral roll. It was held that, inasmuch as the acts done by the applicant apparently constituted the specific offence provided for by section 171F, he could only be tried for that offence, and could not be tried for abetment of the general offence provided for by section 465.^{19.}

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

16. Ins. by the [Election Laws \(Amendment\) Act, 2003](#) (Act 24 of 2003), section 5 (w.e.f. 22-9-2003).

17. *Venkayya*, (1929) 53 Mad 444.

18. *E Anoop v State*, 2007 Cr LJ 2968 : 2006 (3) Ker LJ 50 .

19. *Ram Nath*, (1924) 47 All 268 . See *Achcha Bhoomanna v Court of Distt. Munsif (Election Court)*, AIR 1992 AP 157 [LNIND 1991 AP 162] .

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171E] Punishment for bribery.

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

***Provided* that bribery by treating shall be punished with fine only.**

***Explanation.*—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.**

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171F] Punishment for undue influence or personation at an election.

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

COMMENT.—

Punishment for bribery, personation.— The Chief Minister of a State was campaigning for himself on a date before elections. He was directed by the Election Commissioner under threat of taking drastic action to return to his State headquarters. He was prevented by the order from exercising his voting right at the place where he was registered as a voter. There was no allegation that he used any violence in the election process. Directions were also oral and no reasons were given. It was held that the directions constituted a violation of section 171F.²⁰ The words "all forms of entertainment" in the Explanation to [section 123 \(1\) of the Representation of the People Act](#) apparently refer to offence of treating found in [section 171-E of the Indian Penal Code](#).²¹ Accused entered into a polling booth and handed over a slip showing the name of a voter other than himself. He could not give any explanation as to why he entered into the polling booth. His conduct of appearing before polling officials and handing over the slip which does not relate to him, is sufficient declaration of his intention to apply vote for him. It was held that offence committed by him required a deterrent substantive sentence of imprisonment.²²

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

20. *Court on its Own Motion v UOI*, 2001 Cr LJ 225 (P&H) : (2000) ILR 2 P&H 288. The Court could not direct the Magistrate to take cognizance under section 190 because of the bar under section 197. Aggrieved party would have to launch prosecution.

21. *Iqbal Singh v Gurdas Singh*, AIR 1976 SC 27 [LNIND 1975 SC 354] : (1976) 3 SCC 284 [LNIND 1975 SC 354] : 1976 (1) SCR 884 [LNIND 1975 SC 354].

22. *E Anoop v State*, 2007 Cr LJ 2968 : 2006 (3) Ker LJ 50 .

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171G] False statement in connection with an election.

Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

COMMENT.—

False statements in elections.—False statements of fact in relation to the personal character or conduct of a candidate are penalised by this section. General imputations of misconduct unaccompanied by any charges of particular acts of misconduct cannot properly be described as statements of fact within the meaning of this section.²³

An offence under this section is not a species of the more general offence of defamation. There may be cases under this section which do not fall under section 499 and vice versa.²⁴

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

23. AS Radhakrishna Ayyar v Emperor, [AIR 1932 Mad 511](#) : 1932 Mad WN 1086.

24. Bhagolelal Kwalchand Darji v Emperor, [AIR 1940 Nag 249](#) : [1942] ILR Nag 208.

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171H] Illegal payments in connection with an election.

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

COMMENT.—

Illegal payments in elections.—This section makes it illegal for any one, unless authorized by a candidate, to incur any expenses in connection with the promotion of the candidate's election.

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

THE INDIAN PENAL CODE

1. [CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS]

[s 171-I] Failure to keep election accounts.

Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.]

COMMENT.—

Failure to keep accounts.—This section punishes failure to keep accounts of expenses incurred in connection with an election, if such accounts are required to be kept by any law or rule having the force of law.

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 172] Absconding to avoid service of summons or other proceeding.

Whoever absconds¹ in order to avoid being served with a summons, notice or order,² proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to ^{1.} [produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Absconding to avoid summons.—Absconding to avoid service of summons or other proceeding is similar to non-attendance in obedience to an order from a public servant. The object of this section is to punish an offender for the contempt his conduct indicates of the authority whose process he disregards.

The second clause applies where the summons or notice or order is (1) for attendance in Court; or (2) for production of a document.

1. 'Absconds'.—This term is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and ordinary sense is to hide oneself; and it matters not whether a person departs from a place or remains in it, if he conceals himself. If a person, having concealed himself before process issues, continues to do so after it is issued, he absconds.^{2.}

2. 'Summons, notice or order'.—The summons, notice or order referred to, should be addressed to the same person whose attendance is required and who absconds to avoid being served with such a 'summons, notice or order'. A warrant is not an order served on an accused; it is simply an order to the police to arrest him.^{3.} It is not an offence under this section to abscond to avoid arrest under a warrant.^{4.}

[s 172.1] Bar to take Cognizance:

As per section 195(1)(a)(i) of the [Code of Criminal Procedure 1973](#), (Cr PC, 1973) No court shall take cognizance of any offence punishable under S. 172 to 188 (both inclusive) of the [Indian Penal Code](#) (45 of 1860, except on the complaint in writing of 'the public servant concerned' or of some other public servant to whom he is

administratively subordinate. When the Court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself which is to the effect that no Court can take cognizance of any offence punishable under sections 172–188 of the [Indian Penal Code \(IPC, 1860\)](#) except on the written complaint of 'the public servant concerned' or of some other public servant to whom he is administratively subordinate.⁵

1. Subs. by Act 21 of 2000, section 91 and Sch. I, for "to produce a document in a Court of Justice" (w.e.f. 17-10-2000).
2. *Srinivasa Ayyangar*, (1881) 4 Mad 393, 397.
3. *Lakshmi*, (1881) Unrep. Cr C 152.
4. *Annawadin*, (1923) 1 Ran 218.
5. *State of UP v Mata Bhikh*, (1994) 4 SCC 95 [LNIND 1994 SC 311] : JT 1994 (2) SC 565 [LNIND 1994 SC 311] : (1994) 2 Scale 235 : (1994) 1 SCC (Cr) 831 : 1994 (2) SCR 368 [LNIND 1994 SC 311].

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 173] Preventing service of summons or other proceeding, or preventing publication thereof.

Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or
⁶[to produce a document or electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Preventing service of summons.—This section punishes intentional prevention of the service of summons, notice or order.

A refusal to sign a summons,⁷ a refusal to receive a summons⁸ and the throwing down of a summons after service⁹ do not constitute the offence of intentionally preventing the service of a summons under this section. Under the [Cr PC, 1973](#) the mere tender of a summons is sufficient and a refusal by a person to receive it does not expose him to the penalty of this section. Actual delivery is not necessary to complete the service.¹⁰ Chapter X, sections 172–190 of the [IPC, 1860](#) deal with the offences constituting "Contempts of the Lawful authority of Public Servants". A Magistrate could be covered by the definition of a 'Public Servant' given by [section 21 of the IPC, 1860](#). But the sections given in Chapter X of the [IPC, 1860](#) relate to particular kinds of contempt of the lawful authority of Public Servants and none of these cover the kind of

acts which were committed by the accused with the object of the stifling a prosecution.¹¹

6. Subs. by Act 21 of 2000, section 91 and Sch. I, for "to produce a document in a Court of Justice" (w.e.f. 17-10-2000).
7. *Kalya Fakir*, (1868) 5 BHC (Cr C) 34; *Krishna Gobinda Das*, [\(1892\) 20 Cal 358](#) .
8. *Punamatai*, (1882) 5 Mad 199.
9. *Arumuga Nadan*, (1882) 5 Mad 200 (n), 1 Weir 79.
10. *Sahedeo Rai*, [\(1918\) 40 All 577](#) .
11. *Waryam Singh v Sadhu Singh*, [AIR 1972 SC 905 : \(1972\) 1 SCC 796 : 1972 Cr LJ 635 : \(1972\) 1 SCC \(Cr\) 477](#); *TN Godavarman Thirumulpad (89) v UOI*. [\(2006\) 10 SCC 486 : \(2007\) 9 Scale 272](#)

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 174] Non-attendance in obedience to an order from public servant.

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATIONS

- (a) A, being legally bound to appear before the ¹²[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.
- (b) A, being legally bound to appear before a ¹³[District Judge] as a witness, in obedience to a summons issued by that ¹⁴[District Judge], intentionally omits to appear. A has committed the offence defined in this section.

COMMENT.—

Non-attendance.—The offence contemplated by this section is an intentional omission to appear—

- (1) at a particular specified¹⁵. place in India,¹⁶.
- (2) at a particular time,
- (3) before a specified public functionary,
- (4) in obedience to a summons, notice or order (written or verbal),¹⁷ not defective in form,¹⁸ and

(5) issued by an officer having jurisdiction^{19.} in the matter.

A conviction cannot be had unless the person summoned

- (1) was legally bound to attend, and
- (2) refused or intentionally omitted to attend.^{20.}

[s 174.1] CASES.—Wilful departure before, lawful time.—

Where a man in obedience to a summons attended a Magistrate's Court at 10 a.m., but finding the Magistrate not present at the time mentioned in the summons, departed without waiting for a reasonable time, it was held that he was guilty of an offence under this section.^{21.}

[s 174.2] Public servant absent.—

Where a public servant was absent on a date fixed in the summons, the person summoned could not be convicted, though he purposely failed to attend.^{22.}

[s 174.3] Police Notice.—

If the accused were not within the jurisdiction of the police station or adjoining police station while being served with an order under [section 160, Cr PC, 1973](#), they were not legally bound to attend before the requisitioning police-officer and as such on their failure to attend, their conviction under [section 174, IPC, 1860](#), could not be maintained.^{23.}

[s 174.4] Notice by Railway Protection Force.—

Enquiry conducted by an officer of the Railway Protection Force being in the nature of a judicial proceeding under [section 9 of the Railway Property \(Unlawful Possession\) Act, 1966](#), any person summoned by such officer to produce any document or give evidence, shall be bound to produce such document and to state the truth in course of his examination. Failure to do so or furnishing of false documents, etc., will entail prosecution under [sections 174, 175, 179, 180](#) and [193, IPC, 1860](#), as the case may be.^{24.}

12. Subs. by the A.O. 1950, for "Supreme Court".

13. Subs. by the A.O. 1950, for "Supreme Court".

14. Subs. by the A.O. 1950, for "Zila Judge".

15. *Ram Saran*, (1882) 5 All 7.

16. *Paranga v State*, (1893) 16 Mad 463.
17. *Guman*, (1873) Unrep. Cr C 75 : (1870) 5 MHC (Appx) 15.
18. *Krishtappa*, (1896) 20 Mad 31.
19. *Venkaji Bhaskar*, (1871) 8 BHC (Cr C) 19 : (1865) 1 Weir 87.
20. *Sreenath Ghose*, (1868) 10 WR (Cr) 33.
21. *Kisan Bapu*, (1885) 10 Bom 93.
22. *Krishtappa*, sup.
23. *Krishan*, [1975 Cr LJ 620](#) (HP).
24. *BC Saxena*, [1983 Cr LJ 1432](#) (AP).

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25. [s 174-A] Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]

COMMENT.—

Cr PC (Amendment) Act, 2005—Clause 44.—This clause amends the **IPC, 1860** as follows, namely:—

Clause 12 seeks to insert new sub-sections (4) and (5) in section 82 of the Code to provide for the declaration of a person as proclaimed offender, if he fails to appear in spite of the proclamation published under sub-section (1) of that section. In order to curb the tendency on the part of criminals not to attend the Court in response to proclamation published under sub-section (1) or further proclamation issued under sub-section (4) declaring the accused as "Proclaimed Offender" a new section 174-A is being added to the **Indian Penal Code** to prescribe punishment for such offender. [Notes on Clauses.]

If Investigating Officer submits charge sheet without arresting the accused persons (unless he is on bail), it can be submitted only if he has been declared absconder and the case under **section 174-A IPC, 1860** has also been registered as a result of this proclamation.^{26.}

The offence under **section 174A IPC, 1860** which arises out of the proceedings conducted during the main case can be tried and disposed of by the same Court. Lodging of separate FIR for commission of offence under **section 174 IPC, 1860** is not always required.^{27.}

25. Ins. by [Cr PC](#) (Amendment) Act, 2005 (25 of 2005), section 44(b) (w.e.f. 23-6-2006 vide Notfn. No. SO 923(E), dated 21 June 2006.
26. *Iqbal v State of UP*, [2013 Cr LJ 1332](#) (All).
27. *A Krishna Reddy v CBI*, 2017 (5) ADR 635.

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[s 175] Omission to produce ²⁸[document or electric record] to public servant by person legally bound to produce it.

Whoever, being legally bound to produce or deliver up any ²⁹[document or electronic record] of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if the ³⁰[document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATION

A, being legally bound to produce a document before a ³¹[District Court], intentionally omits to produce the same. A has committed the offence defined in this section.

COMMENT—

This section punishes persons who refuse to produce documents which they are legally bound to produce before a public servant. From reading of [section 345 of the Cr PC, 1973](#), it is clear that offences under sections 175, 178, 179, 180 or 228 would constitute contempt, only if they are committed in the view or presence of the Court. This would also show that offences under sections 175, 178, 179, 180 or 228 *per se* do not amount to contempt. They are contempt only if they are committed "in the view or presence of the Court"; otherwise they remain offences under the [IPC, 1860](#) simpliciter.³²

²⁸. Subs. by Act 21 of 2000, section 91 and Sch. I, for "document" (w.e.f. 17-10-2000).

²⁹. Subs. by Act 21 of 2000, section 91 and Sch. I, for "document" (w.e.f. 17-10-2000).

³⁰. Subs. by Act 21 of 2000, section 91 and Sch. I, for "document" (w.e.f. 17-10-2000).

³¹. Subs. by the A.O. 1950, for "Zila Court".

³². *Arun Paswan v State of Bihar*, [AIR 2004 SC 721 \[LNIND 2003 SC 1085\]](#) : (2004) 5 SCC 53 [LNIND 2003 SC 1085].

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[s 176] Omission to give notice or information to public servant by person legally bound to give it.

Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

33. [or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 (now 356) of the [Code of Criminal Procedure, 1898](#) (now 1973)^{34.} with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

COMMENT.—

Omission to give notice or information.—This section applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation,^{35.} and not where the public servants have already obtained the information from other sources.^{36.}

A doctor is not obliged to inform the police when he treats a patient who has met with vehicle accident.^{37.}

[s 176.1] CASE.—

It was not within the scope of the Magistrate to hold investigative officer guilty for violation of his official duties who had already sought extension to complete the investigation. Omission on the part of IO to complete the investigation within 60 days from date of arrest is not covered under provisions of [section 176, IPC, 1860.](#)^{38.} Under section 39 (i)(v) [Cr PC, 1973](#), where a person is aware of commission or an intention to commit an offence under [sections 302, 303](#) and [304, IPC, 1860](#), he is bound to give

information to the nearest Magistrate or police-officer of such commission or intention and failure to do so is punishable under this section. Where the mother of a murder suspect merely said that her son and daughter-in-law went to bed at about 10 P.M. and that early next morning, her son came out and ran away and she found her daughter-in-law lying dead on the bed, it was held that her failure to inform the police did not constitute an offence under [section 176, IPC, 1860](#), as she was neither aware that a murder was going to be committed nor aware that a murder had been committed.³⁹.

33. Added by Act 22 of 1939, section 2.

34. Now see [section 356 of the Code of Criminal Procedure, 1973](#) (2 of 1974).

35. *Phool Chand Brojobassee*, (1871) 16 WR (Cr) 35.

36. *Sashi Bhushan Chuckrabutty*, (1878) 4 Cal 623 ; *Pandya*, (1884) 7 Mad 436; *Gopal Singh*, (1982) 20 Cal 316 .

37. *SN Naik v State of Maharashtra*, 1996 Cr LJ 1463 (Bom).

38. *Manoj Kumar Gautam v State of UP*, 2009 Cr LJ 3176 (Pat).

39. *TS John v State*, 1984 Cr LJ 753 (Ker). See also *Geetha v Sub-Inspector of Excise, Mudigere*, 2007 Cr LJ 3496 (Kar).

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[s 177] Furnishing false information.

Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS

- (a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.
- (b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause, 5, section VII, Regulation III, 1821,⁴⁰ of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.

⁴¹ [Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of ⁴² [India], which, if committed in ⁴³ [India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.]

COMMENT.—

Furnishing false information.—Section 176 deals with the omission to give information; this section deals with the giving of false information. Persons who are not under a legal obligation to furnish information cannot be dealt with under these sections.⁴⁴. Furnishing false information is distinct from omission to give information. Omission to mention about a two-wheeler in the statement of assets and liabilities by a public servant is not an offence under [section 177 IPC, 1860](#).⁴⁵. It is clear that the accused having been aware of the fact that she belongs to "Havyak Brahmin" by caste, furnished false information to the authority and obtained admission by producing false caste certificate. The ingredients of section 177 are proved.⁴⁶. In a case where the allegation was that the complainant filed false information in nomination paper, it was held that a complaint by the Returning officer is mandatory.⁴⁷.

The appellant being a *Sarpanch* of the Gram Panchayat was legally bound to give correct information and issue a correct certificate but he issued a false certificate in favour of one Lal Chand that he does not own any land except the land which he has made fit for cultivation, in fact, though Lal Chand owned 13 *kanals*, 13 *marlas* and also his wife owned lands in the village Baruhi. Therefore, the ingredients of section 177 of the Code were proved as against him.⁴⁸.

[s 177.1] Application of Section 195 and 340 Cr PC, 1973.—

[Section 195\(1\), Cr PC, 1973](#) lays down that no Court shall take cognizance of any offence punishable under sections 172–188, [IPC, 1860](#) except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. The provision of [section 195\(1\), Cr PC, 1973](#) is mandatory.⁴⁹.

40. Rep. by Act 17 of 1862.

41. Added by Act 3 of 1894, section 5.

42. 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. 1-4-1951), to read as above.

43. 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. 1-4-1951), to read as above.

44. *Ashok Kumar Mittal v Ram Kumar Gupta*, [\(2009\) 2 SCC 656 \[LNIND 2009 SC 33\]](#) : (2009) 1 SCC (Cr) 836 : [\(2009\) 1 KLT 398 \[LNIND 2009 SC 33\]](#) : (2009) 1 CHN 184 (SC) : (2009) 234 ELT 193 .

45. *Veeranna v State of Karnataka*, [2013 Cr LJ \(NOC\) 335](#) (Kar).

46. *State of Karnataka v G M Sumanabai*, [2004 Cr LJ 4112](#) (Kar).

47. *Amita Trivedi v State of Rajasthan*, [2013 Cr LJ \(NOC\) 240](#) (Raj). See also *Jayalalithaa v Kuppusamy*, [2013 Cr LJ 839](#) (SC) : [2012 \(11\) Scale 432 \[LNIND 2012 SC 756\]](#) .

48. *Bishan Dass v State of Punjab*, [2015 Cr LJ 281](#) : [2014 \(9\) Scale 690 \[LNINDORD 2014 SC 21072\]](#) . See also *State of Karnataka v G M Sumanabai*, [2004 Cr LJ 4112](#) (Kar).

49. *Lakpa Sherpa v State of Sikkim*, [2004 Cr LJ 3488](#) (Sik). See also *Ram Dhan v State of UP*, [2012 \(4\) Scale 259 \[LNIND 2012 SC 1057\]](#) : 2012 AIR(SCW) 2500 : [2012 Cr LJ 2419](#) : (2012) 5

SCC 536 [LNIND 2012 SC 1057] : AIR 2012 SC 2513 [LNIND 2012 SC 1057] relied on Sachida Nand Singh v State of Bihar, (1998) 2 SCC 493) [LNIND 1998 SC 138] .

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[s 178] Refusing oath or affirmation when duly required by public servant to make it.

Whoever refuses to bind himself by an oath ^{50.} [or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Refusal to take oath.—The refusal to take an oath amounts to contempt of Court. The person refusing may be dealt with under [section 345 of the Cr PC, 1973](#) summarily or the Court may proceed under section 195 of the same Code. The penalty of this section would not be attracted where the refusal to take oath is justifiable. This observation of the Supreme Court occurs in *Kiran Bedi and Inder Singh v Committee of Inquiry*.^{51.} The justification available to the police-officers in question was that they were sought to be cross-examined under oath at the very outset of the inquiry, whereas other officers similarly placed were to figure in the cross-examination at a subsequent stage. This procedure was discriminatory, hence, the justification. The Court accordingly held that the committee should not have directed a complaint to be filed against them under this section.

50. Ins. by Act 10 of 1873, section 15.

51. *Kiran Bedi and Inder Singh v Committee of Inquiry*, AIR 1989 SC 714 [LNIND 1989 SC 833] : 1989 Cr LJ 903 : (1989) 1 SCR 20 [LNIND 1989 SC 833] : (1989) 1 SCC 494 [LNIND 1989 SC 10].

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[s 179] Refusing to answer public servant authorised to question.

Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Refusing to answer questions.—The offence under this section consists in the refusal to answer a question which is relevant to the subject concerning which the public servant is authorised to inquire, or which at least touches that subject. Under sections 121–132 of the [Indian Evidence Act](#) a witness is exempted from answering certain questions. If a person gives false answers, then he will be guilty under section 193 and not under this section.

Refusing to answer the question of a police-officer investigating a case under [section 161 of the Criminal Procedure Code](#) is not an offence under this section.⁵² This section also applies to the accused as the words used in [section 161\(1\) Cr PC, 1973](#), are "any person acquainted with facts and circumstances of the case". Thus, the accused too is bound to answer a question put by a police-officer in course of his examination. However, the answer to a question has a tendency to incriminate him; he can claim protection under [Article 20\(3\) of the Constitution](#) and refuse to answer. Of course, it is a matter which has to be ultimately decided by the Court.⁵³

The matter is entirely different so far the officers of the Railway Protection Force are concerned first, they are not police-officers⁵⁴. and second, the enquiry conducted by them under [sections 8 and 9 of the Railway Property \(Unlawful Possession\) Act, 1966](#) is not a police investigation but should be deemed to be a judicial proceeding.⁵⁵ Section 9 of this special Act specifically lays down that during such enquiry by an RPF officer, persons summoned have to obey summons and state the truth and, therefore, by refusing to answer, such persons would make themselves liable under [section 179, IPC, 1860](#). The question of invoking [Article 20\(3\) of the Constitution](#) does not arise in such a case, as till the complaint is filed under section 190(1)(a), [Cr PC, 1973](#) by the RPF officer, a person cannot be regarded as "accused of an offence" within the meaning of [Article 20\(3\) of the Constitution](#).⁵⁶

52. *Mawzanagy*, (1930) 8 Ran 511.
53. *Nandini Satpathy v PL Dani*, 1978 Cr LJ 968 : AIR 1978 SC 1025 .
54. *State of MP v Chandan Singh*, 1980 Cr LJ 1024 (MP); *R Muthu v Asst. Sl, RPF*, 1983 Cr LJ 1309 (Mad); *State of UP v Durga Prasad*, 1974 Cr LJ 1465 : AIR 1974 SC 2136 [LNIND 1974 SC 248] .
55. *Durga Prasad, Supra; BC Saxena*, 1983 Cr LJ 1432 (AP).
56. *BC Saxena, Supra; Mohd. Dastgir*, 1960 Cr LJ 1159 : AIR 1960 SC 758 .

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[s 180] Refusing to sign statement.

Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT—

The essential ingredients to constitute the offence under this Section are:—

- (i) The accused made a statement before a public servant.
- (ii) The accused was required by public servant to sign such statement.
- (iii) Public servant was legally empowered or competent to require the accused to sign that statement, and
- (iv) That the accused refused to sign statement.⁵⁷

[s 180.1] Refusal to sign.—

The statement must be such a one as the accused can be legally required to sign, e.g., a statement recorded under the provisions of sections 164 and 281(5) of the [Cr PC, 1973](#) or a statement under [sections 8 and 9](#) of the [Railway Property \(Unlawful Possession\) Act, 1966](#).⁵⁸ To attract the offence under [section 180 of IPC, 1860](#), the person accused of such offence should be under a legal obligation or compulsion to sign the statement or submissions.⁵⁹

^{57.} *Basavaraj Shivarudrappa Sirsi v State of Karnataka*, [2011 Cr LJ 4809](#) (Kar).

^{58.} *Durga Prasad, and BC Saxena, Supra*.

^{59.} *Basavaraj Shivarudrappa Sirsi v State of Karnataka* [2011 Cr LJ 4809](#) (Kar).

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[s 181] False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

Whoever, being legally bound by an oath ⁶⁰.[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath ⁶¹.[or affirmation], makes, to such public servant or other person as aforesaid, touching the subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

False statement on oath.—This section should be compared with section 191. Under it a false statement to any public servant, or other person, authorised to administer oath or affirmation, is punishable.⁶² It does not apply where the public servant administers the oath in a case wholly beyond his jurisdiction⁶³. or where he is not competent to make a statement on solemn affirmation.⁶⁴.

[s 181.1] Failure to administer oath.—

In view of [sections 4 and 5 of the Oaths Act, 1969](#), it is always desirable to administer oath or statement may be recorded on affirmation of the witness. The Supreme Court in *Rameshwar v State of Rajasthan*,⁶⁵ has categorically held that the main purpose of administering of oath is to render persons who give false evidence, liable to prosecution and further to bring home to the witness the solemnity of the occasion and to impress upon him the duty of speaking the truth, further such matters only touch credibility and not admissibility. However, in view of the provisions of [section 7 of the Oaths Act, 1969](#), the omission of administration of oath or affirmation does not invalidate any evidence.⁶⁶.

⁶⁰. Ins. by Act 10 of 1873, section 15.

61. Ins. by Act 10 of 1873, section 15.
62. *Niaz Ali*, (1882) 5 All 17 .
63. *Andy Chetty*, (1865) 2 MHC 438 .
64. *Subba*, (1883) 6 Mad 252.
65. *Rameshwar v State of Rajasthan*, AIR 1952 SC 54 [LNIND 1951 SC 76] .
66. *State of Rajasthan v Darshan Singh*, (2012) 5 SCC 789 [LNIND 2012 SC 334] : 2012 AIR (SCW) 3036 : 2012 Cr LJ 2908 : 2012 (5) Scale 570 [LNIND 2012 SC 334] .

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67. [s 182] False information, with intent to cause public servant to use his lawful power to the injury of another person.

Whoever gives to any public servant any information¹ 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 anything² 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,**

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

ILLUSTRATIONS

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.]

COMMENT.—

Object.—The object of this section is that a public servant should not be falsely given information with the intent that he should be misled by a person who believed that information to be false, and intended to mislead him. This section does not require that action must always be taken if the person who makes the public servant knows or believes that action will be taken.⁶⁸.

[s 182.1] Ingredients.—

- (1) Giving of an information to a public servant.
- (2) Information must have been known or believed to be false by the giver.
- (3) Such false information was given with intention to cause, or knowing that it is likely to cause such public servant (a) to do or omit anything which he ought not to do or omit to do if the true facts were known to him, or (b) to use his lawful power to the injury or annoyance of any person.⁶⁹.

1. 'Any information'.—The Bombay and the Patna High Courts have ruled that any 'false information' given to a public servant, with the intent mentioned in the section, is punishable under it whether that information is volunteered by the informant or is given in answer to questions put to him by the public servant.⁷⁰ Where a driver of a motor vehicle, who had no licence with him, on being asked his name by a police-officer, gave a fictitious name, it was held that he had committed an offence under this section.⁷¹.

The section makes no distinction between information relating to a cognizable offence and one relating to a non-cognizable offence, nor is there anything in the section to justify the conclusion that it applies only to cases in which the information given to any public servant relates to a cognizable offence.⁷².

2. 'To do or omit anything'.—It is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given, but the intention or knowledge (to be inferred from his conduct) of the person supplying such information.⁷³. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken.⁷⁴. Under this clause it is not necessary to show that the act done would be to the injury or annoyance of any third person.⁷⁵.

[s 182.2] Condition precedent for prosecution.—

This section has to be read in conjunction with [section 195\(1\)\(a\) of the Cr PC, 1973](#) which requires a complaint for offences under sections 172–188, [IPC, 1860](#), to be filed by the public servant concerned or by some other public servant to whom he is administratively subordinate.⁷⁶. It is mandatory to follow the procedure prescribed under section 195 of the Code while initiating action against an accused for an offence punishable under [section 182, IPC, 1860](#) else such action is rendered void *ab initio*.⁷⁷. Thus, investigation into an offence under [section 182, IPC, 1860](#) can be done only on the complaint given by a competent public servant; taking note of the fact that the procedure contemplated is not complied within the line with [section 195, Cr PC, 1973](#) as well as the settled legal position evolved through the decisions of the Apex Court, the cognizance assumed by the Magistrate for the offence under [section 182, IPC, 1860](#) is erroneous and not sustainable in law.⁷⁸. Similar view has been expressed by

the Hon'ble Supreme Court in *PD Lakhani v State of Punjab*,^{79.} relying upon its earlier judgment in *Daulat Ram's case (supra)* and *Mata Bhikh's case*.^{80.} It is held that:

no complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of SP, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned^{81.}

[s 182.3] Private Complaint.—

Since the offence under section 182 is covered by the bar of [section 195 Cr PC, 1973](#) there is absolutely no scope for filing a private complaint. The embargo in [section 195 Cr PC, 1973](#) takes away the right to prosecute in respect of the aforesaid offences by way of filing a private complaint. Going by [section 195 Cr PC, 1973](#) no Court shall take cognizance except in the manner contemplated by [section 195 Cr PC, 1973](#) and consequently, no jurisdiction to refer the case under [section 156\(3\) Cr PC, 1973](#) to the Police for investigation or to issue a direction to proceed under the aforesaid sections to the Police on a private person's complaint.^{82.}

[s 182.4] Mala fide Prosecution.—

The Supreme Court has laid down that proceedings can be taken under this section as well as under sections 211 and 500 against persons who initiate prosecution against a person in high position with a view to wreaking vengeance for a private and personal grudge.^{83.}

[s 182.5] CASES.—Causing public servant to do what he ought not to do.—

Mere non-mentioning of the complaint already filed in the Court of Chief Judicial Magistrate, in the petition filed under [section 156\(3\) Cr PC, 1973](#) before the Special Sessions Judge, would not be enough to attract the section.^{84.} The accused falsely telegraphed to a District Magistrate that the town had been attacked by a gang of 200 robbers, but the Magistrate put no faith in the telegram and took no action; it was held that the accused were guilty of an offence under this section.^{85.} A personated B at an examination and passed the examination and obtained a certificate in B's name. B, thereupon, applied to have his name entered in the list of candidates for Government service. He attached to this application the certificate issued in his name, and his name was ordered to be entered on the list of candidates. It was held that he was guilty of an offence under this section.^{86.} Where the ulterior motive of the accused in making a false report of burglary was to suppress certain documents by pleading that they were stolen, it was held that the act of the accused was not punishable under this section.^{87.} Where a resolution was passed in a public meeting condemning police inaction in regard to an assault case and copies of the said resolution were sent to various authorities including the Superintendent of Police and the officer-in-charge, but the officer-in-charge took exception to it and filed a complaint in Court under [sections 182 and 211, IPC, 1860](#), it was held that forwarding of the resolution did not amount to institution of criminal proceeding and no offence either under [section 182](#) or [section 211, IPC, 1860](#), was committed. It was further observed that police should not be so sensitive over public criticism.^{88.}

[s 182.6] Period of Limitation.—

Since the offence under [section 182 IPC, 1860](#) is punishable with imprisonment for a period of six months only, the authority should file the complaint under [section 182 IPC, 1860](#) within one year from the date when that authority found that the allegations made in the complaint were false. Since more than four years was elapsed from the date when the authority found the allegations were false, no question of filing any complaint under [section 182 IPC, 1860](#) at this belated stage arises.⁸⁹.

67. Subs. by Act 3 of 1895, section 1, for section 182.
68. *Daulat Ram*, [AIR 1962 SC 1206 \[LNIND 1962 SC 28\] : 1962 \(2\) Cr LJ 286](#) .
69. *Jiji Joseph v Tomy Ignatius*, [2013 Cr LJ 828](#) (Ker).
70. *Ramji Sajabarao*, (1885) 10 Bom 124; *Lachman Singh*, (1928) 7 Pat 715.
71. *Lachman Singh*, (1928) 7 Pat 715.
72. *Thakuri*, [\(1940\) 16 Luck 55](#) .
73. *Budh Sen v State*, [\(1891\) 13 All 351](#) ; *Raghu Tiwari*, [\(1893\) 15 All 336](#) .
74. *Sham Lal Thukral v State of Punjab*, [2009 Cr LJ 189](#) (PH) relying on [AIR 1962 SC1206 \[LNIND 1962 SC 28\] : \(1962 \(2\) Cr LJ 286\)](#) .
75. *Ganesh Khanderao*, (1889) 13 Bom 506.
76. *Daulat Ram*, 1962 (2) Cr LJ 286 : [AIR 1962 SC 1206 \[LNIND 1962 SC 28\]](#) ; *TS Venkateswaran*, [1982 Cr LJ NOC 68](#) (Ker); See also *State of Rajasthan v Chaturbhuj*, [1983 Cr LJ NOC 56](#) (Raj).
77. *Saloni Arora v State of NCT of Delhi*, [AIR 2017 SC 391 \[LNIND 2017 SC 23\]](#) .
78. *EK Palanisamy v DySP*, [2010 Cr LJ 1802](#) (Mad); *Geetika Batra v OP Batra*, [2009 Cr LJ 2687](#) (Del).
79. *PD Lakhani v State of Punjab*, 2008 AIR SCW 3357.
80. *Mata Bhikh's case*, [\(1994\) 4 SCC 95 \[LNIND 1994 SC 311\]](#) : (1994 AIR SCW 1935).
81. Also see *Sham Lal Thukral v State of Punjab*, [2009 Cr LJ 189](#) (PH); *Randhir v State of Haryana*, [2004 Cr LJ 479](#) (PH).
82. *Loid Jude Manakkat v State*, [2013 \(2\) KLT 931 : 2013 \(3\) KLJ 53](#) .
83. *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335 : [AIR 1992 SC 604 : 1992 Cr LJ 527](#) .
84. *Subhash Chandra v State of UP*, [\(2000\) 9 SCC 356 \[LNIND 1999 SC 1565\]](#) : JT 2000 (2) SC 26 : 2000 AIR(SCW) 4947.
85. *Budh Sen*, *supra*.
86. *Ganesh Khanderao*, *supra*.
87. *Shambhoo Nath*, [AIR 1959 All 545 \[LNIND 1958 ALL 203\]](#) .
88. *Shiv Kumar Prasad Singh*, [1984 Cr LJ 1417](#) (Pat).
89. *Harbhajan Singh Bajwa v Senior Superintendent of Police, Patiala*, [2000 Cr LJ 3297](#) (PH).

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This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 183] Resistance to the taking of property by the lawful authority of a public servant.

Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT—

This section makes it penal to offer resistance to the taking of property by the lawful authority of any public servant. The Bombay High Court has held that there are no words in the section as there are in section 99, extending the operation of the section to acts which are not strictly justifiable by law. Resistance to an act of a public officer acting *bona fide* though in excess of his authority may give rise to some charge in the nature of assault, but it cannot afford any foundation for a prosecution under this section.⁹⁰ The Madras High Court is of opinion that this section should be read in conjunction with section 99. Taking the two together, if an officer acts in good faith under colour of his office the mere circumstance that his "act may not be strictly justifiable by law" cannot affect the lawfulness of his authority. In this case, property had been seized in execution by the officer of the Court, and it was held that as the officer was acting *bona fide*, though he had wrongly seized the property of the accused, the accused could be convicted under this section for resisting the execution.⁹¹ This view of the law receives substantial support from the decision of the Supreme Court in *Keshoram's case*⁹², where too it has been held that merely because no prior notice was served on the accused before seizing his cattle under the Delhi Municipal Act for recovering arrears of milk tax, it could not be said that the municipal officer's action was entirely illegal and as such the accused had the right of private defence against the *bona fide* act of the public servant. In the instant case the accused was held to have been rightly convicted under sections 353/332/333, [IPC, 1860](#), for assaulting the public servant. On a parity of reasoning it can be said that had the accused been prosecuted under section 183 of the Code, he could have also been convicted under that section as well.

[s 183.1] Lawful authority wanted.—

Where a person resisted an official in attaching property under a warrant, the term of which had already expired,⁹³ or which did not specify the date on or before which it was to be executed,⁹⁴ it was held that he was not guilty under this section. If the

warrant is executed by a Court official when it is addressed to a peon, resistance to the Court official is not illegal.⁹⁵.

If a bailiff breaks open the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turns out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not by obstructing the bailiff, render himself punishable under section 183 or section 186.⁹⁶.

90. *Sakharam Pawar*, (1935) 37 Bom LR 362 .

91. *Tiruchitrambala Pathan*, (1896) 21 Mad 78.

92. *Keshoram*, 1974 Cr LJ 814 : AIR 1974 SC 1158 [LNIND 1974 SC 130] .

93. *Anand Lal Bera v State*, (1883) 10 Cal 18 .

94. *Mohini Mohan Banerji*, (1916) 1 PLJ 550 , 18 Cr LJ 39.

95. *Ibid.*

96. *Gazi Aba Dore*, (1870) 7 BHC (Cr C) 83.

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[s 184] Obstructing sale of property offered for sale by authority of public servant.

Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

COMMENT—

This section punishes intentional obstruction of the sale of any property conducted under the lawful authority of a public servant. No physical obstruction is necessary. Use of abusive language by a person at an auction-sale conducted by a public servant makes him liable to be convicted of an offence under this section.⁹⁷.

⁹⁷. *Provincial Govt. CP & Berar v Balaram*, (1939) Nag 139.

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[s 185] Illegal purchase or bid for property offered for sale by authority of public servant.

Whoever, at any sale of property¹ held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

COMMENT—

This section makes it penal to bid at a public sale of property on account of a party who is under a legal incapacity to purchase it, or to bid for it not intending to complete the purchase or as it is expressed to perform the obligations under which the bidder lays himself by such "bidding".^{98.}

1. 'Property'.—This word is used in its wide sense. The right to sell drugs is a monopoly granted for a certain area and comes within the definition of property. A person who bids at an auction of the right to sell drugs within a certain area under a false name and, when the sale is confirmed in his favour, denies that he has ever made any bid at all, is guilty of an offence under this section.^{99.}

^{98.} 2nd Rep., section 110.

^{99.} *Bishan Prasad*, (1914) 37 All 128 .

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[s 186] Obstructing public servant in discharge of public functions.

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

State Amendment

Andhra Pradesh.— Offence under section 186 is cognizable.

[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].

COMMENT—

This section provides for voluntarily obstructing a public servant in the discharge of his duties. It must be shown that the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions as authorised by law. The mere fact of a public servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence.¹⁰⁰. If the public servant is acting in good faith under colour of his office there is no right of private defence against his act.¹⁰¹.

The word "obstruction" connotes some overt act in the nature of violence or show of violence.¹⁰². To constitute "obstruction", it is not necessary that there should be actual criminal force. It is sufficient if there is either a show of force or a threat or any act preventing the execution of any act by a public servant.¹⁰³. Though an offence under this section is a non-cognizable one, by virtue of powers vested in the State Government under [section 10 of the Criminal Law Amendment Act, 1932](#), it can be made a cognizable offence in a specified area by means of a notification, while such notification remains in force.

[s 186.1] Initiation of Prosecution.—

To initiate prosecution under this section it is necessary to see that the complaint is filed under section 195(1)(a), [Cr PC, 1973](#), by the concerned public servant or his superior officer to whom he is administratively subordinate (See also discussion under sub-head "Condition precedent for Prosecution under section 182 *ante*.) It is also not possible to bypass the requirements of section 195(1)(a), [Cr PC, 1973](#), by merely changing the label of the offence, say from section 186 to [section 353, IPC, 1860](#).¹⁰⁴.

[s 186.2] Offences with bar under section 195 Cr PC, 1973 with some offences without the bar.—

Where an accused commits some offences which are separate and distinct from those contained in [section 195 of the Cr PC, 1973](#), section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of section 195 of the Code.¹⁰⁵ It is a well-accepted proposition of law that when an accused commits some offences which are separate and distinct from those contained in section 195; section 195 will affect only the offences mentioned therein unless such other offences form an integral part of the same so as to amount to offences committed as a part of the same transaction. That in such case the other offences would also fall within the ambit of section 195 of the Code. In other words, the offences charged against the petitioners under [section 143, 147, 148, 149, 332, 333](#) and [307](#) of [IPC, 1860](#), cannot be split from the complaint for a separate offence in the facts and circumstances of the present case, and thereby cognizance in respect to said offences are also barred under section 195(1)(a)(i) of the Code.¹⁰⁶

[s 186.3] CASES.—Obstruction.—

A Circle Inspector went into the compound of the accused with a village servant to remove a portion of the hedge which was an encroachment. When the servant put his scythe to the hedge to cut it, the accused caught hold of the scythe and threatened him. It was held that the accused was guilty of an offence under this section, since his laying hold of the scythe amounted to physical obstruction, and the obstruction offered to the servant was tantamount to obstruction to the Circle Inspector under whose orders he was acting.¹⁰⁷ The daughter of the tenant of the accused died of electrocution. The police-officers entered the premises with permission to check fresh wiring and leakage of current. They were prevented from taking photographs by the accused and also not allowed to leave the house. The Court said that this amounted to obstruction within the meaning of section 186 and wrongful confinement within the meaning of section 342.¹⁰⁸ Section 186 contemplates obstruction of a public servant in the discharge of his public duty and section 332 contemplates voluntarily causing hurt to him to deter him from performing his public duty. The gravity of the offences is different. Offence under section 332 is cognizable. The requirement of making a complaint in writing as postulated by [section 195, Cr PC, 1973](#), cannot be extended to the case of an offence under section 332.¹⁰⁹

[s 186.4] Section 186 and Section 353: Distinction between.—

[Sections 186 and 353, IPC, 1860](#) relate to two distinct offences and while the offence under the latter section is a cognizable offence the one under the former section is not so. The ingredients of the two offences are also distinct. [Section 186, IPC, 1860](#) is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under [section 353, IPC, 1860](#) the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Chapter X of the [IPC, 1860](#) dealing with Contempts of the lawful authority of public servants, while section 353 occurs in Chapter XVI regarding the Offences affecting the human body. It is well established that [section 195 of the Cr PC, 1973](#) does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but

which is not within the ambit of that section.¹¹⁰ If in truth and substance the offence in question falls in the category of sections mentioned in section 195 of the Code and it was not open to bypass its provisions even by choosing to prosecute under [section 353, IPC, 1860](#) only.¹¹¹

100. *Lilla Singh*, (1894) 22 Cal 286 ; *Tulsiram v State*, (1888) 13 Bom 168.

101. *Poomalai Udayan*, (1898) 21 Mad 296; *Pukot Kotu*, (1896) 19 Mad 349.

102. *Phudki*, AIR 1955 All 104 [LNIND 1954 ALL 119] .

103. *Babulal*, (1956) 58 Bom LR 1021 .

104. *Oduvil Devaki Amma*, 1982 Cr LJ NOC 11 (Ker).

105. *State of UP v Suresh Chandra Srivastava*, AIR 1984 SC 1108 [LNIND 1984 SC 575] : 1984 Cr LJ 926 .

106. *Ramji Bhikha Koli v State of Gujarat*, 1999 Cr LJ 1244 (Guj).

107. *Bhaga Mana*, (1927) 30 Bom LR 364 . See also *Gyan Bahadur v State of MP*, 2013 Cr LJ 1729 (MP).

108. *Veena Ranganekar v State*, 2000 Cr LJ 2543 (Del).

109. *State of HP v Vidya Sagar*, 1997 Cr LJ 3893 (HP).

110. *Durgacharan Naik v State of Orissa*, AIR 1966 SC 1775 [LNIND 1966 SC 59] : 1966 Cr LJ 1491 (SC).

111. *Ashok v The State*, 1987 Cr LJ 1750 (MP); *Mrityunjoy Das v State*, 1987 Cr LJ 909 (Cal).

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[s 187] Omission to assist public servant when bound by law to give assistance.

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT—

This section provides, first in general terms for the punishment when a person, being bound by law to render assistance to a public servant in the execution of his public duty, intentionally omits to assist; and second, for the punishment when the assistance is demanded for certain specified purposes.¹¹².

This section speaks of assistance to be rendered to public servants, just as sections 176 and 177 speak of furnishing true information. A case was registered against the accused/ Sub-Inspector of Police under [section 187 of the IPC, 1860](#) for not assisting the Assisting Sessions Judge, in the service of summons to witnesses and administration of justice. In the light of the language employed in [sections 195\(1\) of Cr PC, 1973](#), the prosecution initiated at the instance of the Assistant Sessions Judge cannot be sustained for the reason that the Sub-Inspector of Police is not subordinate to the said Officer. Unless a complaint is made by the competent officer as specified under section 195(1) of the Code, the prosecution cannot be further proceeded with. Apart from this aspect of the matter, in as much as the service of summons, being in discharge of the official duties of the Sub-Inspector, sanction under section 197 of the code is also required.¹¹³.

112. *Ramaya Naika*, (1903) 26 Mad 419, (FB).

113. *Paleti Anil Babu v State*, 2006 Cr LJ 3084 (AP).

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[s 188] Disobedience to order duly promulgated by public servant.

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

ILLUSTRATION

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

COMMENT—

Ingredients.—To constitute this offence it is necessary to show—

- (1) a lawful order promulgated by a public servant empowered to promulgate it;
- (2) knowledge of the order which may be general or special;
- (3) disobedience of such order; and
- (4) the result that is likely to follow from such disobedience.

The offence under this section has now been made a cognizable offence under the Cr PC, 1973. Though a bailable offence, it can be made non-bailable by a notification by the State Government under [section 10\(2\) of the Criminal Law Amendment Act, 1932](#).

There must be evidence that the accused had knowledge of the order with the disobedience of which he is charged. Mere proof of a general notification promulgating the order does not satisfy the requirements of the section.¹¹⁴. "Promulgation" does not require publication in newspapers or by posters.¹¹⁵. Mere disobedience of an order does not constitute an offence in itself; it must be shown that the disobedience has or tends to a certain consequence,¹¹⁶ namely, annoyance, obstruction, etc. The annoyance has to be proved as a fact; mere mental annoyance of the authorities concerned is not enough.¹¹⁷. It is also necessary to see that the order was not only lawfully made but duly promulgated and the accused had knowledge of the order, else his conviction cannot be sustained.¹¹⁸. Where a standing crop was attached by means of an order under [section 145 Cr PC, 1973](#) and the accused, who had come to know the order, reaped and removed the crop, an offence under this section was held to have been committed. It was a disobedience packed with a tendency to cause riot or affray.¹¹⁹. The complaint of this offence must disclose that the disobedience of the order led to the consequences narrated in clauses (2) and (3) of [section 188, IPC, 1860](#), otherwise no cognizance can be taken on such a complaint.¹²⁰. It is not necessary that, if the order disobeyed was that of a civil Court, a complaint should be received from that Court. A criminal Court can entertain a complaint of disobedience from any other source.¹²¹.

It is open to a person charged under this section to plead in defence that the order, though made with jurisdiction, was utterly wrong or improper on merits.¹²².

[s 188.1] Necessary particulars in the complaint.—

In order to attract the provisions of [section 186 IPC, 1860](#), it has to be seen whether the public servant in the discharge of his public functions has been voluntarily obstructed or not. It is reiterated that what was mentioned in the complaint was that the government administration was disrupted for half an hour. Mere disruption of government administration without there being a specific mention that the public servants were obstructed from voluntarily discharging their public functions would not attract [section 186 IPC, 1860](#).¹²³.

Knowledge of orders.—The offence of disobedience of the orders of a public servant is not committed where there is nothing to show that the accused person had knowledge of the order.¹²⁴.

[s 188.2] Curfew Order and Shoot to kill.—

Violation of a curfew order under [section 144, Cr PC, 1973](#), is a minor offence punishable under [section 188, IPC, 1860](#), and as such the executive instruction to "Shoot to Kill" for violation of a prohibitory order under [section 144 Cr PC, 1973](#), is *ultra vires* [section 144 Cr PC, 1973](#), [section 188 IPC, 1860](#), Articles 20(1) and 21 of the [Constitution](#) and is, therefore, void and unlawful.¹²⁵.

[s 188.3] Prohibitory order under Food and Safety Standards Act, 2006.—

Disobedience to a prohibitory order issued by the Food and Safety Commissioner from possessing or transporting *Gutka* or *Pan Masala* would not cause breach of law and order. The Commissioner's order is not an order contemplated under Chapter 10 of the [IPC, 1860](#). Besides, the prohibitory order issued under [section 30 of the FSS Act, 2006](#) and its violation, would amount to offence only under [section 55 of the FSS Act, 2006](#). This specific provision is made in the special enactment, which is a law in itself. It would not permit any one to apply [section 188 of the IPC, 1860](#) for such breach or violation.¹²⁶.

[s 188.4] Complaint.—

A written complaint by a public servant concerned is *sine qua non* to initiate a criminal proceeding under [section 188 of the IPC, 1860](#) against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order.¹²⁷.

114. *Ramdas Singh*, [\(1926\) 54 Cal 152](#) .
115. *Srimati Tugla*, [\(1955\) 2 All 547](#) .
116. *Lachhmi Devi*, [\(1930\) 58 Cal 971](#) .
117. *Pradip*, [AIR 1960 Assam 20](#) ; *DN Ramaiah*, [1972 Cr LJ 1158](#) (Mysore); *Saroj Hazra*, [48 Cr LJ 747](#) (Cal); *Bharat Raut*, [1953 Cr LJ 1787](#) 24.(Pat); *Dalganjan*, [1956 Cr LJ 1176](#) (All); *Fakir Charan Das*, [1957 Cr LJ 1151](#) (Ori); *Pradip Choudhury*, [1960 Cr LJ 251](#) (Assam); *Ram Manohar Lohia*; [1968 Cr LJ 281](#) (All).
118. *K Papayya v State*, [1975 Cr LJ 1784](#) (AP).
119. *Bhagirathi Shrichandan v Damodar*, [1987 Cr LJ 631](#) (Ori).
120. *Padan Pradhan*, [1982 Cr LJ 534](#) (Pat).
121. *Thavasiyappan v Periasamy Nadar*, [1992 Cr LJ 283](#) .
122. *Bachuram v State*, [AIR 1956 Cal 102 \[LNIND 1955 CAL 186\]](#) .
123. *Anurag Thakur v State of HP*, [2016 Cr LJ 3363 : I L R 2016 \(III\) HP 1314](#).
124. *Bhoop Singh Tyagi v State*, [2002 Cr LJ 2872](#) (Del).
125. *Jayantilal v State*, [1975 Cr LJ 661](#) (Guj); see also *R Deb : Op Cit*, pp 840-841.
126. *Ganesh Pandurang Jadhao v The State of Maharashtra*, [2016 Cr LJ 2401 : III \(2016\) CCR 334](#) (Bom).
127. *State of UP v Mata Bhikh*, [\(1994\) 4 SCC 95 \[LNIND 1994 SC 311\] : JT 1994 \(2\) SC 565 \[LNIND 1994 SC 311\] : \(1994\) 2 Scale 235 : \(1994\) 1 SCC \(Cr\) 831 : 1994 \(2\) SCR 368 \[LNIND 1994 SC 311\]](#) . See also *C Muniappan v State of TN*, [\(2010\) 9 SCC 567 \[LNIND 2010 SC 809\] : AIR 2010 SC 3718 \[LNIND 2010 SC 809\]](#) : (2010) 3 SCC (Cr) 1402 : 2010 (8) Scale 637 : [JT 2010 \(9\) SC 95 \[LNIND 2010 SC 809\]](#) .

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 189] Threat of injury to public servant.

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

State Amendment

Andhra Pradesh.— *In Andhra Pradesh offence under section 189 is cognizable.*

[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].

COMMENT—

Under this section there must be a threat of injury either to the public servant or to any one in whom the accused believes the public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his action. See section 503 which defines criminal intimidation and applies in all cases. This section deals with criminal intimidation of a public servant. Threats of violence to a public servant who accepted bribe money but did not do the promised work are not covered by this section. A public servant deserves protection, since in the performance of his duties, he is likely to cause disappointment to many and invite their wrath. That is why under sections 189 and 353 and various other sections of the [IPC, 1860](#), a public servant is strongly protected and punishment for offences against him is made deterrent. However if a public servant has gone astray and indulged in malpractices, more especially by way of taking bribe, he would necessarily become subject to public criticism and private accountability. What appears then at the forefront is not the performance of duty by the public servant, but the non-performance of some contract *dehors* the normal functions of the public servant. If that illegal contract gives rise to any act of violence at any stage, such acts cannot constitute by any stretch of imagination acts contemplated and punished under [sections 353](#) and [189, IPC, 1860](#).¹²⁸.

Where workers of Communist Party (Marxist) went to a police station to protest against the arrest of their party workers and in the process asked the police-officer to release them on threat of dire consequences, it was held that the accused had committed an offence under this section.¹²⁹ By a notification under [section 10 of the](#)

Criminal Law Amendment Act, 1932, the State Government can make this section a cognizable offence for a specified area.

128. *Duraikhannu v State of TN*, 1987 Cr LJ 1461 (Mad); *Mrityunjoy Das v State*, 1987 Cr LJ 909 (Cal).

129. *De Cruz*, (1884) 8 Mad 140.

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 190] Threat of injury to induce person to refrain from applying for protection to public servant.

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

State Amendment

Andhra Pradesh.—Offence under section 190 is cognizable.

[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].

COMMENT—

The object of this section is to prevent persons from terrorising others with a view to deter them from seeking the protection of public servants against any injury. Where a clergyman, knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him for withholding it, it was held that the clergyman had committed no offence under this section. By a notification under [section 10\(1\) of the Criminal Law Amendment Act, 1932](#) the State Government can make this offence a cognizable one for a specified area while such notification remains in force.

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.^{1.}

[s 191] Giving false evidence.

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject,¹ makes any statement which is false,² and which he either knows or believes to be false or does not believe to be true,³ is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

ILLUSTRATIONS

- (a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.
- (b) A, being bound by an oath to state the truth, states that he believes a certain

signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

- (c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.
- (d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.
- (e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

COMMENT.—

Ingredients.—The offence under this section involves three ingredients:—

- (1) A person must be legally bound;
 - (a) by an oath, or any express provision of law, to state the truth; or
 - (b) to make a declaration upon any subject.
- (2) He must make a false statement.
- (3) He must;
 - (a) know or believe it to be false, or
 - (b) not believe it to be true.

1. 'Legally bound by an oath or by an express provision of law, etc.'— In case the recourse to a false plea is taken with an oblique motive, it would definitely hinder, hamper or impede the flow of justice and prevent the Courts from performing their legal duties.² The Courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the Court on mere explanation that he had given it under the pressure of the police or for some other reason. Whenever the witness speaks falsehood in the Court, and it is proved satisfactorily, the Court should take a serious action against such witnesses.³ It is necessary that the accused should be legally bound by an oath before a competent authority. If the Court has no authority to administer an oath the proceeding will be *coram non judice* and a prosecution for false evidence will not stand.⁴ Similarly, if the Court is acting beyond its jurisdiction it will not be sustained.⁵ For the essentiality of section 191, petitioner must have been legally bound to speak truth or make a declaration and he must have stated or declared what is false. He must also know or believe what he has stated or declared is false or he has believed it true. If there is no compulsion to make any declaration as required by law, Section 191 will not have any

application. The information given by him is not on any oath nor was he bound to give such information under any provision of Law.⁶

[s 191.1] 'By an oath'.—

An oath or a solemn affirmation is not a *sine qua non* in the offence of giving false evidence.⁷ The offence may be committed although the person giving evidence has been either sworn or affirmed.⁸ Whenever in a Court of law a person binds himself on oath to state the truth, he is bound to state the truth and he cannot be heard to say that he should not have gone into the witness box or should not have made an affidavit. It is no defence to say that he was not bound to enter the witness box.⁹

[s 191.2] 'By an express provision of law'.—

Under this clause sanction of an oath is not necessary; there must be a specific provision of law compelling a person to state the truth. Where the accused is not bound by an express provision of law to state the truth he cannot be charged with giving false evidence.¹⁰

[s 191.3] 'Declaration upon any subject'.—

In certain cases the law requires a declaration from a person of verification in a pleading—and if such a declaration is made falsely it will come under this clause. The words 'any subject' denote that the declaration must be in connection with a subject regarding which it was to be made.

2. 'Any statement which is false'.—It is not necessary that the false evidence should be material to the case in which it is given.¹¹ If the statement made is designedly false, the accused is liable whether the statement had a material bearing or not upon the matter under enquiry before the Court.¹²

3. 'Knows or believes to be false or does not believe to be true'.—The matter sworn to must be either false in fact, or, if true, the accused must not have known it to be so. The making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally the giving of false evidence.¹³ Where a man swears to a particular fact, without knowing at the time whether the fact be true or false, it is as much perjury as if he knew the fact to be false, and equally indictable.¹⁴ However, a man cannot be convicted of perjury for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true.¹⁵

[s 191.4] Two Contradictory Statements.—

Merely because a person makes two contradictory statements, one of which must be false, it does not make out a case of perjury unless the falsity of one of the two statements as charged in the indictment is positively proved to be so.¹⁶ In India a prosecution for perjury seems to be possible in such a case by virtue of illustration (e) of section 221, The [Code of Criminal Procedure, 1973](#), it has been held to be inexpedient to do so in the interest of justice. Thus, where a person made one statement under [section 164 Cr PC, 1973](#) and a diametrically opposite statement in Court during the enquiry or trial, he could in view of this illustration be charged in the

alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false. But to do so may be to tie him down to his previous false statement under [section 164 Cr PC, 1973](#), and preventing him from telling the truth even belatedly at the later stage of enquiry or trial. The Supreme Court too has felt that a witness whose statement has been recorded under [section 164 Cr PC, 1973](#), feels tied to his previous statement and as such his evidence has to be approached with caution.¹⁷ In the instant case as it could not be shown that the earlier statements of the witnesses recorded under [section 164 Cr PC, 1973](#) were true and those given before the Magistrate in course of the enquiry were false, the complaints of perjury filed against the witnesses were directed to be withdrawn.¹⁸

[s 191.5] As to expert opinion.—

A scientific expert was asked to give his opinion regarding two cartridges, whether those were fired from one firearm or from two different ones, without sending the suspected firearm to him. He gave opinion, *inter alia*, that no definite opinion could be offered in order to link the firearm unless the firearm was made available to him. During the examination, the Court insisted him to give a definite opinion that too without examining the firearm. At that time, he opined that the cartridges appeared to have been fired from two separate firearms. Considering that there was a deliberate deviation in his opinion the High Court initiated proceedings against him under [section 340 Cr PC, 1973](#) for perjury. The Supreme Court held that it is unjust, if not unfair, to attribute any motive to the appellant that there was a somersault from his original stand in the written opinion.¹⁹

[s 191.6] Written statements and applications.—

A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of this offence.²⁰ Signing and verifying an application for execution containing false statements is an offence under this section, and it makes no difference that at the time when the signature and verification were appended the application was blank.²¹ But the verification of an application, in which the applicant makes a false statement, does not subject him to punishment for this offence, if such application does not require verification.²²

[s 191.7] Incriminating statement no justification.—

When a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to incriminate himself will not justify his acquittal on a charge of giving false evidence.²³

[s 191.8] Illegality of trial does not purge perjury.—

The fact that the trial in which false evidence is given is to be commenced *de novo* owing to irregularity does not exonerate the person giving false evidence in that trial from the obligation to speak the truth, and he is liable for giving false evidence.²⁴

[s 191.9] Prosecution for perjury.—

It has been held by the Supreme Court that the courts should sanction the prosecution for perjury only in those cases where perjury appears to be deliberate and where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement.^{25.}

[s 191.10] Accused not liable for giving false evidence.—

The authors of the Code observe:

We have no punishment for false evidence given by a person when on his trial for an offence, though we conceive that such a person ought to be interrogated... If A stabs Z, and afterwards on his trial denies that he stabbed Z, we do not propose to punish A as a giver of false evidence.^{26.}

The accused shall not render himself liable to punishment by refusing to answer questions put by the Court or by giving false answers to them.^{27.}

[s 191.11] CASES.—

In a case, where the allegation was that the Attorney General and Chief Vigilance Officer gave consent to prosecute the Complainant without due care and without proper application of mind. The Supreme Court held that it cannot be said that the document conveying consent was a 'false document' or that giving of 'consent' amounted to giving of 'false evidence' or 'fabricating false evidence' at any stage of judicial proceeding.^{28.} A person could only be held guilty of an offence under section 191 if false evidence is knowingly given or when the statement is believed to be not true.^{29.} A witness falsely deposing in another's name;^{30.} and a person falsely verifying his plaint;^{31.} and an official making a false return of the service of summons,^{32.} were held guilty of giving false evidence. The Supreme Court has held that where a false affidavit is sworn by a witness in a proceeding before a Court the offence would fall under this section and section 192. It is the offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding.^{33.} Where a notice of perjury was issued to certain eye-witnesses but it could not be shown with certainty that they were liars, it was held that the issue of notices was not proper. The Court used its inherent powers and quashed the notices. The challenge was presented by only one of the witnesses on his own behalf as well as that of others.^{34.}

[s 191.12] Affidavit.—

An affidavit is evidence within the meaning of [section 191 of the IPC, 1860](#). It was alleged about an affidavit filed in a Court that it contained false statements. The affidavit was filed by the party *suo motu* and not under direction from the Court. Such an affidavit could not be termed as evidence. Hence, no action could be taken against him under the [IPC, 1860](#).^{35.} Process Server while he takes information from the neighbours is not expected to get a sworn statement from them. It is neither an affidavit nor a sworn statement. It is only an information, which he has collected to show his *bona fides* that he made attempts to serve the notice on the party. If on the request of process server if any such information is given that information cannot be

treated as false evidence or fabricating evidence nor it could be treated as certificate nor a declaration under any of the provisions of this section.³⁶.

[s 191.13] Abetment.—

Where an accused asked a witness to suppress certain facts in giving his evidence against him (accused), it was held that he was guilty of abetment of giving false evidence in a stage of a judicial proceeding.³⁷ Where C falsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U and had not written such document, adduced C as U, the writer of that document, it was held that T was guilty of abetment of giving false evidence.³⁸

[s 191.14] Bar under section 195 Cr PC, 1973.—

Section 195 of the Code lays down the procedure for prosecution for contempt of lawful authority of public servants for offences against public justice and for offences against public documents given in the form of evidence. As per this provision, Court is debarred from taking cognizance of any of the offences punishable under sections 193–196, 199, 200, 205–211 and section 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in that behalf or of some other Court to which that Court is subordinate. The term "Court" in the section means a Civil, Revenue or Criminal Court and includes a tribunal. Section 340 of the Code prescribes the procedure to be followed for offences mentioned in section 195 of the Code. Therefore, the summoning orders of the Magistrate against the petitioners under sections 193/191/209 [IPC, 1860](#) are hit by provisions of section 195 of the Code and the cognizance taken by the Magistrate of the offences is, therefore, without jurisdiction.³⁹ Sections 191 and 192 of the [IPC, 1860](#) are the sections that define offences for which punishment is provided for in sections 193 and 195 as mentioned in section 195(1)(b) (i), [Criminal Procedure Code](#). So the bar to initiate proceedings is applicable to sections 191 and 192 also.⁴⁰

[s 191.15] Procedure.—

A combined reading of the aforequoted provisions of [Cr PC, 1973](#) and [IPC, 1860](#) as also sub-section (3) of [section 195, Cr PC, 1973](#) makes this legal position quite clear that they are applicable to any legal proceeding before a Civil Court or a Criminal Court, including a Tribunal constituted by Central, Provincial or State Acts, if declared by that particular Act to be a Court for the purpose of [section 195, Cr PC, 1973](#). Therefore, if the Family Court finds that any party to the proceeding or a witness therein has intentionally given false evidence at any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of the proceeding, and the Family Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any evidence referred to in clause (b) of sub-section (1) of [section 195, Cr PC, 1973](#) it may hold a preliminary enquiry and if it thinks necessary then it may record a finding to that effect and then proceed to make a complaint in respect of the particular offence/offences stipulated in clause (b) of [section 195, Cr PC, 1973](#) to the concerned Magistrate having jurisdiction against the said person.⁴¹

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .
2. *Chandra Shashi v Anil Kumar Verma*, 1995 (1) SCC 421 [[LNIND 1994 SC 1604](#)] .
3. *Mishrilal v State of MP*, [\(2005\)10 SCC 701 \[LNIND 2005 SC 1165\]](#) : 2005 SCC (Cr) 1712.
4. *Abdul Majid v Krishna Lal Nag*, [\(1893\) 20 Cal 724](#) ; *Niaz Ali*, [\(1882\) 5 All 17](#) ; *Mata Dayal* [\(1897\) 24 Cal 755](#) ; *Subba*, (1883) 6 Mad 252; *Fatteh Ali*, (1894) PR No. 15 of 1894.
5. *Chait Ram*, [\(1883\) 6 All 103](#) ; *Bharma*, (1886) 11 Bom 702 (FB).
6. *D Jothi v K P Kandasamy*, 2000 Cr LJ 292 (Mad).
7. (1865) 2 WR (CrL) 9.
8. *Gobind Chandra Seal*, [\(1892\) 19 Cal 355](#) ; *Shava v State*, (1891) 16 Bom 359; contra, *Maru*, [\(1888\) 10 All 207](#) .
9. *Ranjit Singh*, [1959 Cr LJ 1124](#) : AIR 1959 SC 843 [[LNIND 1959 SC 63](#)] .
10. *Hari Charan Singh*, [\(1900\) 27 Cal 455](#) .
11. *Parbutty Churn Sircar*, (1866) 6 WR (Cr) 84; *Damodhar P Kulkarni*, (1868) 5 BHC (CrC) 68.
12. *Mohammad Khudabux*, (1949) Nag 355.
13. *Echan Meeah*, (1865) 2 WR (Cr) 47. *Mohammed Hussein v State of Maharashtra*, [1995 Cr LJ 2364](#) (Bom).
14. *Mawbey*, (1796) 6 TR 619, 637; *Schlesinger*, [\(1847\) 10 QB 670](#) .
15. *Muhammad Ishaq*, [\(1914\) 36 All 362](#) .
16. Cross & Jones: *Introduction to Criminal Law*, 9th Edn, p 275.
17. *Ramcharan*, [1968 Cr LJ 1473](#) : AIR 1968 SC 1267 [[LNIND 1968 SC 29](#)] ; *Balak Ram*, [1974 Cr LJ 1486](#) : AIR 1974 SC 2165 [[LNIND 1974 SC 236](#)] .
18. *Ibid. Kuriakose v State of Kerala*, [1995 Cr LJ 2687](#) : 1994 Supp (1) SCC 602 , contradictory statements as to contents of panchanama by an attesting witness does not make him liable to be prosecuted under the section, gravity of the false statement has also to be taken into account.
19. *Prem Sagar Manocha v State (NCT of Delhi)*, [2016 Cr LJ 1090](#) : [\(2016\) 4 SCC 571 \[LNIND 2016 SC 9\]](#) .
20. *Mehrban Singh*, [\(1884\) 6 All 626](#) ; *Padam Singh*, [\(1930\) 52 All 856](#) .
21. *Ratanchand v State*, [\(1904\) 6 Bom LR 886](#) .
22. *Kasi Chunder Mozumdar*, [\(1880\) 6 Cal 440](#) .
23. (1867) 3 MHC (Appx.) XXXIX.
24. *Virasami v State*, (1896) 19 Mad 375; *Batesar Mandal*, [\(1884\) 10 Cal 604](#) .
25. *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*, [AIR 2018 SC 5412 \[LNIND 2018 SC 565\]](#) .
26. Note G, p 131.
27. *Criminal Procedure Code, section 313* (3).
28. *Buddhi Kota Subbarao v K Parasaran*, [AIR 1996 SC 2687 \[LNIND 1996 SC 1254\]](#) : [\(1996\) 5 SCC 530 \[LNIND 1996 SC 1254\]](#) .
29. *Indian Structural Engineering Company Pvt Ltd v Pradip Kumar Saha*, [2009 Cr LJ 4229](#) (Cal).
30. *Prema Bhika* (1863) 1 BHC 89.
31. *Luxumandas*, (1869) Unrep CrC 25.
32. *Shama Churn Roy*, (1867) 8 WR (Cr) 27.

33. *Baban Singh v Jagdish Singh*, AIR 1967 SC 68 [LNIND 1966 SC 47] : 1967 Cr LJ 6 ; MP Paul, 1973 Cr LJ 1284 (Ker).
34. *State v Manoher Yeshwant Paul*, 1997 Cr LJ 3114 (Bom).
35. *Delhi Lotteries v Rajesh Agarwal*, AIR 1998 : 1332 (Del).
36. *D Jothi v K P Kandasamy*, 2000 Cr LJ 292 (Mad).
37. *Andy Chetty*, (1865) 2 MHC 438 .
38. *Chundi Churn, Nauth*, (1867) 8 WR (Cr) 5.
39. *Kusum Sandhu v Sh Ved Prakash Narang*, 2009 Cr LJ 1078 (Del).
40. *Premjit Kaur v Harsinder Singh*, (1982) 2 SCC 167 : (1982) 1 SCC (Cr) 379 : 1982 CrLR 318.
41. *Arun Kumar Agarwal v Mrs. Radha Arun*, 2001 Cr LJ 3561 (KAR).

THE INDIAN PENAL CODE

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[s 192] Fabricating false evidence.

Whoever causes any circumstance to exist or⁴² [makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding,¹ or in a proceeding taken by law before a public servant² as such, or before an arbitrator, and that such circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material³ to the result of such proceeding, is said "to fabricate⁴ false evidence".

ILLUSTRATIONS

- (a) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.
- (b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

- (c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

COMMENT.—

The wording of this section is so general as to cover any species of crime, which consists in the endeavour to injure another by supplying false data upon which to rest a judicial decision.

[s 192.1] Ingredients.—

The offence defined in this section has three ingredients:—

- (1) Causing any circumstance to exist, or making any false entry in any book or record, or making any document containing a false statement.
- (2) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant or an arbitrator.
- (3) Doing such act with the intention that it may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding.⁴³. From a careful reading of [section 192, IPC, 1860](#), what transpires is that whoever forges a document, containing false statement or false entry, intending that such false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion in such proceeding, he is said to fabricate false evidence.⁴⁴.

1. 'Judicial proceeding'.—The [Code of Criminal Procedure](#) says that 'judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath [section 2(i)]. The power to take evidence on oath, which includes affirmation as well,⁴⁵ is the characteristic test of 'judicial proceeding'. 'Judicial proceeding' means nothing more or less than a step taken by a Court in the course of administration of justice in connection with a case.⁴⁶. Execution proceedings are judicial proceedings.⁴⁷.

It is not essential that there should be any judicial proceeding pending at the time of fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document in question is intended to be used in such a proceeding.⁴⁸.

2. 'Public servant'.—The provisions of this section are not confined to false evidence to be used in judicial proceedings, but to any proceeding before a public servant. A Government correspondence was stealthily removed by accused No. 1 and handed over to the pleader of accused Nos. 2 and 3. The correspondence was replaced by accused No. 1. It was afterwards discovered that some papers had disappeared from the correspondence whilst others had been either mutilated or altered. It was held that accused Nos. 2 and 3 were guilty of offences under sections 466 and 193.⁴⁹.

3. 'Material'.—The false evidence under this section should be material to the case in which it is given though not so under section 191.⁵⁰ The word 'material' means of such a nature as to affect in any way, directly or indirectly, the probability of anything to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted.⁵¹

4. 'Fabricate'.—The term fabrication refers to the fabrication of false evidence; and if the evidence fabricated is intended to be used in a judicial proceeding, the offence is committed as soon as the fabrication is complete; it is immaterial that the judicial proceeding has not been commenced,⁵² or that no actual use has been made of the evidence fabricated. The mere fabrication is punishable under section 193; the use of the fabricated evidence is punishable under section 196.

The evidence fabricated must be admissible evidence.⁵³

[s 192.2] Liability of accused for fabricating false evidence.—

It has been held by the High Courts of Calcutta⁵⁴ and Bombay⁵⁵ that an offender who fabricates false evidence to screen himself from punishment is liable to be convicted under this section. The Allahabad High Court⁵⁶ has veered round to the same view, after distinguishing an earlier case⁵⁷ to the contrary.

[s 192.3] Vicarious liability.—

Neither [section 192 IPC, 1860](#) nor [section 199 IPC, 1860](#), incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint.⁵⁸ [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the managing Director or the Director for the Company when the accused is the company. Vicarious liability arise provided any provision exists in that behalf in the statute. It is obligatory on the part of the complainant to make requisite allegations which would attract the provision constituting vicarious liability.⁵⁹

[s 192.4] CASES.—Fabrication of evidence to be used in judicial proceeding.—

The brother of an accused person applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first be made to identify the accused. The Court assenting to this request, he produced before the Court ten or twelve men, none of whom could be identified as the accused by any of the witnesses. Upon being asked by the Court where the accused was, he pointed out a man who was not the accused. It was held that he was guilty of fabricating false evidence.⁶⁰ The accused, who was in possession of the complainant's house as a yearly tenant, about the time the tenancy came to an end, prepared another rent-note for a period of four years and got it registered without the complainant's knowledge. It was held that the accused had fabricated false evidence inasmuch as the rent-note, which contained an admission against the interest of the accused, could be admitted in evidence on his behalf.⁶¹ By swearing a false affidavit the accused makes himself *prima facie* liable under section 193 read with [sections 191 and 192 of the IPC, 1860](#).⁶² In order to have the value of CFC excluded for the purpose of excise duty, letters were fabricated and the same were

seized in a raid. Fifteen months later, taking up a notice of motion, High Court directed filing of criminal complaints against the appellant under section 192. While agreeing that the Division Bench was not wrong in making the direction, which it did on the merits of the case, Supreme Court held that the High Court did not appear to have bestowed sufficient attention while deciding upon the expediency contemplated by section 340.⁶³.

[s 192.5] No fabrication if no erroneous opinion could be formed touching any point material to result of proceeding.—

It is now well settled that prosecution for perjury should be sanctioned by the Court only in those cases where there is a *prima facie* case of deliberate and conscious falsehood on a matter of substance and the conviction is reasonably probable or likely.⁶⁴ It is also very necessary that the portions of the witness's statement in regard to which he has, in the opinion of the Court, perjured himself, should be specifically set out in or form annexure to the show cause notice issued to the accused so that he is in a position to furnish adequate and proper reply in regard thereto and be able to meet the charge.⁶⁵.

[s 192.6] No fabrication of evidence fabricated is inadmissible.—

The mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of section 193.⁶⁶

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659].

42. Subs. by The **Information Technology Act, 2000** (Act 21 of 2000) section 91 and First Sch, w.e.f. 17 October 2000, for the words "makes any false entry in any book or record, or makes any document contained on false statement". The words "electronic record" have been defined in section 29A.

43. *Babu Lal v State of UP*, (1964) 1 Cr LJ 555 : AIR 1964 SC 725 [LNIND 1963 SC 218] . *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 CR LJ. 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68; See *State of MP v Asian Drugs*, 1990 Cr LJ 105 MP, the defence exposing fabrication by Inspectors under The **Drugs and Cosmetics Act, 1940** (23 of 1940).

44. *Sushanta Sarkar v State of Nagaland* 2012 Cr LJ 4467 (Gau).

45. The **General Clauses Act, 1897** (X of 1897), section 3 (37)

46. *Venkatachalam Pillai*, (1864) 2 MHC 43 ; *Tulja v State*, (1887) 12 Bom 36, 42.

47. *Govind Pandurang*, (1920) 22 Bom LR 1239 , 45 Bom 668.

48. *Rajaram*, (1920) 22 Bom LR 1229 [LNIND 1920 BOM 119] ; *Govind Pandurang*, *Ibid*.

49. *Vallabham Ganpatram*, (1925) 27 Bom LR 1391 .

50. Tookaram, (1862) Unrep. CrC 2.
51. Stephen's Digest, Art 148; SP Kohli, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] .
52. Mula, (1879) 2 All 105 .
53. Zakir Husain, (1898) 21 All 159 .
54. Superintendent and Remembrancer of Legal Affairs, Bengal v Taraknath Chatterji, (1935) 62 Cal 666 .
55. Rama Nana, (1921) 46 Bom 317, 23 Bom LR 987.
56. Bhagirath Lal, (1934) 57 All 403 .
57. Ram Khilawan, (1906) 28 All 705 .
58. Maharashtra State Electricity Distribution Co Ltd v Datar Switchgear Ltd, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
59. Maksud Saiyed v State of Gujarat, (2008) 5 SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] : 2008 (5) SCR 1240 : (2008) 6 Scale 81 [LNIND 2008 SC 848] : (2008) 2 SCC (Cr) 692.
60. Cheda Lal, (1907) 29 All 351 .
61. Rajaram, (1920) 22 Bom LR 1229 [LNIND 1920 BOM 119] .
62. Baban Singh, 1967 Cr LJ 6 : AIR 1967 SC 68 [LNIND 1966 SC 47] .
63. Phiroze Dinshaw Lam v UOI, 1996) 8 SCC 209 : (1996) 1 SCC (Cr) 575.
64. SP Kohli, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] .
65. Ibid.
66. Mahesh Chandra Dhupi, (1940) 1 Cal 465 .

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.¹.

[s 193] Punishment for false evidence.

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding,¹ 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 whoever intentionally gives or fabricates false evidence in any other case,² shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation 1.—A trial before a Court-martial; ^{67.} [***] is a judicial proceeding.*

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION

A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

COMMENT.—

Sections 191 and 192 define the offences punishable under this section. The first paragraph applies only to cases in which the false evidence is given in a judicial proceeding, the second to all other cases. If the offence is committed in any stage of a judicial proceeding it is more severely punishable than when it is committed in a non-judicial proceeding.

Intention is the essential ingredient in the **constitution** of this offence. If the statement was false, and known or believed by the accused to be false, it may be presumed that in making that statement he intentionally gave false evidence. In order to make a person liable for perjury it is necessary that he should have made a statement on oath regarding the facts on which his statement was based and then deny those facts on oath on a subsequent occasion.⁶⁸. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under section 193 but it must be established that the deponent has intentionally given false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the 'judicial proceeding'.⁶⁹.

It is not necessary that the false statement should be material to the case. The gist of the offence is the giving or fabrication of false evidence intentionally. Where knowledge of falsity is proved, intention is readily presumed.⁷⁰.

1. 'Any stage of a judicial proceeding'.—The recording of a statement under section 161 itself is a judicial proceeding in view of Explanation 2 to section 193 in so far as recording of a statement is part of the investigation directed by law preliminary to a proceeding before a Court of justice and therefore is a stage of the judicial proceedings. Mere failure to support contention made in said FIR while giving evidence under **section 164 Cr PC, 1973**, can't conclusively lead to hold that he had given false evidence by departing from contentions made in FIR.⁷¹. Where a witness in Sessions trial deposing contrary to what he had said in a statement recorded under section 164, recourse to section 340 cannot be taken without first deciding whether the earlier statement was false.⁷². In the course of proceedings for execution of a decree in a Court which had no jurisdiction to entertain such proceedings the judgment-debtor made a false statement and produced a forged receipt. The Court made a complaint under **section 195 of the Criminal Procedure Code** for prosecution of the judgment-debtor in respect of the said offences; it was held that if during the course of the proceedings which were *ultra vires* and illegal any offence under section 471 of the Code was committed, it could not be said that it was committed in or in relation to, or by a party to, any judicial proceedings, in which evidence could be legally taken, and therefore the complaint must be dismissed.⁷³. Since enquiry conducted by an officer of the Railway Protection Force is a judicial proceeding under **section 9 of The Railway Property (Unlawful Possession) Act, 1966**, furnishing of false documents in course of

such an enquiry would amount to an offence under section 193, IPC, 1860.⁷⁴ Giving false evidence in support of the prosecution case during the course of trial falls within the ambit of sections 193 and 195, IPC, 1860, and not under section 211, IPC, 1860, as there is no institution of criminal proceeding in such a case.⁷⁵ (See Comments under sub-head "Falsey Charges" under section 211 *infra*.) Where the accused abetted the offence of forgery by creating a false document with a view to use it in a suit but did not use it in the suit, it was held that there was no question of prosecuting him under section 193, IPC, 1860, nor was a Court complaint under section 195(1) (b) (i), Cr PC, 1973, necessary in the case. The accused could be safely prosecuted under section 467 read with section 114, IPC, 1860, on a private complaint.⁷⁶

Where the accused police-officer asked a police official to forge the signature of his superior on the carbon copy of the counter-affidavit containing false averments and the same was filed in the Supreme Court with that forged signature, the accused was held guilty of an offence under section 192.⁷⁷

Questions which a person is compelled to answer and the answers which have a tendency to incriminate, cannot be the sole basis of a charge of perjury.⁷⁸

[s 193.1] Court Complaint: When?—

In *Iqbal Singh Marwah v Meenakshi Marwah*,⁷⁹ the Constitution Bench held that the section 195(1)(b)(ii) -Cr PC, 1973 which mandates that 'no Court shall take cognizance of offences relating to documents given in evidence except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate', would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceedings in any Court, i.e., during the time when the documents was in *custodial legis*.⁸⁰ Though the Rent Controller discharges quasi-judicial functions, he is not a Court, as understood in the conventional sense and he cannot, therefore, make a complaint under section 340 Cr PC, 1973.⁸¹

[s 193.2] Belated complaint.—

A witness made false statement before a competent Court and the accused were convicted. The appellate Court (Sessions Court) held that the witness had given false statement and directed that a notice be issued to him to show cause why a complaint under section 193, IPC, 1860 be not filed against him. The notice was issued and after hearing him, the Court directed that a complaint be filed. The High Court found that the notice issued to him was no notice because it did not specify the portions that were found to be false, besides the statement was recorded ten years ago. The Court held that it was not proper to file a complaint at that stage. The Court set aside the order of the Sessions Judge.⁸²

[s 193.3] Supreme Court cannot convert itself into trial Court.—

The accused filed a forged affidavit before the Supreme Court. It was held by the three Judge Bench that the Supreme Court could not try and convict the accused. The order of the Supreme Court convicting the accused and sentencing him to three months' imprisonment was liable to be set aside because of non-compliance of procedure prescribed by sections 195 and 340, Cr PC, 1973 and also because of lack of original jurisdiction to try a criminal offence under section 193, IPC, 1860. Directions to the

competent authority to proceed in the matter were not issued because the accused had already served out the sentence of imprisonment imposed on him.⁸³.

[s 193.4] False Affidavits.—

The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act. On facts, High Court found that apart from committing contempt of Court the accused-1 has also committed an offence of perjury punishable under [section 193, IPC, 1860](#) committed in relation to proceedings of the Court. Court directed the Registrar (Judicial) under section 340(3)(b), [Cr PC, 1973](#) to file a complaint before the jurisdictional Magistrate in this regard.⁸⁴.

[s 193.5] CASES.—

A father handed over the custody of his minor daughter to the accused woman for household chores, but thereafter his efforts to get back his daughter failed. He filed a *habeas corpus* petition and the Court directed the respondent to produce the girl in response to which the respondent produced some other girl of the same name to mislead the Court. The Court directed that a complaint under sections 193, 196 and 199 be lodged against the respondent.⁸⁵ Declaration in an application filed under [section 482 of Cr PC, 1973](#) that the applicant had not approached the Supreme Court or the High Court earlier is not perjury, though applicant had filed for anticipatory Bail before the Sessions Court.⁸⁶

[s 193.6] Hostile witness.—

In a prosecution under sections 489B and 489C, all prosecution witnesses who were police officials turned hostile. Subsequently they filed affidavits stating that they were threatened by higher officers not to support their previous statements during investigation. Court set aside the order of acquittal of the accused, ordered re-trial and directed to proceed under sections 193 and 195A.⁸⁷ After a long span of time, the prosecution witnesses filed a false affidavit stating that they were coerced and tutored by police. They were held liable for perjury.⁸⁸

2. 'In any other case'.—A statement made in the course of a public investigation under [section 164 of the Code of Criminal Procedure](#) comes within these words.⁸⁹ Whether the accused has really made a false statement or not is a question of fact, which can be decided at the trial and not in quashing proceeding, when the allegations, which have been made against the accused do make out a *prima facie* case under [section 193, IPC, 1860](#).⁹⁰ A person married the daughter of his maternal uncle, after converting to Christianity. If they married before conversion this marriage would have come under 'Sapindas relations' which is prohibited under the [Hindu Marriage Act, 1955](#). After conversion into Christianity the marriage does not fall under 'Sapinda' relationship. It

cannot be said that there was any false declaration. It is held that offence punishable under [section 193 of IPC, 1860](#) is not made out.⁹¹.

[s 193.7] [Section 193 IPC, 1860](#) and [Section 125A of the Representation of Peoples Act, 1950](#).—

Where a specific penal provision is made under the Act providing a penalty for filing false affidavit under section 125A of the Act, without anything more, for filing such a false affidavit, that alone, no prosecution under the general penal provision of [section 193 of the Penal Code](#) is entertainable. Furthermore, the penal provision under [section 193 IPC, 1860](#) has to be understood giving significance to the expressions 'intentionally giving or fabricating false evidence', 'in any stage of a judicial proceeding' or 'in any other case.' Giving or fabricating false evidence in the aforesaid section whether it be in the judicial proceeding or in any other case must have been intended to form an opinion on the evidence erroneously and such forming of opinion should be touching the point material to the result of such proceeding. Viewed in that angle the declaration to be made by a candidate in his affidavit filed with his nomination paper over the matters prescribed by the election commission when he contests an election, it cannot be stated that the candidate is giving evidence by affidavit but at best only a declaration on the particulars sought for. If the candidate fails to furnish information or gives false information which he knows or has reason to believe to be false or conceals any information he is liable to be prosecuted only for the offence under section 125A of the Act, and not for the penal offence under [section 193 IPC, 1860](#).⁹²

[s 193.8] [Section 193 IPC, 1860](#) and proceedings under [section 340 Cr PC, 1973](#).—

Power to punish under [section 344 Cr PC, 1973](#) and [section 193 Cr PC, 1973](#) are distinct. [Section 344 Cr PC, 1973](#) calls for summary trial, whereas under [section 193 IPC, 1860](#) offender is to be tried as warrant case. [Section 344 Cr PC, 1973](#) vests powers in the Courts to summarily try and punish the accused. It is for this reason that [section 344 Cr PC, 1973](#) prescribes sentence also. The Judge either should have convicted the petitioner under [section 344 Cr PC, 1973](#) or ought not to have invoked [section 193 IPC, 1860](#). Once, the Judge opted to try the petitioner for the offence under [section 193 IPC, 1860](#), it was incumbent upon him to hold an inquiry under [section 340 Cr PC, 1973](#) and then to frame a charge and try the offender for a warrant case as minimum sentence prescribed under [section 193 IPC, 1860](#) is three years.⁹³ Before lodging a complaint as provided by section 340 of the Code, the Court has to record a finding of any (i) *prima facie* case and deliberate falsehood on a matter of substance; (ii) there is reasonable foundation for the charge; and (iii) it is expedient in the interest of justice that a complaint should be filed.⁹⁴ An enquiry when made, under [section 340 \(1\) Cr PC, 1973](#), is really in the nature of affording a *locus paenitentiae* to a person and if at that stage the Court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence. When the trial of the appellant commences under [section 193, IPC, 1860](#) the reasons given or those in the order passed under section 340 (1), Cr PC, 1973 should not weigh with the criminal Court in coming to its independent conclusion whether the offence under [section 193, IPC, 1860](#) has been fully established against the appellant beyond reasonable doubt.⁹⁵

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
67. The words "or before a Military Court of Request" omitted by Act 13 of 1889, section 2 and Sch.
68. *Ismail Khan v State of Karnataka*, 1992 Cr LJ 3566 (Kant).
69. *KTMS Mohd v UOI*, AIR 1992 SC 2199 : 1992 Cr LJ 2781 .
70. *Sadasiba*, (1956) Cut 87; *Pravinchand v Ibrahim Md*, 1987 Cr LJ 1795 (Bom).
71. *Bimal Das v The State of Tripura*, 2012 Cr LJ 1252 (Gau).
72. *Thomman v IIInd Addl Sessions Judge*, 1994 Cr LJ 48 (Ker).
73. *Sumat Prasad v State*, (1942) All 42 .
74. *BC Saxena*, 1983 Cr LJ 1432 (AP).
75. *Santosh Singh v Izahar Hussain*, 1973 Cr LJ 1176 : AIR 1973 SC 2190 [LNIND 1973 SC 160] .
76. *State of Karnataka v Hemareddy*, 1981 Cr LJ 1019 : AIR 1981 SC 1417 [LNIND 1981 SC 44] : (1981) 2 SCC 185 [LNIND 1981 SC 44] .
77. *Afzal v State of Haryana*, AIR 1996 SC 2326 [LNIND 1996 SC 130] : 1996 Cr LJ 1679 .
78. *NSR Krishna Prasad v Directorate of Enforcement LBK Market*, 1992 Cr LJ 1888 (AP). See section 132, The *Indian Evidence Act*, 1972.
79. *Iqbal Singh Marwah v Meenakshi Marwah*, (2005) 4 SCC 370 [LNIND 2005 SC 261] : AIR 2005 SC 2119 [LNIND 2005 SC 261] .
80. *Sushanta Sarkar v State of Nagaland*, 2012 Cr LJ 4467 (Gau).
81. *Iqbal Singh Narang v Veeran Narang*, AIR 2012 SC 466 [LNIND 2011 SC 1189] : (2012) 2 SCC 60 [LNIND 2011 SC 1189] ; 2012 AIR (SCW) 730 : (2012) 1 SCC (Cr) 740.
82. *Jagdish Prasad Singhal v State of Rajasthan*, 1994 Cr LJ 759 (Raj).
83. *Randhir Singh v State of Haryana*, AIR 2000 SC 544 [LNIND 2000 SC 27] : 2000 Cr LJ 755 .
Another ruling to the same effect, *MS Ahlawat v State of Haryana*, AIR 2000 SC 168 [LNIND 1999 SC 1395] : (2000) Cr LJ 388 ; *Mohammed Zahid v Govt. of NCT of Delhi*, 1998 Cr LJ 2908 : AIR 1998 SC 2023 [LNIND 1998 SC 557] .
84. *Advocate General,Karnataka v Chidambara*, 2004 Cr LJ 493 (Kant).
85. *R Rathinam v Kamla Vaiduriam*, 1993 Cr LJ 2661 (Mad).
86. *Rajkumar Dhanaji Bombarde v Madhukar Wankhede*, 2008 Cr LJ 661 (Bom).
87. *Court on Its Own Motion v State of Punjab*, 2012 Cr LJ 2240 (PH).
88. *State of MP v Badri Yadav*, 2006 Cr LJ 2128 : AIR 2006 SC 1769 [LNIND 2006 SC 229] : (2006) 9 SCC 549 [LNIND 2006 SC 229] .
89. *Purshottam Ishvar*, (1920) 23 Bom LR 1 ; 45 Bom 834 (FB). *Mohammed Zahid v Govt. of NCT of Delhi*, AIR 1998 SC 2023 [LNIND 1998 SC 557] : 1998 Cr LJ 2908 , false entries in case diary, interpolations, cooking up false case against the accused, show-cause notices issued against the concerned police officer for the offence.
90. *Sushanta Sarkar v State of Nagaland*, 2012 Cr LJ 4467 (Gau).
91. *O P Gogne v State*, 2012 Cr LJ 1718 (Del).
92. *Ganesh Kumar v PK Raju*, 2013 (2) Ker LT 434 : 1 LR 2013 (2) Ker 710 .
93. *Jaskaran v State of Haryana*, 2008 Cr LJ 4261 (PH).
94. *Rit Lai Khatway v State of Bihar*, 2007 Cr LJ 593 (Pat). See also *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*, AIR 2018 SC 5412 [LNIND 2018 SC 565] .

95. *K Karunakaran v TV Eachara Warrier*, AIR 1978 SC 290 [LNIND 1977 SC 319] : (1978) 1 SCC 18 [LNIND 1977 SC 319].

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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[s 194] Giving or fabricating false evidence with intent to procure conviction of capital offence.

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital ^{96.} [by the law for the time being in force in ^{97.} [India]] shall be punished with ^{98.} [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

if innocent person be thereby convicted and executed.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

COMMENT.—

This is an aggravated form of the offence of giving or fabricating false evidence made punishable by section 193.

To constitute an offence under this section the accused must give false evidence intending thereby to cause some person to be convicted of a capital offence. A person who brings before a Court a witness whom he has tutored to tell a false story concerning a murder case before it, commits an offence under this section.⁹⁹.

[s 194.1] CASE.—

Where the Investigating Officer fabricated false evidence by manipulating the records in large number of documents to get the accused persons convicted and the time was not mentioned in documents prepared during investigation conviction under section 194 was held proper.¹⁰⁰ Where the Investigating Inspector concocted false evidence with the help of two *sarpanchas* and villagers to rope in an innocent man in a false murder case which led to his conviction by the Sessions Court and during the course of hearing of the appeal in the High Court the so-called murdered man appeared in person before the High Court, it was held that the Inspector, the *sarpanchas* and the other witnesses were liable to be prosecuted under [section 194, IPC, 1860](#), read with [section 340, Cr PC, 1973](#).¹⁰¹

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\] : \(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .

96. Subs. by the A.O. 1948, for "by the law of British India or England".

97. Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 1 April 1951).

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

99. *Sur Nath Bhaduri*, [\(1927\) 50 All 365](#) .

100. *Suresh Chandra Sharma v State of MP*, [AIR 2009 SC 3196 ; 2009 Cr LJ 4288 \(SC\)](#).

101. *Darshan Singh*, [1985 Cr LJ NOC 71](#) (P&H). See also *Baij Nath Dubey v Avas Eevam Vikas Parishad*, [1997 Cr LJ 2681](#) (All).

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[s 195] Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which ¹⁰²**[by the law for the time being in force in** ¹⁰³**[India]] is not capital, but punishable with** ¹⁰⁴**.[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.**

ILLUSTRATION

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is ¹⁰⁵**[imprisonment for life]**, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to ¹⁰⁶**[imprisonment for life]** or imprisonment, with or without fine.

COMMENT.—

This section is similar to the preceding section except as regards the gravity of the offence in respect of which the perjury is committed. The preceding section deals with perjury in the case of an offence punishable with death, this section deals with perjury of an offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards. In the case of a person who burnt his own house and charged another with the act, it was held that he should not be convicted under this section, but under section 211.¹⁰⁷ but where A, with a view to having B convicted, assisted in concealing stolen railway pins in his house and field, it was held that A was properly convicted of an offence under this section.¹⁰⁸ Giving false evidence in support of the prosecution case amounts to an offence under [sections 193 and 195, IPC, 1860](#), and not under [section 211, IPC, 1860](#).¹⁰⁹ Misstatement of facts and concealment of an essential fact in a writ petition amounts to giving false evidence. The petitioner was liable to face proceedings for giving false evidence.¹¹⁰ It is not necessary that fabrication of false evidence takes place only inside the Court as it can also be fabricated outside the Court though has been used in the Court.¹¹¹

A Disciplinary Proceedings Tribunal is not a Court for the purposes of this section. It is not "a court in the accepted sense of that term, though it may possess some of the trappings of a court."¹¹² A party giving an answer to a question put under Order 10 r. 2 of the [CPC](#) when not under oath and when not being examined as a witness, cannot attract [section 195 IPC, 1860](#).¹¹³ Police-officers fabricated the evidence in order to book the appellant under TADA. From the materials on record, Supreme Court was of the opinion that it is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of [section 340, Cr PC, 1973](#) into the commission of offences under sections 193, 195 and 211.¹¹⁴

[s 195.1] St. Kitts (Chandraswamy) Case.—

The respondent, was at the relevant time, serving as Director (Enforcement) with the government of India. The respondent was a public servant at the time of the commission of the alleged offence, no cognizance of the offence could have been taken against him in the absence of sanction under [section 197 Criminal Procedure Code](#).¹¹⁵

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .

102. Subs. by the A.O. 1948, for "by the law of British India or England".

103. Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 1 April 1951).

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

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

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

107. *Bhugwan Ahir*, (1867) 8 WR (Cr) 65.

108. *Rameshar Rai*, (1877) 1 All 379 .

109. *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1976 SC 2190 .
110. *Dehri Cooperative Development v State of Bihar*, 2002 Cr LJ 3396 (Pat); *Mohammed Zahid v Govt. NCT of Delhi*, 1998 Cr LJ 2908 : AIR 1998 SC 2023 [LNIND 1998 SC 557] : (1998) 5 SCC 419 [LNIND 1998 SC 557] , for note on the case see under section 193. Also see *Harrianna Gowda v State of Karnataka*, 1998 Cr LJ 4756 (Kant).
111. *Ram Dhan v State of UP*, 2012 (4) Scale 259 [LNIND 2012 SC 1057] : 2012 AIR (SCW) 2500 : 2012 Cr LJ 2419 : (2012) 5 SCC 536 [LNIND 2012 SC 1057] : AIR 2012 SC 2513 [LNIND 2012 SC 1057] relied on *Sachida Nand Singh v State of Bihar*, (1998) 2 SCC 493) [LNIND 1998 SC 138] .
112. *R Venkat Reddy v State of AP*, 1992 Cr LJ 414 .
113. *Kapil Corepacks Pvt Ltd v Harbans Lal*, 2 AIR 2010 SC 2809 [LNIND 2010 SC 697] : 2010 (7) Scale 558 [LNIND 2010 SC 697] : (2010) 9 SCR 500 [LNIND 2010 SC 697] : (2010) 3 SCC (Cr) 924.
114. *Mohd Zahid v Govt. of NCT of Delhi*, AIR 1998 SC 2023 [LNIND 1998 SC 557] : (1998) 5 SCC 419 [LNIND 1998 SC 557] .
115. *State through Central Bureau of Investigation v B L Verma*, (1997) 10 SCC 772 ; See also *Asha Sunder Shivdasani v Aruna Ramesh Kriplani*, 2001 Cr LJ 2146 (Bom) - proceedings quashed as hit by section 195 Cr PC, 1973.

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116. [s 195A] Threatening or any person to give false evidence.

[Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.]

COMMENTS.–

In a prosecution under sections 489B and 489C, all prosecution witnesses who were police officials turned hostile. Subsequently they filed affidavits stating that they were threatened by higher officers not to support their previous statements during investigation. Court set aside the order of acquittal of the accused, ordered re-trial and directed to proceed under sections 193 and 195A.¹¹⁷.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [**\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\] : \(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]**](#).

116. New section 195A Ins. by The **Criminal Law (Amendment) Act, 2005** (Act No. 2 of 2006), section 2 (w.e.f. 16 April 2006 *vide* Notfn. No. SO 523(E), dated 12 April 2006.

117. *Court on Its Own Motion v State of Punjab*, [**2012 Cr LJ 2240 \(PH\)**](#).

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[s 196] Using evidence known to be false.

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

COMMENT.—

This section applies to those who make use of such evidence as is made punishable by sections 193, 194 and 195. It must be read with sections 191 and 192, and can only apply to the use of evidence which was false evidence within the meaning of section 191, or fabricated evidence within the definition laid down in section 192.¹¹⁸ Where an expert witness deposing on behalf of the defence claimed to be a diploma holder in criminology from the Imperial College of Science and Technology, London and it was found that the said claim was totally false and the diploma produced by him was a forged document, it was held he committed an offence in relation to Court proceedings under [sections 193 and 196, IPC, 1860](#), and as such a Court complaint under section 195 (1)(b)(i), [Cr PC, 1973](#), was necessary to prosecute him.¹¹⁹

The word 'corruptly' in this section means something different from "dishonestly" or "fraudulently". Although the user may not be dishonest or fraudulent, it may nevertheless be corrupt, if the user is designed to corrupt or prevent the course of justice. A person who files rent receipts alleged to have been granted by one of the landlords, who actually signs the receipts to support a false case of a tenancy under the landlord, does not commit an offence under section 471, but is guilty of corruptly using as true or genuine evidence which he knows to be false within the meaning of this section.¹²⁰.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\] : \(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .
118. *Lakshmajji*, (1884) 7 Mad 289, 290.
119. *Dr. S Dutt*, [1966 Cr LJ 459 : AIR 1966 SC 595 \[LNIND 1965 SC 196\]](#) .
120. *Bibhuranjan Gupta*, [\(1949\) 2 Cal 440](#) .

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[s 197] Issuing or signing false certificate.

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

COMMENT.—

Several laws require a certificate of some matter to be given. The offence of certifying in any of these, knowing or believing that the certificate is false, is put on the same footing as the offence of giving false evidence. The certificate must, however, be false in a material point. The issuing or signing must be by the officer or person authorized to certify.

[s 197.1] Ingredients.—

The section has two essentials:—

1. Issuing or signing of a certificate—
 - (a) required by law to be given or signed, or
 - (b) relating to a fact of which such certificate is by law admissible in evidence.
2. Such certificate must have been issued or signed knowing or believing that it is false in any material point.

Before convicting a person for offence under [section 197, IPC, 1860](#) the prosecution must prove the following facts:—

- (i) that the document in question purports to be a certificate;
- (ii) that such certificate is required by law to be given or signed, or that it related to some fact of which such certificate is by law admissible in evidence;
- (iii) that such certificate is false;
- (iv) that it is false in a material point;
- (v) that the accused issued or signed the same;
- (vi) that he, when doing so, knew or believed, such certificate to be false.¹²¹.

[s 197.2] Certificate.—

As per section 197, certificate contemplated therein is a certificate, which is required not to be given or signed for the use in the Court's administration of Justice. That means, certificate is issued as required by some law and it has some reference to some statutory requirements. Information given by petitioner to Process Server is that he has not heard about the Noticee for the last two years and his whereabouts are not known. That is not a certificate contemplated under any statute. Therefore, section 197 also will have no application.¹²². The expression "by law admissible in evidence" means that the certificate should by some provision of law be admissible in evidence as such a certificate without further proof.¹²³. A medical certificate is not such a certificate and the issue or use of a false medical certificate does not render a person liable under this section or section 198.¹²⁴.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .

121. *Mangtu Ram v State of Rajasthan*, [2003 Cr LJ 4733](#) (Raj).

122. *D Jothi v KP Kandasamy*, [2000 Cr LJ 292](#) (Mad).

123. *Mahabir Thakur*, (1916) 23 CLJ 423; *Kumar Choudhari v State*, (1936) 16 Pat 21; *Prafulla Kumar Khara*, [\(1942\) 1 Cal 573](#) . A caste certificate issued by an MLA to a student to enable him to get a pre-matric scholarship has been held to be not a certificate within the meaning of this section. *Haladhara Karji v Dileswar Subudhi*, [1989 Cr LJ 629](#) (Ori), no caste was mentioned in the

certificate. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a statement would become a false certificate if the law requires the issue of such a certificate as a legal proof. In this case the certificate was issued by the headmaster, though he was not authorised to do so. The candidate used the certificate for obtaining an appointment. A *prima facie* case under section 198 was made out against the headmaster.

124. *Prafulla Kumar Khara, Ibid.*

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[s 198] Using as true a certificate known to be false.

Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

COMMENT.—

This section is connected with section 197 just as section 196 is connected with sections 193, 194 and 195.¹²⁵ Appellant used the duplicate certificate with changes, as a true certificate knowing it to be false in material particular and thereby got admission in Polytechnic. Therefore, there is no reason to interfere with the conviction. However, looking to the nature of the offence and the fact that the appellant's past and present records have been good and the fact that he has already lost his career and is now married, reduced the sentence to that already undergone.¹²⁶

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .
125. *Premlata v State of Rajasthan*, [1998 Cr LJ 1430](#) (Raj), for notes on the case see under section 197.
126. *Tulsibhai Jivabhai Changani v State of Gujarat*, [\(2001\) 1 SCC 719 \[LNIND 2000 SC 2333\]](#) : [2001 Cr LJ 741](#) .

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[s 199] False statement made in declaration which is by law receivable as evidence.

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

COMMENT.—

This section makes the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have, on being made, the same effect as the compulsory declarations referred to in sections 51 and 191.^{127.} Voluntary declarations are thus placed on the same level as compulsory declarations. The Supreme Court has said that the complaint for an offence under [section 199, IPC, 1860](#), must make out the offence by singling out false averment in the complaint. Thus, where the allegation was that the accused had used a false affidavit before the Rent

Controller but the complaint did not set out a single averment from the said affidavit, which is said to be false, it was held that the complaint was not maintainable.¹²⁸.

[s 199.1] Ingredients.—

This section requires three essentials:—

1. Making of a declaration that a Court or a public servant is bound or authorised by law to receive in evidence.
2. Making of a false statement in such declaration knowing or believing it to be false.
3. Such false statement must be touching any point material to the object for which the declaration is made or used.¹²⁹ Section 199 provides punishment for making a false statement in a declaration that is by law receivable in evidence. Rival contentions set out in affidavits accepted or rejected by Courts with reference to *onus probandi* do not furnish foundation for a charge under [section 199, IPC, 1860](#).¹³⁰ A declaration before it could be made the foundation of charge under [section 199 of IPC, 1860](#), it is necessary that it must be admissible in evidence as proof of the fact declared under any law in consequence of which the Court is bound or authorised to receive it as such.¹³¹

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .

127. *A Vedamuttu, (1868) 4 MHC 185 ; Asgarali v State*, (1943) Nag 547.

128. *Chandrapal Singh, 1982 Cr LJ 1731 : AIR 1982 SC 1238 : (1982) 1 SCC 466 . Shiv Raman Gaur v Madan Mohan Kanda, 1990 Cr LJ 1033 P&H.*

129. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgear Ltd*, [\(2010\) 10 SCC 479 \[LNIND 2010 SC 979\]](#) : [2011 Cr LJ 8 L : \(2010\) 12 SCR 551](#) : (2011) 1 SCC (Cr) 68.

130. *Chandrapal Singh v Maharaj Singh, AIR 1982 SC 1238 (1982) 1 SCC 466 .*

131. *D Jothi v KP Kandasamy, 2000 Cr LJ 292 (Mad).*

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[s 200] Using as true such declaration knowing it to be false.

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200.

COMMENT.—

This section is connected with the last section just as section 198 is with section 197 or section 196 with sections 193, 194 and 195. The person who uses a false declaration is made liable as one who makes it.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : **(2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659]** .

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.¹.

[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender—.

Whoever, knowing or having reason to believe that an offence has been committed,¹ causes any evidence of the commission of that offence to disappear, with the intention of screening the offender² from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence;

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life;

and if the offence is punishable with ^{132.}[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

ILLUSTRATION

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

COMMENT.—

Object.—This section relates to the disappearance of any evidence of the commission of an offence and includes also the giving of false information with the intention of screening an offender. Sections 202 and 203 relate to the giving or omitting to give such information, and section 204 to the destruction of documentary evidence.

There are three groups of sections in the Code relating to the giving of information. First, sections 118–120 deal with concealment of a design to commit an offence; second sections 176, 177, 181 and 182 deal with omission to give information and with the giving of false information; and, third, sections 201–203 deal with causing the disappearance of evidence.

[s 201.1] Scope.—

The Supreme Court has held that this section is not restricted to the case of a person who screens the actual offender; it can be applied even to a person guilty of the main offence, though as a matter of practice a Court will not convict a person both of the main offence and under this section.¹³³.

But, if the commission of the main offence is not brought home to the accused, then he can be convicted under this section.¹³⁴. Where it is impossible to say definitely that a person has committed the principal offence he cannot escape conviction under this section merely because there are grounds for suspicion that he might be the principal culprit.¹³⁵. A woman's husband and in-laws could not be convicted of murdering her because there was no evidence whatsoever. They were convicted under this section because they gave no reasonable explanation of the unnatural death and had also disposed of the body in suspicious circumstances (dead body found near railway track).¹³⁶. The fact that the accused persons cannot be convicted for offence punishable under [section 302 IPC, 1860](#) does not extricate them from the offence under [section 201 IPC, 1860](#).¹³⁷. In a case of bride burning, where the *post-mortem* report was that death was due to throttling, burning her subsequently was held to be a clear proof of the fact that the evidence of strangulation was sought to be destroyed by the accused husband by pouring kerosene and setting her ablaze. The conviction of the husband under sections 201, 302 and 498-A was held to be proper.¹³⁸.

A statement given by a person in the course of an investigation by the police cannot amount to an offence under this section and section 203, even if it ultimately turns out to be false.¹³⁹. The allegation against the appellant was that, he had deliberately shielded the real offenders in the murder case and was accordingly liable for the offence under [section 201 of the IPC, 1860](#). Supreme Court acquitted the accused

holding that it is not possible on the evidence to ascertain, as to whether the appellant was, in fact, guilty of the offence alleged against him.¹⁴⁰

The Supreme Court has held that where the evidence showed that a person had died and his body was found in a trunk and discovered in a well, and that the accused had taken part in the disposal of the body but there was no evidence to show the cause of his death, or the manner or circumstances in which it came about, it was held that the accused could not be convicted for an offence under this section.¹⁴¹ In other words, the mere secreting of a dead body without first proving that the corpse secreted was the *corpus delicti* of a murder case is no offence under section 201, IPC, 1860.¹⁴²

[s 201.2] Independent offence.—

A charge under section 201 of the IPC, 1860 can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence had the knowledge or the reason to believe that the offence had been committed, the said person has caused disappearance of evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender. The offender may be either himself or any other person.¹⁴³ It has been held that the offence under the section is of independent nature, though it cannot be separated from the substance of the main offence. Accordingly, a conviction under the section can be recorded even though the commission of the main offence is not established. The Court, however, pointed out that such cases are likely to be very small in number. Applying this to the facts of the case, the Court held that the accused was guilty of offence under this section because he had buried the dead body of his wife in his field and misguided the police of her disappearance, though, because of decomposition, it could not be proved that he was responsible for her death.¹⁴⁴

[s 201.3] Ingredients.—

To bring home a charge under section 201, IPC, the prosecution must prove:—

- (1) That an offence has been committed.
- (2) That the accused knew or had reason to believe the commission of such an offence.
- (3) That with such knowledge or belief he
 - (a) caused any evidence of the commission of that offence to disappear, or
 - (b) gave any information relating to that offence which he then knew or believed to be false.
- (4) That he did so as aforesaid with the intention of screening the offender from legal punishment.
- (5) If the charge be of an aggravated form, it must be further proved that the offence in respect of which the accused did as in (3) and (4) *supra*, was punishable with death or imprisonment for life or imprisonment extending to ten years.¹⁴⁵

1. 'Knowing or having reason to believe that an offence has been committed'.—It must be proved that an offence, the evidence of which the accused is charged with causing to disappear, has actually been committed,¹⁴⁶ and that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed.¹⁴⁷ Unless the prosecution was able to establish that the accused person knew or had reason to believe that an offence has been committed and had done something causing the offence of commission of evidence to disappear, he cannot be convicted.¹⁴⁸

Where the accused committed rape on a seven-year-old minor girl at his studio, killed her and disposed of her dead body in a carton. The dead body of the deceased was found in the carton, which the accused procured from witness. Conviction under sections 302, 376 and 201 IPC, 1860 is maintained.¹⁴⁹

The charge framed was for causing disappearance for evidence. The fact that concealment was the likely effect of the Act is not enough. There was no evidence to attribute the knowledge of the death of the victim woman to the accused. Hence, the essential ingredient of the offence was missing.¹⁵⁰

[s 201.4] Causing disappearance by preventing information from reaching police.—

Where after raping a girl of 11 years the accused persons thrust a stick into her private part of which she died and they falsely told the mother of the victim that they had already reported the matter to the police and in the meantime there was disappearance of evidence, they were held liable under this section.¹⁵¹ Where the Court has no case that there is any intentional omission to give information by the accused to the police, the conviction under section 201 cannot be maintained only on the ground that no communication was given to the police and that the post-mortem had not been performed. It is also no case of the complainant that he had requested for post-mortem of the body and that intimation should have been given to the police before the last rites were performed and there is also no charge under section 202 of the IPC, 1860 of intentionally omitting to give information of the unnatural death to the police.¹⁵²

2. 'Intention of screening offence of offender'.—The intention to screen the offender must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient.¹⁵³ The accused person killed his brother and his whole family in order to avoid partition of the joint family property. There was no evidence to show that his son had common intention with him or participated in the commission of the crime. But because he had seen his father commit multiple murders, he tried to destroy the evidence by throwing away certain articles on two occasions from over a bridge. It seemed obvious that he had done that with the primary object of saving his father. He was convicted under this section.¹⁵⁴

Where a man shot down his wife with his pistol, his companion, who played no other role, but concealed the authorship of the homicide, he was held guilty under this section.¹⁵⁵ Where the co-accused persons told the investigating officer that the deceased was not present in the house at the material time, it was held that this amounted to the offence of screening the offender.¹⁵⁶

[s 201.5] Cases.—

In the Jessica Lal murder Case¹⁵⁷, the Supreme Court upheld the conviction of co-accused under section 201 read with section 120-B IPC, 1860 considering the evidence relating to their presence at the time of incident, removal of Tata Safari, his call details etc. as well as the evidence of PWs 30 and 101. In another case where the accused committed murder of his wife assaulting on her head with a chopper did cause the evidence to disappear by setting fire to the dead body after pouring kerosene on her, it is found that the accused has committed an offence punishable under sections 302 and 201 of IPC, 1860.¹⁵⁸ Where unnatural conduct of appellants to dispose of dead body of victim without having awaited for victim's husband who was already on his way to home and the evidence shows that victim died under unnatural circumstances, conviction under sections 302 and 201 IPC, 1860 is upheld.¹⁵⁹ Where the accused husband strangled his young wife to death and attempted to destroy evidence by burning her dead body, the order of acquittal of the accused of the offence under sections 300 and 201 was reversed by the Apex Court.¹⁶⁰

[s 201.6] Help rendered to conceal crime.—

Where a person through fear did not interpose to prevent the commission of a murder, and afterwards helped the murderers in concealing the body, it was held that he was not guilty of abetment of murder but was guilty of an offence under this section.¹⁶¹ A person who assists the actual murderers in removing the corpse of their victim to a distance from the place where the murder was committed is *prima facie* guilty of an offence under this section, until he can establish that he acted under compulsion.¹⁶² Where it appeared from the statement of the accused that he took from the men who, according to him committed the murder, a jewel which was unquestionably the property of the deceased and he hid it and produced it later, it was held that the accused, when he hid the jewel, had the intention of screening the offender, whoever he was, from legal punishment and so was guilty of an offence under this section.¹⁶³ The death of a woman was caused on the first floor of the house and her mother-in-law, the only other occupant of the house at the time of the occurrence, was residing on the ground floor. The place of incident was intermeddled and bamboo pieces, rafters, and broken tiles were thrown over the dead body with a view to cause disappearance of evidence and to screen the offender. It was held that it was not possible without the complicity of the mother-in-law and hence though she could not be held guilty of murder or abetting it, she was guilty of an offence under section 201.¹⁶⁴

[s 201.7] Death in custody.—

Where there was death of a person in the police custody while he was detained there for interrogation and his dead body was not traced, however, the evidence of other witnesses who were also beaten up and injured by the police, categorically established that the deceased became unconscious on receipt of injuries inflicted by the police and died, it was held that an irresistible inference could be drawn that the police personnel who caused the death, must also have caused the disappearance of the body.¹⁶⁵

[s 201.8] Bride burning.—

In a bride burning case, the victim was murdered and thereafter her body was burnt to screen the offence. The guilt of the accused mother-in-law and that of the husband of the victim as *particeps criminis* was established beyond any shadow of doubt. The

order of acquittal passed by the High Court from the offence of murder was reversed and set aside and that of the trial Court convicting both the accused under section 300 was upheld. The mother-in-law was also convicted under section 201.¹⁶⁶.

[s 201.9] False explanation by wife of death of husband.—

The accused wife attempted to explain away the death of her husband by saying that he was attempting suicide and while she attempted to save him, he fell, down to death. A search of her house showed evidence of murder. The Court said that even if she had not herself caused death, she was in know of things and attempted to explain away the incident by false explanations. The finding of guilt and her conviction under the section could not be interfered with.¹⁶⁷.

[s 201.10] Kidnapping, murder and concealment.—

The charge was that of Kidnapping the girl, murdering her and then concealing the dead body. The police brought the accused to his house. He himself dug the place from where the body was exhumed. The accused admitted that the house belonged to him. The accused failed to explain how the body came to be buried in his house. The Supreme Court confirmed his conviction under sections 300, 364 and 201.¹⁶⁸.

[s 201.11] Disposal of dead body by burning.—

The fact that the accused, after killing his two minor daughters, threw their dead bodies in the river, which amounted to causing disappearance of the evidence of murder.¹⁶⁹.

[s 201.12] Failure of doctor to give information.—

The failure on the part of the doctor to give information to police for six days after the admission of a burnt patient has been held not to constitute any offence under section 201 by itself.¹⁷⁰.

[s 201.13] Threat to approver.—

Oral threat or inducement given by the two lady lawyers to the approver not to give any statement against the petitioner, cannot amount to commission of an offence under section 201 IPC, 1860.¹⁷¹.

[s 201.14] Sanction under section 197 Cr PC, 1973.—

In a case where the allegation was that HIV contaminated blood was supplied to the Government Medical College Hospital and as a result, some patients who were given blood transfusion had tested HIV positive. Accused tampered with the entries made in official register, tearing of pages from the different official registers and stowing them