CHAPTER VI
Of Offences against the State

Chapter introduction.—*This Chapter comprises twelve sections, the first three of which deal with preparation, conspiracy, and the actual waging of war against the Government of Bangladesh. Section 123 deals with abetment by criminal concealment, and in this respect it is an aggravated form of the offence punishable under Secs. 118 and 120. Sections 125, 127 refer to hostile acts directed against any Asiatic power in alliance or at peace with the Government of Bangladesh. The two groups of sections are thus directed to the securing of external and internal peace. Section 124A is directed against sedition which may be regarded as a precautionary section intended to avert internal commotion and civil war. Sections 121, 123 and 124A are thus directed to the preservation of the State. Secs. 125, 127 to the preservation of allied foreign States and the remaining sections have the same object in view, though they are not directly conductive to its preservation. There are thus four principal offences dealt with in this Chapter : (i) waging war against the Government (Secs. 121, 121A, 122, 123), (ii) waging war against an Asiatic ally (Secs. 125, 126, 127), (iii) overawing the Government (Secs. 124, 124A), (iv) permitting or aiding the escape of a state prisoner or a prisoner of war (Secs.) 128, 129 and 130.*

Section 121

121. Waging or attempting to wage war or abeting waging of war against [1][Bangladesh].—Whoever wages war against [2][Bangladesh], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [3][imprisonment] for life, [4][and shall also be liable to fine].

[5]*[Illustration]*

[6]*[* *] A joins an insurrection against [2][Bangladesh]. A has committed the offence defined in this section.*

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1. The word 'Bangladesh' was substituted for the word "Pakistan" by Act VIII of 1973, Second Schedule (w.e.f. 26th March, 1971.
2. The word 'Bangladesh' was substituted for the word "Pakistan" by Act VIII of 1973, Second Schedule (w.e.f. 26th March, 1971.
3. Subs. by Ord. No. XLI of 1985, for "transportation".
4. Subsituted by the Indian Penal Code (Amendment) Act, 1921 (act XVI of 1921), s. 2, for "and shall forfeit all his property".
5. Subs. by A.O. 1961, Art 2 and Sch. for "Illustrations" (with effect from 23rd March, 1956).
6. The brackets and letter "(a)" were omitted, *ibid* (with effect from the 23rd March, 1956).

[7][* * * * * * *]

Cases and Materials : Synopsis

1. *Scope.*
2. *"Whoever".*
3. *Wages war".*
4. *Distinction between waging war and riot.*
5. *"Abets the waging of war".*
6. *This section and S. 235(4) Cr.P.C.*
7. *Compulsion as defence.*
8. *Practices.*
9. *Procedure.*
10. *Charge.*
11. *Sanction.*

1. Scope of the section.—(1) This Chapter consists of 13 sections from 121 to 130 which is directed to the securing of external and internal peace of the State. The expression "waging war" must be construed in its ordinary sense. An act would fall under this section if it comes to waging war in the manner usual in war and what is known as Armoury Raid. Where however the accused does not have plans to use force or violence but otherwise preaches a change of government, he is not guilty of waging war. So long as a man tries to inflame feeling to excite a state of mind, he is not guilty of anything more than sedition. Section 121 makes no distinction between abetment which has succeeded and abetment which has failed. Section 44 of the CrPC requires that every person aware of the commission or the intention to commit an offence punishable under sections 121, 121A, 122 to 126 and 130 should in the absence of a reasonable excuse report the same to the police or the nearest Magistrate. The omission to so report was with a view to aiding the waging of war, the person shall be guilty of the offence under section 121 *(38 CrLJ 715).*

(2) For conviction u/s. 121 it must be proved that the accused took steps to restrain by force of arms the lawful Government from reigning according to law—Fiery oratory, however inflammable, does not attract sec. 121 unless it is accompanied by some overt act. *Obaidullah Majumdar Vs. The State (1982) 34 DLR 404.*

(3) There is no evidence that apart from trying to inflame feeling, the appellant incited anyone to such action that it resulted in the waging of war against the Government of Bangladesh. The appellant was neither guilty of waging war against the Government of Bangladesh nor of abetting the waging of such war against the said Government. *Obaidullah Majumdar Vs. The State (1982) 34 DLR 404.*

(4) Conviction of the appellant u/s. 121 of the Penal Code read with Article 11(a) and paragraph (a) of Part I of the Schedule to P.O. No. 8 of 1972 cannot be upheld. *Obaidullah Majumdar Vs. The State (1982) 34 DLR 404.*

(5) If a particular article is charged as being seditious on the ground that it says more than as appears on the face of it, it is the duty of the prosecution to show that it has, in fact, the guilty meaning or intent attributed to it. *Obaidullah Majumdar Vs. The State (1982) 34 DLR 404.*

(6) It has not been established that the accused while referring to so-called Bangladesh really attacked the Govt. of People's Republic of Bangladesh—All his attacks were directed, in fact, against the Govt. of India. *Obaidullah Majumdar Vs. The State (1982) 34 DLR 404.*

(7) In order to support a conviction on charge under section 121 of the Penal Code it is not enough to show that the person charged used highly emotional and opinionated language against the Government in public speeches. There must also be some evidence that the accused has taken some

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7. Illustration (b) as amended by the Federal Laws (Revision and Declaration) Act, 1951 (Act XXVI of 1951), s. 4 and III Sch. was ommitted by A.O. 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

steps to restrain by force of arms the lawful Government from reigning according to law. *Majibur Rahman Vs. State (1983) 35 DLR 35.*

(8) The offences described in this section correspond to the offence of treason by levying war under the English law. *AIR 1946 Nag 173.*

(9) In enacting this section, it was not the intention of the framers of the Code to reproduce the English law of treason in its entirety, that is to say, the statute law and also the interpretation placed upon it by the case. *(1910) 11 CriLJ 453 (458) (DB) (Cal).*

(10) No specific number of persons is necessary to constitute an offence under the section. The number concerned or the manner in which they are equipped or armed is not material. The true criterion is quo animo (=with what mind) did the gathering assemble? The object of the gathering must be to attain by force or violence an object of a general public nature, thereby striking directly against the Government authority. *AIR 1931 Rang 235.*

2. "Whoever."—The essence of the offence under this section lies in the violation of the allegiance which is owed to the sovereign power, i.e., the Government and which is due from all citizens wherever they may be. *AIR 1931 Rang 235.*

3. "Wages war".—(1) The expression "waging war" has neither been defined in the Code nor in the General Clauses Act, 1897. It must be therefore understood in its ordinary dictionary meaning of "carrying on war". *(1910) 11 CriLJ 453 (458) (DB) (Cal).*

(2) The expression 'waging war' has been held to be a substitute for the expression "levying war" used in the English Statutes relating to treason. *AIR 1931 Rang 235.*

(3) English authorities bearing on the interpretation of the term "Levying war" are relevant in construing the expression "wages war" in this section. *AIR 1946 Nag 173.*

(4) The phrase 'waging war' imports use of force and violence and hence, where a society is formed with the object of putting an end to capitalism and private ownership and bring about a change in the existing Government by peaceful means it cannot be said that it is guilty of waging war as it is right of every citizen to entertain and propagate his political theories and ideas and work for their establishment without use of force and violence. *AIR 1955 Trav-Co 33 (37, 38) = 1955 CriLJ 414 (DB).*

(5) A rebel in arms against Crown in unlawful possession of deadly weapons to be used when occasion demanded is guilty of waging war. *AIR 1934 Cal 221.*

(6) The words "wages war" occurring in Section 121 of the Penal Code and the words "waged war" occurring in sub-clause (III) of clause (b) of Article 2 of P. O. No. 8 of 1972 mean waging war in the manner usual in a war—In order to support a conviction on a charge under Section 121 of the Penal Code it is not enough to show that the accused used highly emotional and opinionated language against the Government in public speeches—There must be some evidence to show that the accused took some steps to restrain by force of arms the lawful Government from reigning according to law. *Majibur Rahman Vs. The State 3 BLD (HCD) 158.*

4. Distinction between waging war and riot.—(1) Although the offence of waging war against the Government and the offence of rioting may often very nearly run into each other the distinction between them is clear. Where the rising or tumult is merely for the purpose of accomplishing some private purpose interesting only to those engaged in it and not for the purpose of resisting or calling in question the authority of the Government or its prerogative then the tumult, however numerous or

outrageous the mob may be, is only a riot. But wherever the rising or insurrection has for its object a general purpose not confined to the peculiar interests of the persons concerned in it, but common to the whole community and striking directly against the authority of the Government then it assumes the character of treason, i.e., waging war. *AIR 1955 Trav-Co 33.*

5. "Abets the waging of war".—(1) While the general law makes a distinction between successful and unsuccessful abetments for the purpose of punishment, S. 121 does away with that distinction and deals equally with the abettor whose instigation has led to a war and one whose instigation has taken no effect whatsoever. *AIR 1946 Nag 173.*

(2) So long as a man only tries to inflame feelings or to excite a state of mind he is not guilty of anything more than sedition. It is only when he definitely and clearly incites persons to action that he is guilty off instigation and therefore of abetting the waging of war. *AIR 1922 Bom 284.*

(3) There is a difference between men who plan and execute a raid and those who, swept along in the maelstrom of events and sudden frenzy, participate in an offence of that kind it was held that the latter cannot be held liable under this section. *AIR 1946 Nag 173.*

(4) Where, in a village which was a hotbed of rebellion an influential man who was also the president of an association which was formed for resisting payment of capitation taxes by way of a rebellion, recruited rebels and assisted them after battle with the tax authorities, it was held that he was guilty of the offence of waging war. *AIR 1937 Rang 118.*

6. This section and Section 235(4) Criminal P.C.—(1) The waging of war is essentially a continuing offence in which several incidents, which may in themselves be separate offences, may be comprised. Hence, the striking off of the convictions for other offences cannot affect the conviction of the accused under S. 121 if there is other evidence to establish it. *AIR 1925 Mad 690.*

7. Compulsion as defence.—(1) In view of the provisions of Sec. 94, compulsion is not a defence in India to a charge under this section, though it does operate in mitigation of punishment in most, though not in all, cases. *AIR 1931 Rang 2235.*

8. Practice.—Evidence—Prove: (1) That the accused waged war, or attempted to do so, or abetted the same.

(2) That such war was against the Government of Bangladesh.

9. Procedure.—(1) The offence may be tried at the place conspiracy to wage war was entered into or at the place where an act was done in pursuance of conspiracy by any of the conspirators, as such act is the act of all conspirators. *(1872) 17 SuthWR 15.*

(2) Not cognizable—Warrant—Not bailable—Not compoundable—Triable by the Court of Session.

10. Charge.—(1) A charge for an offence under this section is not vitiated by the fact that it does not set out the speeches alleged to be seditious. *AIR 1925 Mad 106.*

(2) The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, waged war (or attempted to wage war, or abetted the waging of war) against Government of Bangladesh, and thereby committed an offence punishable under section 121 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

11. Sanction.—Sanction of Government is necessary before prosecution could be instituted under this section (*section 196 CrPC).*

Section 121A

[8]**[121A. Conspiracy to commit offences punishable by section 121.**—Whoever within or without [2][Bangladesh] conspires to commit any of the offences punishable by section 121, or to deprive [9][Bangladesh of the sovereignty of her territories] [10][* * *] or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, [11][the Government] [12][* * * *], shall be punished with [13][imprisonment for life], or with imprisonment of either description which may extend to ten years, [14][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.]

Cases and Materials : Synopsis

1. *Scope.*
2. *"Conspiracy to commit offences under S. 121."*
3. *Proof of conspiracy.*
4. *"Conspiracy to overawe the Government".*
5. *"Criminal force or show of criminal force".*
6. *Section 120B and S. 121A compared.*
7. *Charge.*
8. *Punishment.*
9. *Joint trial of other offences with offence under this section.*
10. *This section and S. 196, Criminal P.C.*
11. *Practice.*
12. *Procedure.*
13. *Charge.*

1. Scope.—(1) The question whether the conspiracy would succeed in the near future or distant future is immaterial for the application of this section. Section 121A embraces not merely a conspiracy to raise a general insurrection but also a conspiracy to overawe the Government by the organisation of a serious riot or a large and tumultuous unlawful assembly. The word 'overawe' imports more than the creation of an apprehension or alarm or even fear, it connotes the creation of a situation in which the Government feel themselves compelled to choose between yielding to force or expose themselves and the members of the public to a very serious danger ; may be to the public property. Mere holding of communist beliefs is not per se punishable.

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8. Section 121A was inserted by the Indian Penal Code (Amendement) Act, 1870 (Act XXVII of 1870), s. 4.
9. The original words "the Queen of the soverignty of British Indian" have successively been amended by A.O. 1949, Arts. 3(2) and 4. Ordinance XXI of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955), and A.O. 1961, Art. 2nd Sch. (with effect from the 23rd March, 1956). and Act VIII of 1973, Second Sch. (with effect from 26th March, 1971), to read as above.
10. The words "of British Burma" were omitted by A.O. 1949, Sch.
11. The words "the Central Government or any Provincial Government" were first substituted for the words "the Government of India or any Local Government" and then the words "the Government" were substituted for the words "the Central Government or any Provincial Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), (with effect from 26th March, 1971).
12. The words "or the Government of Burma" were omitted by A.O. 1949, Sch.
13. Subs. by Ord. No. XLI of 1985, for "transportation for life or any shorter term".
14. These words were inserted by Act XVI of 1921.

(2) Ingredients: The section deals with two kinds of conspiracies:

(i) Conspiring within or without Bangladesh (a) to commit any of the offences punishable by section 121 or (b) to deprive Bangladesh of the sovereignty of her territories or any part thereof.

(ii) Conspiring to overawe by means of criminal force, or the show of criminal force, the Government.

(3) Truth of the allegation alleged to be seditious can never operate as a defence to such an allegation. Truth of the seditious commentary becomes relevant to the proceedings in order that the accused may succeed in securing a lighter sentence from the Court. *Sardar Ataullah Khan Vs. State (1964) 16 DLR (WP) 149.*

(4) The essence of the crime of sedition consists in the intention with which the language is used and such intention has to be judged primarily by the language used. *PLD 1954 (Sind) 80.*

(5) A person may no doubt lawfully express his opinion even in strong terms on public matter however distasteful it might be to others, but this does not entitle him to do so in a language which is calculated to endanger feelings of hatred or contempt or to rouse passions to such an extent as to incite listeners to rebellion, insurrection, etc. Intention is a state of mind and it can only be gathered from the evidence of his overt acts and expressions. Where there are no deeds but only words the speaker's intention must be gathered from a plain reading of his words. He must be deemed to have meant what he said unless the words are ambiguous and capable of bearing more than one meaning. *The State Vs. Sardar Ataullah Khan Managal, (1967) 19 DLR (SC) 186.*

(6) Attempt to bring into hatred or contempt or excite disaffection towards the Government—Use of vituperative and strong language not a sure test—Right of criticising the Govt. even in violent language universally accepted. *Masihur Rahman Vs. The State (1974) 26 DLR 87.*

(7) The section obviously draws a distinction between the Sovereign for the time being of the United Kingdom and the Government of India or the Local Government. It may therefore be conceded in favour of the accused that any conspiracy to change the form of the Government of India or of any Local Government even though it may amount to an offence under another section of the Code would not be an offence under Section 121A unless it is a conspiracy to overawe such Government by means of criminal force or show of criminal force. *AIR 1933 All 690.*

(8) In view of the explanation a conspiracy itself is a crime and it is not necessary to establish any illegal act or illegal omission as overt acts of the conspiracy. The illegal acts or omission, if established, support the case of the existence of the conspiracy itself, the offence being complete even though two persons conspiring together go no further than the original agreement. *AIR 1937 Cal 99.*

2. "Conspiracy to commit offences under S. 121".—(1) The gist of a conspiracy lies in the agreement of two or more 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, but when two or more persons 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, punishable, if for a criminal object or for the use of criminal means. *(1910) 11 CriLJ 453 (Cal).*

(2) Conspiracy in the present section is to be construed in the light of the definition contained in Section 120A. The agreement in itself is therefore enough to constitute the offence under this section. *AIR 1933 All 690.*

(3) 'Conspire' is nothing, agreement is the thing. *(1911) 12 CriLJ 286.*

(4) The criminality of the conspiracy in this section is independent of the criminality of the overt acts. *(1912) 13 CriLJ 609.*

(5) Where a conspirator A intended to leave the conspiracy and carried out his intention before the other conspirators indulged in acts of war, it was held that A was only guilty of conspiracy under this section and was acquitted of the offence under Section 121. *(1913) 14 CriLJ 610.*

(6) In order to constitute a conspiracy it is not necessary that its purpose should be immediate. The fact that the purpose was not immediate, if proved, would only be material in so far as it might bring the matter within the saving operation of S. 95 of the Code. *(1910) 11 CriLJ 453 (Cal).*

3. Proof of conspiracy.—(1) Conspiracy is generally hatched in secrecy. It must, therefore, be remembered that direct proof can scarcely be afforded of a conspiracy. In such a situation the prosecution is not obliged to prove that the persons accused actually met and put their heads together and after a formal consultation came to an express agreement to do evil. On the contrary, if the facts as proved are such that the jury "as reasonable men can say there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which jury may suppose that a conspiracy was actually formed". *AIR 1929 Pat 145.*

(2) The overt acts may be properly looked at as evidence of the existence of a concerted intention: indeed, conspiracy is usually closely bound up with overt acts, because in many cases, it is only by means of overt acts that the existence of the conspiracy can be made out. *(1912) 13 CriLJ 609.*

(3) Once the agreement is proved by circumstances raising a presumption of common concerted plan to carry out the unlawful design, not only those who have joined in the scheme from the first but also those who came in at a later stage are equally guilty of the conspiracy. *(1912) 13 CriLJ 609.*

(4) Where it has been proved that the accused were members of the particular conspiracy charged, it is not necessary to establish that the different organisations to which they belonged were connected with one another. *AIR 1937 Cal 99.*

(5) Conspiracy to wage war would not imply the existence of a serious menace to the Constitution or the stability of the constituted authority. To attach sinister significance to an association for play or pastime such as music or gymnastic exercises and lathi-play of those who live in the same village or attend the same school is dangerous especially where there is a complete absence of secrecy. *(1911) 12 CriLJ 286.*

(6) Where several persons are charged with the same conspiracy, it is a legal impossibility to find some guilty of one conspiracy and some of another. Any member who is not guilty of the particular conspiracy is entitled to be acquitted. *(1911) 12 CriLJ 286.*

(7) With regard to the conviction of the accused under section 124A of the Penal Code read with paragraph (a) of Part I of the Schedule to the President's Order No. 8 of 1972, in order to sustain a conviction on this charge it is necessary for the prosecution to adduce evidence that the accused brought into hatred or contempt, or excited or attempted to excite disaffection, towards the Government established by law in Bangladesh. *Majibur Rahman Vs. State (1983) 35 DLR 35.*

(8) Where the charge is based upon a statement concerning measures taken or alleged to be taken by the Government, it is irrelevant for the purpose of establishing the charge whether the allegations of fact made in such statement are true or otherwise. It is not relevant even for determination of sentence, whether the allegations of fact are true or untrue, in a case where the prosecution does not make it a part of its case that the statements were untrue. Evidence as to the truth of the measures which formed the basis of criticism offered in the offending statement cannot be admitted in cases where he libels are

alleged to be seditious. If the prosecution does not allege that the facts are incorrect they must be accepted as correct and the Court should proceed to decide assuming that the facts referred to in the speech are correct. The principle is that it can never be in the public interest that enquiry into the truth of statements (subject-matter of a charge u/s. 124A) should be allowed in cases where the only question for the Court to decide is whether the effect of the language used is such that it is calculated to create a feeling of revulsion towards the Government, so strong as to amount to hatred or contempt, or where it proves "disaffection." *The State vs. Sardar Ataullah Khan, (1967) 19 DLR (SC) 186.*

(9) Evidence of truth of speech (or publication) which the subject matter of a charge for sedition under Sec. 124A of the Penal Code is not admissible at all either upon general principles or by reason of anything contained in section 124A of the Penal Code. Whether a comment is fair or not, or whether it was made with the intention of bringing about a change is Governmental policy or action by lawful means, would depend upon the language used in the offending article or speech and not upon the truth or falsity of the facts commented upon. *The State Vs. Sardar Ataullah Khan Mangal, (1967) 19 DLR (SC) 186.*

4. "Conspiracy to overawe the Government".—(1) The word 'overawe' clearly imports more than the creation of apprehension or alarm or even perhaps fear. It connotes the creation of a situation in which the members of the Government feel themselves compelled to choose between yielding to force or exposing themselves or the 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 the members of the general public. *AIR 1951 Pat 60.*

(2) The words "conspires to overawe by means of criminal force or the show of criminal force, the Government" clearly embrace not only a conspiracy to raise a general insurrection but also a conspiracy to overawe the Government by the organisation of a serious riot or a large and tumultuous unlawful assembly. *AIR 1951 Pat 60.*

5. "Criminal force or show of criminal force".—Where a large number of havildars and police constables conspired to withhold their services with the object of compelling the Government to yield to their demands and the conspirators seized the armoires and took possession of the arms and ammunition but remained peacefully in the police lines and did nothing to intimidate the general body of citizens, but took steps to ensure the uninterrupted working of the treasury, it could not be said that there was any such show of criminal force as is contemplated by the section. *AIR 1951 Pat 60.*

6. Section 120B and Section 121A compared.—As under Section 120A, so also under this section, the conspiracy to commit an offence is a substantive offence by itself, though the offence conspired to be committed may not be actually committed in pursuance of the conspiracy. *AIR 1937 Cal 99.*

7. Charge.—(1) Under Ss. 221 and 222, Criminal Procedure Code 1898 there is no duty on the prosecution to mention in the charge the names of the fellow conspirators and the charge is not invalid by reason of such omission. *AIR 1933 All 498.*

(2) If the names of the fellow conspirators are known they must be mentioned in the charge. *(1911) 12 CriLJ 286 (FB) (Cal).*

(3) When the facts may sustain a charge under S. 121A and also under S. 120B, the prosecution may rest content with proceeding under S. 120B only. It is not incumbent on the Government to prosecute the accused under S. 121A. *AIR 1934 Nag 71.*

8. Punishment.—(1) In the case of political offences arising out of beliefs of the accused severe sentences defeat their object as in practice such sentences confirm the offenders in their beliefs and create other offenders, thus increasing the evil and danger to the public. *AIR 1937 Cal 99.*

(2) A distinction must be drawn between political offences of the nature of sedition or spread of ideas of communism and socialism charged under this section and offences against the State and society involving treason, armed rebellion and murder, in connection with which the name of 'policitics' is used. All the conspirators, however, are not to be punished alike if the parts played by them largely differ in character, but in the awarding of sentences the complicity of each of the individual accused person and the part played by him as a member of the conspiracy in furtherance of its aims and objects have to be carefully considered. *AIR 1937 Cal 99.*

9. Joint trial of other offences with offence under this section.—(1) Under clause (d) of S. 239, Criminal P.C., persons accused of different offences committed in the course of the same transaction may be tried jointly. Hence offences under Ss. 121A (conspiracy to wage war), 122 and 123 which are committed in furtherance of the same transaction are triable jointly under Section 239 (d), Criminal Procedure Code. *(1912) 13 CriLJ 609.*

10. This section and S. 196, Criminal Procedure Code.—(1) The offence envisaged by this section probably would, to the lay mind, imply a political situation of the gravest character, and it is no doubt, partly for this reason that the Legislature has prescribed that an offence of this description shall not be taken cognizance of except upon a complaint made by order of, or under sanction from the authorities specified in Section 196, Criminal Procedure Code. *(1911) 12 CriLJ 286.*

(2) *Sanction:* No Court shall take cognizance of an offence under this section unless the prosecution is instituted under the authority of Government *(Section 196, CrPC).*

11. Practice.—Evidence—Prove: (1) That the accused had entered into a conspiracy.

(2) That the conspiracy was to commit an offence punishable under section 121 or to deprive Bangladesh of the sovereignty of her territories or to overawe by means of criminal force or show of criminal force the Government.

12. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

13. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, conspired to wage war (or to abet the waging of war) against Bangladesh (or conspired to deprive Bangladesh of the sovereignty or of some part thereof, or conspired to overawe, by means of criminal force or show of criminal force, the Government) and thereby committed an offence punishable under section 121A of the Penal Code and within the cognizance of the Court of Session.

And I hereby direct that you be tried on the said charge.

Section 122

122. Collecting arms, etc. with intention of waging war against [15][Bangladesh].—Whoever collects men, arms or ammunition or otherwise prepares

15. The word "Bangladesh" was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule (w.e.f. 26th March 1971).

to wage war with the intention of either waging or being prepared to wage war against [15][Bangladesh], shall be punished with [16][imprisonment] for life or imprisonment of either description for a term not exceeding ten years, [17][and shall also be liable to fine].

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Practice.*
3. *Procedure.*
4. *Charge.*
5. *Sanction.*

1. Scope of the section.—(1) Since the expression "wages war" occurring in S. 121 has to be construed in its ordinary sense, the overt acts, envisaged by the present section do not amount to waging war but they are part of, and go to make up the offence under S. 121-A. That is why the general rule of procedure is that when a person is convicted for the offence of conspiracy to wage war under S. 121-A, he is not to be separately convicted, much less punished, for the acts under this section if they related to the conspiracy charged. *(1910) 11 CriLJ 453.*

(2) Where an accused declared that he was going to set up his throne in a particular city, Mandalay (which was then part of British India) and started with a following of other persons, it was held that it was an act of collecting men to wage war with the intention of waging war against the Government of India. *(1900-1902) 1 Low Bur Rul 340.*

(3) Where an accused person was charged with abetment of dacoity and the charge was proved, there could be no objection to convict him for the offence, though an intention to prepare for waging war was disclosed in the course of trial, but no charge could be framed for want of sanction under S. 196, Criminal P. C. *(1900) 2 BomLR 653.*

2. Practice.—Evidence—Prove: (1) That the accused collected men, arms, etc.

(2) That he did collect men, arms, etc. with intent to wage war or was prepared to wage war.

(3) That such war was against Bangladesh.

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

4. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, collected men, arms and ammunition, or otherwise prepared with the intention of waging war (or being prepared to wage war) against Bangladesh and thereby committed an offence punishable under section 122 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction of Government is required for prosecution under this section (*Section 196, CrPC*).

Section 123

123. Concealing with intent to facilitate design to wage war.—(1) Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war

16. Subs. by Ord. No. XLI of 1985, for "transportation".
17. Subs. by the Indian Penal code (Amendment) Act, 1921 (Act XVI of 1921), s. 2, for "and shall forfeit all his property".

against [15][Bangladesh], 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.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Practice.*
3. *Procedure.*
4. *Charge.*
5. *Sanction.*

1. Scope of the section.—(1) A conspiracy to wage war (S. 121A) will necessarily amount to a design to wage war and the concealment of such conspiracy will fall under this section. *(1912) 13 CriLJ 609.*

(2) It is not necessary under this section that persons designing by conspiracy to wage war and the persons concealing such design must be different persons. The same persons may form a conspiracy to wage war (S. 121A) and may also conceal the existence of such conspiracy intending thereby to facilitate the waging of war. *(1912) 13 CriLJ 609.*

(3) Even persons guilty under S. 121A (conspiracy to wage war) may be convicted under Ss. 122 and 123. Thus in the case of a conspiracy to wage war (S. 121A) the conspirators may be held guilty under this section also for concealing the existence of the conspiracy. *(1892-96) 1 UBR 148.*

(4) A charge under this section can be joined with a charge under S. 121A. The charge under S. 121A is that of conspiracy to wage war or overawe the Government. In furtherance of that conspiracy the conspirators may collect arms or they may conceal the existence of their conspiracy from the authorities. All these acts, if done, will be part of one transaction and therefore may clearly be charged jointly under S. 235 of the Criminal P.C. *(1912) 13 CriLJ 609.*

(5) Where the sanction is granted by the Government to lay a complaint under Ss. 121, 122 and 123, it is not open to an accused person to challenge the valid creation of the Government itself, when it is a de facto Government of the State for years, as such challenge might undermine other functions of the Government including the appointment of Magistrates and Judges and their jurisdiction to commit and try the offences. *(1912) 13 CriLJ 609.*

2. Practice.—Evidence—Prove: (1) That a design to wage war against the Government of Bangladesh existed.

(2) That the accused knew of such design.

(3) That he concealed the same.

(4) That the concealment was intended to facilitate the design to wage war.

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Chief Metropolitan Magistrate, District and Additional District Magistrate, MFC specially empowered.

4. Charge.—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you—Knowing that on or about the—day of—, at—, certain persons had design to wage war against Bangladesh, concealed the existence of such design by (specify the act or illegal omission)

intending by such concealment to facilitate (or knowing it to be likely that such concealment would facilitate) the waging of such war, and thereby committed an offence punishable under section 123 of the Penal Code, and within my cognizance:

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction of Government is necessary for prosecution under the section *(Section 196, CrPC).*

Section 123A

[18][**123A. Condemnation of the creation of the State and advocacy of abolition of its sovereignty.**—(1) Whoever, within or without [15][Bangladesh], with intent to influence, or knowing it to be likely that he will influence, any person or the whole or any section of the public, in a manner likely to be prejudicial to the safety of [15][Bangladesh], or to endanger the sovereignty of [15][Bangladesh] in respect of all or any of the territories lying within its borders, shall by words, spoken or written, or by signs or visible representation, condemn the creation of [15][Bangladesh] [19][in pursuance of the Proclamation of Independence on the twenty-sixth day of March, 1971], or advocate the curtailment or abolition of the sovereignty of [15][Bangladesh] in respect of all or any of the territories lying within its borders, whether by amalgamation with the territories of neighbouring States or otherwise, shall be punished with rigorous imprisonment which may extend to ten years, and shall also be liable to fine.

(2) Notwithstanding anything contained in any other law for the time being in force, when any person is proceeded against under this section, it shall be lawful for any Court before which he may be produced in the course of the investigation or trial, to make such order as it may think fit in respect of his movements, of his association or communication with other persons, and of his activities in regard to dissemination of news, propagation of opinions, until such time as the case is finally decided.

(3) Any Court which is a Court of appeal or of revision in relation to the Court mentioned in sub-section (2) may also make an order under that sub-section].

Materials

1. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Chief Metropolitan Magistrate, District Magistrate, Additional District Magistrate, MFC specially empowered.

Section 124

124. Assaulting President, Government, etc. with intent to compel or restrain the exercise of any lawful power.—Whoever, with the intention of

18. Section 123A was inserted by the Pakistan Penal Code (Amdt.) Act, 1950 (LXXI of 1950), s. 2.

19. The words within square brackets were substituted for the words "by virtue of the partition of India which was effected on the fifteenth day of August, 1947" byAct VIII of 1973, Second Sch. (w.e.f. 26th March,,1971).

inducing or compelling the [20][President] of [21][Bangladesh], or [22][the Government], [23][* *], [24][* * *], [25][* * *], to exercise or refrain from exercising in any manner any of the lawful powers of the [20][President], or [26][the Government],

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, [27][the President], [28][* *],

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

Materials

1. Practice.—Evidence—Prove: (1) That the person assaulted was the President of Bangladesh or the Government.

(2) That the accused assaulted or attempted to assault such person or wrongfully restrained or attempted to restrain such person or that the accused used a criminal force or show of criminal force.

(3) That the accused did so with the intention of inducing or compelling such person to exercise or refrain from exercising any of his lawful powers.

2. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Judge/Magistrate etc.) hereby charge you (name of the accused) as follows;

That you, on or about the—day of—, at—, with the intention of inducing the President of Bangladesh, to refrain from exercising a lawful power as such President, assaulted such President, and thereby committed an offence punishable under section 124 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

4. Sanction.—Sanction of Government is necessary for prosecution under this section *(Section 196 CrPC).*

Section 124A

[29][**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

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20. Subs. by A.O. 1961, Art. 2, for "Governor-General" (with effect from the 23rd March 1956).
21. The word "Bangladesh" was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule, (with effect from 26th March 1971).
22. The words "the Government" were substituted for the words "the Governor of any Province" by Act VIII of 1973, Second Schedule.
23. The words "or a Lieutenant-Governor" were repealed by A.O. 1937.
24. The words "or a Member of the Council of the Governor-General of India" were omitted by A.O. 1949.
25. The words "or of the Council of any Presidency" were repealed by A.O. 1937.
26. These words were substituted for "Governor" *ibid.*
27. Subs. by A.O. 1961, Art. 2 for "such Governor-General" (w.e.f. 23-3-1956).
28. The words "or Governor" were omitted by Act VIII of 1973.
29. Substituted by the Indian Penal Code (Amendment) Act, 1898 (Act IV of 1898), s. 4, for the original section 124A, which was inserted by the Indian Penal Code (Amendment) Act. 1870 (Act XXVII of 1870), s. 5.

contempt, or excites or attempts to excite disaffection towards, [30][the Government established by law, shall] be punished with [31][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.]

Cases and Materials : Synopsis

1. History of the section.—(1) The words "brings or attempts to bring into hatred or contempt" were absent in the section as originally enacted. The word "disaffection" is not equivalent to 'disapprobation' but means 'dislike' or 'hatred'. *(1897) ILR 20 All 55 (FB).*

(2) The word "disaffection" did not mean a mere negation of affection, but meant positive ill-will, dislike, hatred and contempt. *AIR 1916 Bom 9.*

2. Scope of section.—(1) The expression 'the Government established by law' has to be distinguished from the persons for the time being engaged in carrying on the administration.

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30. The original words "Her Majesty or the Government established by law in British India, shall" have successively been amended by A.O. 1937, A.O. 1949, Sch., the Central Law (Statute Reform) Ordinance, 1960 (Ord. XXI of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955) and A.O. 1961, Art. 2 and Sch. (with effect from the 23rd March 1956) to read as "the Central or Provincial Government established by law shall" and then the words "the Government" were substituted for the words "the Central or Provincial Government" by Act VIII of 1973, Second Schedule., (w.e.f. 26th March 1971).

31. Subs. by Ord. No XLI of 1985, for "transportation for life or any shorter term".

'Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the 'State'. That is why 'sedition' as the offence in S. 124A has been characterised comes under Chapter VI relating to offences against the State. *AIR 1962 SC 955.*

(2) The section is limited to activities which create or tend to create disorder. *AIR 1962 SC 955.*

(3) The section must be interpreted in view of all the social, political and constitutional changes. *AIR 1976 AndhPra 375.*

(4) Sedition consists of exciting or attempting to excite others in certain bad feelings towards the Government. A person may no doubt lawfully express his opinion even in strong terms on public matter however distasteful it might be to others, but this does not entitle him to do so in a language which is calculated to endanger feelings of hatred or contempt or to rouse passions to such an extent as to incite listeners to rebellion, insurrection, etc. "Disaffection" is not defined in the Code. It includes disloyalty and all feelings of enmity but dose not mean mere disapproval which may consist of severe condemnation even though perversely, unreasonably or unfairly expressed *(ILR 19 Cal. 35).* The essence of the crime of sedition consists in the intention with which the language is used. The intention of a speaker, writer or publisher, may be gathered from the particular speech, article or letter or words used. The requisite intention cannot be attributed to a person if he was not aware of the contents of the seditious publication. It is not necessary that the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that their intention or tendency. Mere existence of feeling of hatred if not punishable unless an attempt is made to excite such feelings in others and the hatred and contempt must be hatred and contempt of the State, or the established Government.

(5) Prosecution to establish by evidence that the accused brought the Government into hatred, encouraging disaffection. With regard to the conviction of the accused under section 124A of the Penal Code read with Paragraph (a) of part I of the Schedule to the President's Order, in order to sustain a conviction on this charge it is necessary for the prosecution to adduce evidence that the accused brought into hatred or contempt or exited or attempted to excite disaffection towards the Government established by law in Bangladesh. In the present case the prosecution has not adduced any evidence to show that the accused in his speeches excited disaffection towards the Government of the People's Republic of Bangladesh established by law. The accused had not directed his speeches against the Government of the People's Republic of Bangladesh. He was urging his listeners to face Indian aggression untidily and boldly, advising them to maintain the integrity of Pakistan and at times eulogising the services of the Razakars. This evidence warrants the conviction of the accused on the charge of collaboration but we do not think that these statements, wherein the Government of the People's Republic of Bangladesh dose not figure at all, warrant the conviction of the accused under section 124A of the Penal code. *35 DLR 35.*

(6) The essence of the crimes of seditions. It consists in the intention with which the language is used and such intention has to be judged primarily by the language used. *PLD 1954 (Sind) 80.*

(7) Attempt to bring into hatred or contempt or excite disaffection towards the Government—Use of vituperative and strong language not a sure test—Right of criticising the Government even in violent language universally accepted. In construing a speech or a writing to determine whether it contains words which are seditious the Court has to consider the speech or writing "as a whole in fair, free and

liberal spirit", with reference to context and the circumstances and environments in which it was spoken or written. Needless to say that circumstances and environments have changed since the incorporation of section 124A in the Penal Code and they are changing fast. In modern times the State is conceived as an instrument for the advancement of the well-being of the people and "Government" is the vehicle through which the State carries its beneficial activities. If a Government for the time being holding the reins fails to respond effectively to the needs and aspirations of the people, it must be prepared for onslaughts by the people through their representatives. In the instant case, apart from the use of rather strong words against the ex-President, who was a part of the Government, the speaker gave vent to his feeling on some of the issues which have repeatedly been raised by leaders of public though imbued with the best of intentions. Some of them may appear to be unpalatable to some, but unfortunately they are factually true. *26 DLR 87.*

(8) If the prosecution does not say that what the accused said in his speech is untrue, the Court must act on the view that what was said in the speech is true. Evidence that the speech contained true statement of facts—not admissible. If the prosecution does not allege that the facts are incorrect they must be accepted as correct and the Court should proceed to decide assuming that the facts referred to in the speech are correct. The principle is that it can never be in the public interest that enquiry into the truth of statements (subject matter of a charge under section 124A) should be allowed in cases where the only question for the Court to decide is whether the effect of the language used is such that it is calculated to create a feeling of revulsion towards the Government, so strong as to amount to hatred or contempt, or where it proves disaffection. It is of course not necessary that such feelings should have actually been caused. Evidence as to the truth of a speech, the subject matter of a charge under section 124A not admissible even on the ground that truth of such speech is a fact or for leniency of sentence of punishment. Evidence as to the truth of a speech the subject matter of a charge for sedition under section 124A of the Penal Code is not admissible at all either upon general principles or by reason of anything contained in section 124A of the Penal Code. Whether a comment is fair or not, or whether it was made with the intention of bringing about a change in Government policy or action by lawful means, would depend upon the language used in the offending article or speech and not upon the truth or falsity of the facts commented upon. Strong criticism—Short of open incitement permissible—incitement to violence not permissible. Intention can be gathered from the words used. A person may no doubt lawfully express his opinion even in strong terms on public matter however distasteful it might be to others, but this does not entitle him to do so in a language which is calculated to endanger feelings of hatred or contempt or to rouse passions to such an extent as to incite listeners to rebellion, insurrection, etc. Intention is a state of mind and it can only be gathered from the evidence of his overt acts and expressions. Where there are no deeds but only words the speaker's intention must be gathered from a plain reading of his words. He must be deemed to have meant what he said unless the words are ambiguous and capable of bearing more than one meaning *(Ref: 16 DLR 149 WP). 19 DLR (SC) 185.*

3. "Visible representation".—The expression "visible representation" includes pictures or dramatic performances in a dumb show where no words are spoken but where the feelings of the audience are excited by the gestures and motions and dramatic actions of the performers. *(1909) 9 CriLJ 456.*

4. "Or otherwise".—The words "or otherwise" should be given their natural meaning. They are not to be restricted by the doctrine of ejusdem generis to the classes of cases covered by the words that precede them. *1947 RangLR 82.*

5. "Brings or attempts to bring into hatred or contempt".—(1) The two expressions "brings or attempts to bring into hatred or contempt" and "excite disaffection" must be construed together. The one really results from the other. *AIR 1936 Cal 524.*

(2) The hatred, contempt or disaffection towards the Government is usually created by words or writings imputing to the Government base, dishonorable, corrupt or malicious motives in the discharge of its duties, or by writings or words unjustly accusing the Government of hostility or indifference to the welfare of the people or by abusing the Government or its officials. *AIR 1937 All 295.*

(3) The offence under this section partakes of the nature of libel against the Government established by law. It is, therefore, the publication of the libel that constitutes the offence. *(1897) ILR 22 Bom 152.*

6. "Excites or attempts to excite disaffection".—(1) Under this section, not only the creating of hatred or contempt against the Government but also the exciting of disaffection against the Government, is an offence. *AIR 1976 AndhPra 375.*

(2) The expression "disaffection" involves the intention or tendency to create disorder. *AIR 1962 SC 955.*

(3) For illustrations of speeches or writings held to be seditious, see the undermentioned cases. *AIR 1919 PC 31; AIR 1950 Lah 183; AIR 1932 Cal 738.*

(4) For illustrations of speeches or writings held to be not seditious, see the undermentioned cases. *1972 CriLJ 373; (1948) 52 Mys HCR 265.*

7. "Disaffection".—The word "disaffection" is never used with regard to individuals. It is only with regard to the Government that this word is used. *(1906) 4 CriLJ 1.*

8. Intention.—(1) An attempt to do a thing must necessarily involve intention, for a man cannot be said to attempt to do that which he has absolutely no knowledge of doing and no intention to do. Thus, an attempt to excite hatred, contempt or disaffection implies intention. *AIR 1920 Cal 478.*

(2) A writer or speaker generally avoids saying that his intention is to excite bad feelings towards Government. If per chance he does that, then there is no difficulty in ascertaining the intention. It is only in other cases that the question of ascertaining the intention arises. *(1897) ILR 20 All 55.*

(3) It is not open to the speaker or writer to contend that he did not intend his language to bear the meaning which it naturally does bear. *AIR 1930 All 401.*

(4) In judging of the intention of the writer or publisher, you must look at the articles as a whole giving due weight to every part. It would not be fair to judge of the intention by isolated passages or casual expressions without reference to the context. *AIR 1930 All 401.*

9. "Government established by law".—(1) Section 17 of the Penal Code defines the word 'Government' as denoting "the person or persons authorised by law to administer executive Government in Bangladesh or in any part thereof". This definition was assumed to be applicable to the interpretation of the words "Government established by law" in this section and it was held that the words of S. 17 referred to persons entrusted with the executive Government of the country, collectively as a body, and not as individuals. *AIR 1932 Cal 745.*

(2) Under the amended Section 17, the word 'Government' denotes the Government. But this amendment only states what was already the law under the previous section as interpreted by judicial decisions. *AIR 1919 All 91.*

(3) The expression "Government established by law" in this section still retains the same meaning as before, as referring collectively to the persons entrusted by law with the exercise of executive authority. *AIR 1962 SC 955.*

(4) Even where the target of the alleged sedition is the Council of Ministers there could be "sedition" under this section. *AIR 1962 SC 955.*

(5) The Ministers were held to be officers subordinate to the Government and hence automatically fulfilled the requirements of S. 17 of the Code as persons authorised under the law to exercise executive power, and hence constituted "Government" within S. 49 of the Government of India Act, 1935. *AIR 1939 Cal 529.*

(6) The words "Government established by law" mean the "existing political system as distinguished from any particular set of administrators." *AIR 1932 Cal 738.*

(7) In many speeches of writings it may not be patent if feelings of hatred, contempt or disaffection are excited against the Government established by law or against some other institution or section of the people. In other words, words exciting disaffection may not be directed against the Government in explicit language but if they may hint at it by necessary implication, the offence of sedition is committed. *AIR 1933 Cal 278.*

10. Comments expressing disapprobation—Explanations 2 and 3.—(1) A man may criticise or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures, and he may do so severely, and even unreasonably, perversely and unfairly so long as he confines himself to that he will be protected by the Explanation. But if he goes beyond that, and whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers, then he is guilty under the section, and the Explanation will not save him. *AIR 1918 Mad 1210.*

(2) This Section will have to be construed in such a way as to preserve its validity under Articles 36–40 of the Constitution and so construed, this section will only apply when the impugned speech or writing or other matter is detrimental to public order or the security of the state. *AIR 1962 SC 955.*

(3) There can be no doubt that the object of the Explanations is to allow perfect freedom to journalists, publicists, orators and public speakers to discuss the measures and administrative acts of Government even in strong terms, so that the attention of the Government may be drawn to the criticism and that it may be persuaded to remedy the grievances of the public if found necessary. *AIR 1932 Bom 468.*

(4) In a democratic country criticism of governmental measures and administrative action are to some extent unavoidable ; they are made for the purpose of enlisting popular support, and in considering the effect of such criticism no serious notice ought to be taken of crude, blundering attempts or rhetorical exaggerations by which nobody is likely to be impressed. With the change of times, the effect of criticism of governmental measures and administrative action also changes ; what was damaging contempt or hatred of a bureaucratic Government is not so of a popular Government—a Government which can neither afford to be hypersensitive, nor impervious to criticism. *AIR 1942 FC 2225.*

(5) Explanations 2 and 3 have a common clause viz., 'without exciting or attempting to excite hatred, contempt or disaffection', and this clause lays down a condition precedent to the validity of the

comments envisaged by the Explanations as fair criticism. It was held that the ordinary meaning of the word 'disaffection' in the main body of the section was not varied by the Explanation. No doubt the word 'disaffection' had been judicially construed as including hatred, contempt, disloyalty or enmity. *(1897) ILR 20 All 55.*

(6) The Explanations are added to remove any doubt as to the true meaning of the Legislature ; they do not add or subtract from the section itself ; words in the Rules ought to be interpreted as if they had been explained in the same way. *AIR 1942 FC 22.*

(7) An article containing a criticism of S. 93 Government, in spite of the extravagance of its language, is attracted by one of the two Explanations because its professed aim is to obtain a change of Government through the ballot box and not to incite people to disobedience of the laws of the Government. *AIR 1947 Nag 1.*

11. Constitutional validity of the section.—(1) This section will come into operation only in cases where the speech, writing or other activity of the accused which is the subject-matter of the charge under this section was intended or has a tendency to prejudicially affect the security of the State, public order and the like and hence, the section clearly came within the saving clause in Aricle 39(2) of the Constitution and hence, the validity of the section was not open to question under the Constitution. *AIR 1962 SC 955.*

12. Evidence.—(1) Where the question is whether a particular speech made is seditious and a verbatim report of the speech is not available for the purpose of ascertaining its object, but only excerpts have been taken by the reporter and the excerpts are correct and fairly represent the general drift of the speech as tending to excite hatred or disaffection against the Government that is sufficient evidence for conviction under this section. *AIR 1937 All 466.*

(2) Where a person has published a series of books or written a series of articles or delivered a series of speeches though only some of these are the subject-matter of the charge, the whole series must be considered in order to determine whether the passages contained in the books or other matter which are the subject of the charge are seditious. This is on the principle recognised in Illus. (e) to Section 14, Evidence Act, 1872. *AIR 1925 All 195.*

13. Punishment.—(1) The punishment prescribed by the section ranges from mere fine to imprisonment for life. The section also envisages that fine may be imposed in addition to imprisonment for life or imprisonment extending to three years. But in practice, it can only be in very exceptional circumstances that it is suitable and appropriate to inflict a fine as well as a substantial term of imprisonment. *(1948) 52 Mys HCR 265.*

(2) The theory of punishment is not based upon retribution, but upon the protection of the public, the prevention of crime and the reformation of the offender, the punishment should be commensurate with the gravity of the offence. What should be the measure of punishment depends upon the facts and circumstances of each case. *(1948) 52 Mys HCR 265.*

(3) The punishments under Sections 124A and 153A should be deterrent especially in a case of a peculiarly mischievous conspiracy to poison the immature minds of students and other impressionable people. *(1910) 11 CriLJ 583.*

(4) On the question of sentence the position of printers of seditious document is probably worse than that of the authors because the seditious acts of the author would be far less extensive in their operation if it were not for the existence of persons able and willing to print and publish them. *AIR 1931 Cal 349.*

14. Commitment to Sessions and trial by Jury.—(1) An offence under this section is triable by a Court of Session, Chief Presidency Magistrate or District Magistrate or Magistrate of the First Class specially empowered by the Government in that behalf. The complaint for the offence has to be presented before the Magistrate in the first instance and it appears that in view of the alternatives given in the Schedule it is for such Magistrate to decide whether he shall try it himself or commit it to the Court of Session. No doubt, that discretion must be exercised judicially. But this does not mean that in every case the accused must be committed to the Sessions so as to give him the benefit of a trial by a Jury of his own countrymen. *AIR 1932 Bom 63.*

15. Joint trial of Editor, Printer and Publisher.—(1) In cases of sedition, the printer and publisher being concerned in the same transaction regarding publication of the seditious matter can be tried jointly under Section 239(a) of Criminal P. C. *AIR 1928 Bom 139.*

16. Distinction between sedition and abetment of waging war.—(1) So long as a man only tries to inflame feelings or to excite a state of mind he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. *AIR 1922 Bom 284.*

17. Truth of matter or innocence of motive—No defence.—(1) A plea of truth or innocence of the motive may be a good defence to a charge for defamation, but is not a valid defence to a charge for sedition under this section. *AIR 1947 Nag 1.*

18. Printer and publisher—Liability of.—(1) Mere authorship of a seditious leaflet which has been published by others would be sufficient to constitute the offence. *AIR 1928 Rang 276.*

(2) A man is presumed to intend the natural and reasonable consequences of his own acts. It is on this principle that the printer and publisher of an article is attributed the intention to excite hatred, contempt or disaffection if the article is seditious. *AIR 1931 Cal 349.*

(3) An editor of a newspaper containing a seditious article of which another is an author is guilty of the offence under this section, despite the fact that his paper was usually in favour of non-violence. *AIR 1930 Lah 875.*

19. Practice.—*Evidence*—Prove: (1) That the accused spoke or wrote the words, or made the signs or representations, or did some other acts, in question.

(2) That he thereby brought or attempted to bring into hatred or contempt ; or excited or attempted to excite disaffection.

(3) That such disaffection was towards the Government of Bangladesh.

20. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by the Court of Session ; Chief Metropolitan Magistrate or District Magistrate or Magistrate of the first class specially empowered.

21. Charge.—(1) The gist of the offence under this section is the bringing or attempting to bring into hatred or contempt or the exciting or attempting to excite disaffection towards the Government established by law. The offence may be committed by means of words, spoken or written or visible representation where no words are used. *(1909) 9 CriLJ 456 (Mad).*

(2) Even if the words or their substance are or is not set out in the charge, it is an irregularity and the conviction cannot be reversed unless the accused has been misled or there has been a failure of justice. *AIR 1931 Lah 186.*

(3) The charge should run as follows:

I, (name and office of the Judge/Magistrate, etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, by writing (or speaking) the words (mention them) (or by signs or by visible representation, or otherwise) brought (or attempted to bring) into hatred or contempt (or excited or attempted to excite disaffection towards) the Government established by law in Bangladesh and thereby committed an offence punishable under section 124A and within my cognizance (or the cognizance of the Court of Session).

And I hereby direct that you be tried on the said charge.

22. Sanction.—Sanction of the Government or some officer empowered by the Government is necessary for prosecution under section *196, CrPC.*

Section 125

125. Waging war against any Asiatic Power in aliance with Bangladesh.—Whoever wages war against the Government of any Asiatic Power in alliance or at peace with [32][Bangladesh], or attempts to wage such war, or abets the waging of such war, shall be punished with [33][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.

Cases and Materials

1. Scope of the section.—(1) This section is based on international committee and a desire on the part of the Government of Bangladesh to remain in friendly relationship with its neighbours.

(2) Accompanying a military expedition by a foreign power into the territory of a friendly Asiatic Power was an offence under this section. Such act on the part of the accused would amount to abetment of waging of war against a friendly Power. *(1865) 3 SuthWR (Cr) 16.*

(3) Where the accused was found to have accompanied an expedition into the State of Manipore which was then an Asiatic Power in alliance with the Queen, it was held that he was guilty under S. 125 of the Code. *(1865) 3 SuthWR (Cr) 16.*

2. Practice.— *Evidence*—Prove: (1) That the Power in question is Asiatic and the alliance, or at peace, with Bangladesh.

(2) That the accused waged war against the Government of such Power; or that the accused abetted or attempted the same.

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by the Court of Session.

4. Sanction—Sanction of the Government is necessary for prosecution *(Section 196, CrPC).*

5. Charge.—The charge would run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

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32. The word "Bangladesh" was substituted for the word "Pakistan" by Act. VIII of 1973, Second Sch., (w.e.f. 26th March, 1971).

33. Subs. by Ord. No. XLI of 1985, *for* "transportation".

That you, on or about the—, day of—, at—, waged (or attempted to wage or abetted the waging of war against the Government of—an Asiatic Power in alliance (or at peace) with Bangladesh and thereby committed an offence punishable under section 125 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 126

126. Committing depredation on territories of Power at peace with Bangladesh.—Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with [32][Bangladesh], 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.

Materials

1. Scope.—Depredation is plunder and to be punishable under this section, it must be a raid by a band of men in a foreign territory for plunder. The object of the raid is not to wage war but only to plunder. This section deals with depredation on territories of Power at peace with Government of Bangladesh.

2. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, committed (or made preparations to commit) depredation on the territories of—, a Power in alliance (or at peace) with Bangladesh, and thereby committed an offence punishable under section 126 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

4. Sanction—Sanction of Government or some officers empowered by the Government is necessary for prosecution (section 196, CrPC).

Section 127

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.

Materials

1. Scope.—This section provides for punishment of persons who knowingly receive property taken by war or depredation against an Asiatic Power in alliance. Such properties are usually sold at low prices in great hurry and in secrecy.

2. Practice.—*Evidence*—Prove: (1) That the property in question was obtained by waging war against any Asiatic Power or by commission of depredation.

(2) That such war or depredation was punishable under section 125 or 126.

(3) That the accused received such property.

(4) That when he so received such property, he knew that it had been obtained as mentioned in (1).

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows:

I. (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, received (specify the property) knowing the same to have been taken in waging war against—an Asiatic Power in alliance (or at peace) with Bangladesh or knowing the same to have been taken in the commission of depredation on the territories of—, a Power in alliance (or at peace) with Bangladesh and thereby committed an offence punishable under section 127 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction—Not Sanction is necessary for prosecution under this section.

Section 128

128. Public servant voluntarily allowing prisoner of State or war to escape.—Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with [33][imprisonment] for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cases and Materials

1. Scope.—(1) A State prisoner is prisoner arrested and confined for reasons of State.

(2) The expression "State prisoner" would seem to indicate a foreigner kept in confinement on political grounds or for political reasons and not in due course of law on conviction and sentence by a court of law for an offence against the law of the land. *(1870) 6 BengLR 456.*

2. Practice.—*Evidence*—Prove: (1) That the accused was a public servant.

(2) That he had the persor. in question in his custody.

(3) That such a person was State prisoner or prisoner of war.

(4) That the prisoner escaped.

(5) That the accused allowed the prisoner to escape from the place where he was confined.

(6) That the accused did so voluntarily.

3. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

4. Charge.—The charge should run as follows:

I, (name and office of the Judge) do hereby charge you (name of the accused) as follows:

That you, being a public servant (mention the office) and as such having the custody of—, a State prisoner (or prisoner of war), on or about the—day of—, at—, voluntarily allowed such prisoner to escape from—, the place in which such prisoner was confined, and thereby committed an offence punishable under section 128 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 129

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.

Materials

1. Scope.—This section deals with the Government servant who has the custody of the prisoner acting negligently in allowing the prisoner to escape.

2. Practice.—*Evidence*—Prove: (1) That the accused was public servant.

(2) That he had the person in question in his custody.

(3) That such person was a State prisoner or prisoner of war.

(4) That the accused suffered such prisoner to escape from the place of confinement.

(5) That the accused did so negligently.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. **Sanction**—Sanction of the Government or some officer empowered by the Government is required for prosecution under this section.

5. Charge.—The charge should run as follows:

I, (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, being a public servant (mention the office), and as such having the custody of—, a State prisoner (or prisoner of war), on or about the—day of—, at—, negligently suffered such prisoner to escape from any place of confinement in which such prisoner was confined, and thereby committed an offence punishable under section 129 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 130

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 [33][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 [32][Bangladesh], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Materials

1. **Scope.**—Knowingly aids or assists—The knowledge must be that the person assisted is a State prisoner or a prisoner of war. To harbour a person is to give him shelter and protection.

2. **Practice.**—*Evidence*—Prove: (1) That the person in question was a prisoner of State or of war.

(2) That such prisoner was at the time in lawful custody or that such prisoner had escaped from lawful custody.

(3) That the accused knew that such person was in lawful custody as a prisoner of State or of war, That he knew that such prisoner had escaped from the lawful custody.

(4) That he aided or assisted such prisoner in escaping. That he rescued such prisoner or attempted to do so. That he harboured or concealed such prisoner. That such prisoner was about to be recaptured but the accused offered or attempted to offer resistance to such recapture.

3. **Procedure.**—Not—cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

4. **Charge.**—The charge should run as follows:

I, (name and office of the Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, knowingly aided (or assisted, or offered to rescue, or attempted to rescue)—, a State prisoner (or prisoner of War), in escaping from lawful custody (or knowingly harboured or concealed)—, a State prisoner (or prisoner of war) who had escaped from lawful custody or knowingly offered or attempted to offer resistance to the recapture of—a State prisoner (or prisoner of war) committed an offence punishable under section 130 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER VII
Of Offences relating to the Army, [1][Navy and Air Force]

Chapter introduction.—*The authors of the Code say : "A few words will explain the necessity of having some provisions of the nature of those which are contained in this chapter. It is obvious that a person who, not being himself subject to military law, exhorts or assists those who are subject to military law to commit gross breaches of discipline, is a proper subject of punishment. But the general law respecting the abetting of offences will not reach such a person; nor framed as it is, would it be desirable that it should reach him. It would not reach him, because the military delinquency which he has abetted is not punishable by this Code and therefore is not, in our legal nomenclature, an offence. Nor is it desirable that the punishment of a person not military, who has abetted a breach of military discipline, should be fixed according to the principles on which we have proceeded in framing the law of abetment. We have provided that the punishment of the abettor of an offence shall be equal or proportional to the punishment of the person who commits that offence; and this seems to us a sound principle when applied only to the punishments provided by this Code. But the military penal law is, and must necessarily be, far more severe than that under which the body of the people live. The severity of the military penal law can be justified only by the reasons drawn from the peculiar habits and duties of soldiers, and from the peculiar relation in which they stand to the Government. The extension of such severity to persons not members of the military profession appears to us altogether unwarrantable. If a person, not military, who abets a breach of military discipline, should be made liable to a punishment regulated, according to our general rules, by the punishment to which such a breach of discipline renders a soldier liable, the whole symmetry of the penal law would be destroyed. He who should induce a soldier to disobey any order of a commanding officer would be liable to be punished more severely than a dacoit, a professional thug, an incendiary, a ravisher or a kidnapper. We have attempted in this chapter to provide, in a manner more consistent with the general character of the Code, for the punishment of persons who, not being military, abet military crimes."*

Section 131

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,

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1. Substituted by the Repealing and Amendment Act, 1927 (Act X of 1927), s. 2 and Sch. I for "and Navy".

[2][sailor or airman], in the Army, [3][Navy or Air Force] of [4][Bangladesh], or attempts to seduce any such officer, soldier, [2][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 the [9][[10][Army Act, 1952 or the Navy Ordinance, 1961 or the Air Force Act, 1953], as the case may be].]

Cases and Materials

1. Scope.—(1) This Chapter consisting of sections 131 to 140 deal with abetment of breaches of Military discipline and the harbouring of offenders against Military Law. This section supplements and extends to civilians the penal provisions of Army Act, 1952, Naval Ordinance, 1961, or the Air Force Act, 1953 relating to mutiny desertion. The word "Mutiny" has not been defined in the Code. Abetting or attempting to seduce, the committing of mutiny by an officer, soldier, sailor or airman by a person other than those subject to military discipline, is made an offence under this section.

(2) The undermentioned case has a bearing on the Incitement to Mutiny Act (37 Geo 3, C. 70) which is an analogous law. *(1912) 22 CoxCC 729.*

(3) An allegation in a newspaper article that a person has been guilty of tampering with the loyalty of the 'Punjab Sepoys' has been held to amount to an imputation that the person has attempted to seduce the soldiers from their duty within the meaning of this section. *(1910) ILR 37 Cal 760.*

(4) A newspaper published an article purporting to be a letter from a sympathiser of native soldiers and addressed to them. It was of a nature calculated to seduce soldiers of the Indian Army from their allegiance and duty to His Majesty the King-Emperor. It was held that the act of publishing copies of the letter addressed, to native soldiers and which were bound to reach them was clearly an act amounting to an attempt to seduce the soldiers within the meaning of this section. *(1907) 6 CriLJ 411.*

(5) The definition of the word 'soldier' given in the Indian Articles of War was expressly confined to those articles and was very limited. *AIR 1920 Lah 114.*

2. Practice.—*Evidence*—prove: (1) That the person abetted is an officer, etc. of the Bangladesh's Army, Navy or Air Force.

(2) That the accused abetted him to commit mutiny; or attempted to seduce him from allegiance.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

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2. Subs. *ibid*, for "or sailor".
3. Subs. *ibid*, for "or Navy".
4. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, 2nd Sch., (w.e.f. 26th March, 1971).
5. Subs. by Ord. No. XLI of 1985, for "transportation".
6. Explanation was inserted by the Indian Penal Code (Amendment) Act, 1870 (Act XXVII of 1870), s. 6.
7. Subs. by the Repealing and Amending Act, 1927 (Act X of 1927), s. 2 and Sch. I, for "and soldier".
8. Ins. by the Amending Act, 1934 (Act XXXV of 1934), s. 2 and Sch.
9. Subs. by Act X of 1927.
10. The words within square brackets were substituted for the words "Army Act, the Indian Army Act, 1911, the Pakistan Army Act, 1952, the Naval Discipline Act or that Act as modified by the Pakistan Navy (Discipline) Act 1934, the Air Force Act or the Indian Air Force Act, 1932 or the Pakistan Air Force Act, 1953" by Act VIII of 1973, Second Schedule.

4. Charge.—The charge should run as follows :

I, (name and office of the Judge) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, abetted the commission of mutiny by—, an officer (or soldier, or sailor, or airman) in the Army (or Navy or Air Force) of Bangladesh (or attempted to seduce—an officer, or sailor, or airman in the Army, or Navy, or Air Force) of Bangladesh for his allegiance or duty), and thereby committed an offence punishable under section 131 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 132

132. Abetment of mutiny, if mutiny is committed in consequence thereof.—Whoever abets the committing of mutiny by an officer, soldier, [2][sailor or airman], in the Army, [3][Navy or Air Force] of [4][Bangladesh], shall, if mutiny be committed in consequence of that abetment, be punished with death, or with [5][imprisonment] for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Materials

1. Practice—Evidence—Prove: (1) The abetment of mutiny as in section 131.

(2) That mutiny was committed in consequence of such abetment.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

3. Charge.—The charge should run as follows :

I, (name and office of the Judge) hereby charge you (name of the accused) as follows :

That you on or about the—day of—, at—, abetted the commission of mutiny by—an officer or soldier, or sailor or airman) in the Army, (Navy, or Air Force) of Bangladesh and mutiny was committed in consequence of that abetment and thereby committed an offence punishable under section 132 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 133

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, [2][sailor or airman], in the Army, [3][Navy or Air Force] of [4][Bangladesh], 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.

Materials

1. Scope.—The abetment of substantive offence of assault by any one other than a soldier, sailor or airman is dealt with under this section.

2. Practice.—*Evidence*—Prove: (1) That the accused was guilty of act of abetment.

(2) That the person abetted was an officer, etc. in Bangladesh's Army, Navy or Air Force.

(3) That the assault was to be on the superior officer of the person abetted.

(4) That such officer was at the time in the execution of his duty.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

4. Charge.—The charge should run as follows :

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, abetted an assault by—an officer (or soldier, or sailor, or airman) in the Army, (or Navy, or Air Force) of Bangladesh on—a superior officer being in the execution of his office, and thereby committed an offence punishable under section 133 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 134

134. Abetment of such assault if the assault is committed.—Whoever abets an assault by an officer, soldier, [2][sailor or airman], in the Army, [3][Navy or Air Force] of [4][Bangladesh], 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.

Materials

1. Practice.—*Evidence*—Prove: (1) That the accused was guilty of acts of abetment.

(2) That the assault was committed.

(3) That it was committed in consequence of the abetment.

2. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

3. Charge.—The charge should run as follows :

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at— abetted on assault which was committed by—an officer (or soldier, or sailor, or airman) in the Army (or Navy or Air Force) of Bangladesh on —a superior officer being in the execution of his office, and thereby committed an offence punishable under section 134 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 135

135. Abetment of desertion of soldier, sailor or airman.—Whoever abets the desertion of any officer, soldier, [11][sailor or airman], in the Army, [12][Navy or Air Force] of [13][Bangladesh], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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11. Subs. by the Repealing and Amending Act, 1927 (Act X of 1927), s. 2 and Sch. I, for "or sailor".
12. Subs *ibid.* for "or Navy".
13. The word "Bangladesh" the word "Pakistan" by Act VIII of 1973, Second Schedule, (w.e.f. 26th March, 1971).

Cases and Materials

1. Scope.—(1) The offence under this section is abetment of desertion. Desertion implies the abandoning of duty. The term is applied when a soldier, sailor or airman absents himself from duty without leacve with no intention to return to duty.

(2) Where the accused helped a Regimental sepoy M and two other persons believing them to be Regimental sepoys to desert the regiment, it was held that the accused was guilty under S. 135 read with S. 108, Penal code, for abetting M to desert even though M never intended to desert and had offered to do so only to enter the accused. So also the endeavour by the accused to make the other two persons desert, believing them to be sepoys, amounted to an attempt to make sepoys desert, and is punishable under Section 135 read with S. 511, Penal Code. *AIR 1917 Sind 28.*

(3) The word "Soldier" in the section must be interpreted in the light of the Explanation to Section 131 of the Code. *AIR 1920 Lah 114(1).*

(4) The definition of "soldier" given in the Indian Articles of War is expressly confined to those articles and is very limited. *AIR 1920 Lah 114.*

(5) A regimental sepoy is a soldier within the meaning of this section. *AIR 1917 Sind 28.*

(6) Where an accused believes another to be a soldier and helps him to "desert" the accused will be guilty of attempting to abet desertion by a soldier and will be liable to punishment under this section read with Section 511, although as a fact such person is not a soldier at all. *AIR 1917 Sind 28.*

2. Practice.—*Evidence*—Prove: (1) That the person instigated was an officer, etc. in the Army, Navy or Air force.

(2) That the accused instigated such person to desert.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows :

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, abetted that desertion of—, an officer (or soldier, or sailor, or airman) in the (Army, or Navy, or Air Force) of Bangladesh, and thereby committed an offence punishable under section 135 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 136

136. Harbouring deserter.—Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, [11][sailor or airman], in the Army, [12][Navy or Air Force] of [13][Bangladesh], has deserted, harbours such officer, soldier, [11][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.

Materials

1. Practice.—*Evidence*—Prove: (1) That the person in question was an officer, etc., in the Army, Navy, or Air Force.

(2) That such person had deserted.

(3) That the accused harboured such person.

(4) That the accused when he so harboured knew or had reason to believe that such person was a deserter.

(5) That the accused was not the wife of such person.

2. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows :

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, knowing, or having reason to believe that—, an officer (or soldier, or sailor, or airman) in the Army (or Navy, or Air Force) of Bangladesh had deserted, harboured such officer (or soldier, or sailor or airman) and thereby committed an offence punishable under section 136 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 137

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, [12][Navy or Air Force] of [13][Bangladesh] is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred [14][taka] 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.

Materials

1. Practice.—*Evidence*—Prove: (1) That the person in question is a deserter from Bangladesh's Army, Navy or Air Force.

(2) That such deserter was concealed in a merchant vessel.

(3) That the accused was, at the time of such concealment, the master or person in charge of such vessel.

(4) That the accused was guilty of neglect of duty, as such master or person in charge; or was guilty of want of discipline on board.

(5) That such neglect of duty, or want of discipline, was the cause of such concealment.

2. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows :

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That —, a deserter from the Army, (or Navy, or Air force) of Bangladesh, had concealed himself on or about the—day of—, at—, on board—a merchant vessel of which you are the master (or person in charge) through your neglect of duty as such master (or person in charge) or through your want of discipline on board the said vessel and that you have thereby committed an offence punishable under section 137 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

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14. The word "taka" was substituted for the word "rupees", *ibid.*

Section 138

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, [11][sailor or airman], in the Army, [12][Navy or Air Force] of [13][Bangladesh], 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.

Materials

1. Practice.—*Evidence*—Prove: (1) That the act was one of insubordination.

(2) That the person guilty of such act was an officer, etc., in the Army, Navy, or Air Force.

(3) That the accused abetted such officer in doing such act.

(4) That the accused at the time knew the same to be an act of insubordination.

(5) That such act of insubordination was committed in consequence of such abetment.

2. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, abetted what you knew to be an act of insubordination by—, an officer (or soldier, or sailor or airman) in the Army (or Navy, or Air Force) of Bangladesh and such act of insubordination was committed in consequence of the said abetment, and thereby committed an offence punishable under section 138 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 138A

138A. Application of foregoing sections to the Indian Marine Service.—*Rep. by the Amending Act, 1934 (XXXV of 1934), s. 2 and Sch.*

Section 139

139. Persons subject to certain Acts.—No person subject to the [15][* * * *] [16][Army Act, 1952,] the [17][Navy Ordinance, 1961], the [18][* * * *] [19][Air Force Act, 1953,] is subject to punishment under this Code for any of the offences defined in this Chapter.

Materials

(1) The object of this section is to specify definitely that persons subject to military law will not be dealt with under the Code for offences defined in this chapter.

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15. The words "Army Act, the Indian Army Act, 1911, the Pakistan" were omitted, *ibid.*
16. Ins. by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s. 3 & 2nd Sch., (w.e.f. 14th October, 1955).
17. The words "Navy Ordinance, 1961" were substituted for the words "the Naval Discipline Act or that Act as modified by the Pakistan Navy (Discipline) Act 1934", by Act VIII of 1973, 2nd sch.
18. The words "Air Force Act or the Indian Air Force Act, 1932 or the Pakistan" were omitted, *ibid.*
19. Ins. by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s. 3 & 2nd Sch., (with effect from the 14th October, 1955).

Section 140

140. Wearing garb or carrying token used by soldier, sailor or airman.— Whoever, not being a soldier, [20][sailor or airman] in the Military, [21][Naval or Air] service of [22][Bangladesh], wears any garb or carries any token resembling any garb or token used by such a soldier, [20][sailor or airman] with the intention that it may be believed that he is such a soldier, [20][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 [23][taka], or with both.

Materials

1. Practice.—*Evidence*—Prove: (1) That the accused wore the garb or carried the token in question.

(2) That such garb or token resembled that used by soldiers or sailors or airmen.

(3) That the accused was not a soldier or sailor or airman.

(4) That the accused wore the garb or carried the token with the intention that it might be believed that he was a soldiers, etc.

2. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows :

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows :

That you, not being a soldier or sailor or airman in the Military (or Naval or Air) Service of Bangladesh, on or about the—day of—, at—, wore (specify the garb) or carried a token resembling (specify it) (or used by such soldier or sailor or airman)] with the intention that it might be believed that you were such a soldier (or sailor or airman), and thereby committed an offence punishable under section 140 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

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20. Ins. by the Repealing and Amending Act, 1927 (Act X of 1927), s. 2 and Sch. I.
21. Subs., *ibid*, for "or Naval".
22. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, Second Schedule, (with effect from 26th March, 1971).
23. The word "taka" was substituted for the word "rupees", *ibid*.

CHAPTER VIII
Of Offences against the Public Tranquillity

Chapter introduction.—*This Chapter consisting of 21 sections deals with a class of offences intermediate between offences against the State and those against the persons. Its general underlying object may be gathered from its heading which is to preserve public tranquillity. The arrangement of the sections here, as elsewhere in the Code, is again haphazard and unscientific. But such offences in their most elementary form consists of an affray. Where, however, there is a meeting of great numbers of people with such circumstances of terror as cannot but endanger the public peace, the assembly is designated an unlawful assembly.*

Sections 142—145, 150, 151, 157 and 158 deals with the liability of persons who are members of an unlawful assembly. The use of force converts an unlawful assembly into a riot. In English law there is a distinction made between a riot and a rout, a rout being a disturbance of the peace by persons assembled together, with an intention to do a thing which, if executed, would make them rioters, and actually making movement towards the execution thereof, but not executing it. The Code recognizes no such distinction, and the facts constituting a riot in England fall within the definition of a riot under the Code. A new section was added to this Chapter in 1898, and its object is to prevent internecine, racial or sectarian quarrels resulting in the disturbance of public peace. It is, however, more akin to the offence of sedition as defined by Sir James Stephen, and its proper place would appear to be after Sec. 124-A.

It is provided by the Code of Criminal Procedure that every officer employed in connecting with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is the nearer, any information which he may possess respecting the commission of, or intention to commit in or near such village, any non-bailable offence or any offence punishable under Secs. 143—145, 147 or 148 of the Code. And the same duty is generally laid on the public without any restriction as to the locality. A person is guilty of an offence who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby breach of the peace is likely to be occasioned, and is liable, on summary conviction, to imprisonment for a term not exceeding three months, or to fine not exceeding Tk. 50, or to both.

Section 141

141. Unlawful assembly.—An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, [1][Government or Legislature], 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.

Cases and Materials : Synopsis

1. Scope of the section.—(1) Section 141 of the Penal Code defines an unlawful assembly and in its five clauses are enumerated the elements required in order to make an assembly an unlawful assembly. The requisites are that there must be five or more persons, and their common object should

1. The words "the Central or any Provincial Government or Legislature" were first substituted for the words "the Legislative or Executive G. of I., or the Govt. of any Presidency, or any Licutenant-Governor" by A.O., 1937 and then the word" Government" was subs. for the words "the Central or any Provincial Government" by Act VIII of 1973, Second Sch. (w.e.f. 26th March, 1971).

be one of the objects mentioned in the five clauses if a person is already in possession of a property and he gathers five or more persons to defend such possession, he would be doing so to maintain his possession and, such action would not be illegal and this assembly would not be unlawful. But if he is not in possession of property, but has got only right to acquire possession, and if he with five or more persons go to the property to acquire it by force, that would be unlawful, because that would be a case of enforcing a right. There is a difference between "to maintain or defend a right" and "to enforce a right or a supposed right". What section 141, Penal Code prohibits is to enforce a right or a supposed right and not maintaining or defending such right. The common object of the unlawful assembly must be an immediate one to be carried out. It has to be determined with reference to the subsequent conduct of the assembly. If an unlawful assembly meet and arrange some plans to be carried out in future which may be executed individually not necessarily jointly that would not constitute an unlawful assembly within the meaning of section 41 *(AIR 1954 Pat 194).* To bring a case within the mischief of cl. (1), it is necessary to prove that the accused showed criminal force which could overawe and intimidate his adversary and this must be judged objectively. If there is an assembly of five or more men with the common object of resisting by force or show of force the execution of process of law, every one of them is guilty of being a member of an unlawful assembly. By virtue of section 40, Penal Code the word "offence" in section 141 means the thing punishable under the special or local law if it is punishable under such law with imprisonment for a term of six months or upwards. An assembly to defend a right may not be unlawful but it is dangerous to lay down a general proposition that such assembly cannot be unlawful. This section would apply only where the common object of an unlawful assembly is unlawful. Although there is a distinction between section 34 which deals with common intention and section 149 which deals with constructive liability based on common object, there may not be much different between intention and object because if there is common intention to commit an offence it must be assumed that the common object was to commit that offence. Same object is not necessarily a common object, it becomes so only when it is known to and shared by all persons having it.

(2) Village Courts Ordinance (Ordinance No. LXI of 1976)—This Ordinance came into force on the Ist day of November, 1976 vide Notification *No. SRO 353-476 dated 20-10-76.* The provisions of section 3, read with Schedule Part 1 criminal cases, show that sections 143 and 147 of the Penal Code read with the third or the fourth clause of section 141 of the Code, when the common object of the unlawful assembly is to commit an offence under section 323 or 426 of that Code, and when not more than ten persons are involved in the unlawful assembly, these cases are exclusively triable by the Village Court and no normal Criminal Court has got any jurisdiction to try the same, except under the provisions of section 15 of this Ordinance.

(3) *Ingredients.*—To constitute an unlawful assembly there must be:

(1) The assemblage of five or more persons.

(2) They must have a common object.

(3) The said common object must be one of the objects enumerated in the section.

(4) Hartal is an unlawful assembly if criminal force is applied in its favour or to oppose it—While a hartal is observed by an assembly of five or more persons and their associates without holding procession or picket it will not be an unlawful assembly but if any criminal force is applied to observe such hartal then the members of the unlawful assembly falling within the purview of the fifth clause to section 141 of Penal Code will be liable to be punished under section 145 of Penal Code. Hence the

procession or other activities in support of applying force to observe hartal shall be unlawful assemblies including opposition to such hartal. *State Vs. Md. Zillur Rahman and others (Criminal) 4 BLC 241.*

(5) In a big crowd when charge of unlawful assembly is laid against them—distinction to be observed when circumstances prove that only a part of the crowd could possibly become unlawful assembly. *Hamida Banu Vs. Ashiq Hossain (1963) 15 DLR (SC) 65.*

(6) Hartal being an unlawful assembly is an offence under section 141 punishable under section 143 of the Penal Code. *The State Vs. Md. Zillur Rahman and others—4 MLR (1999) (HC) 181.*

(7) Where the common object of the assembly, whatever be their number, is not one or more of the objects specified in the section, it will not constitute an unlawful assembly. *AIR 1968 All 130.*

(8) If the assembly is an 'unlawful assembly' as defined in the section the mere fact of being a member thereof and sharing its common object is an offence punishable under Section 143. *AIR 1965 SC 202.*

(9) No overt act in pursuance of the common object is necessary, nor need the object be carried out. *AIR 1965 SC 202.*

(10) If overt acts are committed in pursuance of the common object every member of the assembly will be constructively liable for such acts also where such acts constitute offences. *AIR 1978 SC 191.*

(11) Court must specify the common object of the unlawful assembly in the charge—Merely saying the common object was nothing is not enough. No mention of the object in the charge, as enumerated in section 141 of the Penal Code—Trial fails. *38 DLR 299.*

(12) Unlawful assembly—Assuming the character of unlawful assembly at a subsequent stage. In a big crowd when charge of unlawful assembly is laid against them—Distinction to be observed when circumstances prove only a part of the crowd could possibly become unlawful assembly. An explanation to section 141 of the Penal Code states that an assembly may become unlawful at some stage after the time of assembly, but to establish such a development, it would be necessary to prove a circumstance applicable to all the persons assembled which influenced them all in one direction, namely, that of using criminal force or committing mischief, criminal trespass, or other offences or of testing the execution of law or legal process. *15 DLR SC 65.*

(13) Fourth clause does not apply where force is applied by a person in lawful possession. Section 141, fourth clause of the Penal Code has no application to a case where a person in lawful possession of any property uses force in order to maintain such possession, because such a party is not enforcing a right within the meaning of clause (4) of the section, but preventing a wrong. A person has a right within the meaning of clause (4) of the section, but preventing a wrong. A person has a right of private defence of his property against criminal trespass, even though such trespass has not caused any loss to the property in question *(Ref: AIR 1970 SC 27). 15 DLR 615.*

2. "Assembly".—(1) Where two different mobs start form different localities, operate independently and never mingle together at any time or place, the mere fact that they have the same intention will not make them one assembly. *AIR 1927 Oudh 151.*

(2) If an assembly, the common object of which is to beat A, splits itself into two parties for the purpose of trapping the victim, the two parties cannot be said to cease to be one unlawful assembly. *AIR 1950 All 418.*

(3) Where an unlawful assembly is engaged in beating a person and another batch of persons joins the assembly and begins to beat the same person, it may be inferred that the second batch joined the

first batch with the same object and the two groups together constituted only one unlawful assembly. *AIR 1955 NUC (Cal) 2931.*

(4) When the doing of an act which is the object of an assembly is not an offence, Section 143 will not apply as the assembly cannot be said to be unlawful. *1971 CriLJ 1477.*

3. Five or more persons".—(1) The first essential to constitute an assembly, an "unlawful assembly", is that it should consist of five or more persons. *AIR 1963 SC 174.*

(2) It is not necessary that the identity of all the members should be known or stated in the charge. *AIR 1960 SC 289.*

(3) Cases where it is proved that an assembly consisted of more than five persons but some of them are not identified must be distinguished from cases where the Court is in doubt where other persons were present at all, who, though not identified, would make up the number five or more. *AIR 1978 SC 1647.*

(4) If out of the six persons charged under Section 149 of the Penal Code along with other offences, two persons are acquitted, the remaining four may not be convicted because the essential requirement of an unlawful assembly might be lacking. *AIR 1962 SC 1211.*

(5) It is possible in some cases for Judges to conclude that though five were unquestionable there the identity of one or more is in doubt. In that case a conviction of the rest with the aid of Section 149 would be good. But if that is the conclusion it behoves a Court, particularly in a murder case, to say so with unerring certainty. *AIR 1953 SC 364.*

4. "Common object".—(1) An assembly of persons, however large it may be, is not an "unlawful assembly" where the gathering is for a "lawful" purpose and this will be so even if some of the members of the assembly resort to unlawful force or commit offences. *AIR 1956 SC 513.*

(2) One of the essential conditions necessary in order to render an assembly an 'unlawful assembly' within the meaning of this section is that the members thereof should have one or more of the common objects enumerated in the section. *AIR 1956 SC 513.*

(3) In the absence of a finding that the assembly was animated by a common object, within the meaning of the section it cannot be considered to be an unlawful assembly. *AIR 1978 SC 1021.*

5. Sudden quarrel or "free fight".—(1) Where a sudden quarrel arises as a result of abuse and an unpremeditated fight takes place, it cannot be said that there is any 'common object' operating on the minds of the fighters and they cannot be said to constitute an unlawful assembly. *AIR 1933 Lah 928.*

(2) In a 'free fight' there is no common object. *1972 RajLW 325 (Pr 23) (DB).*

(3) In a free fight between two groups of persons, only persons found to have inflicted injuries can be convicted for the injuries caused by them. There cannot be any question of constructive liability. *1981 CriLJ NOC 133.*

6. Same or similar object and common object.—(1) All members of the assembly must share the common object. A common object is not the something as a same or similar object. The same object will become common object only when it is known to and shared by all the members having it. *AIR 1951 Nag 47(1) (47) : 52 CriLJ 813.*

7. Common object and common intention.—(1) A common object is different from a common intention in that the former does not require pre-concert and a common meeting of the minds at or before the formation of the assembly. *AIR 1956 SC 513.*

8. No pre-concert necessary.—(1) It is not necessary that there should be a pre-concert or conspiracy at the outset or beginning of the assembly unlike in the case of common intention under Section 34. *AIR 1959 SC 572.*

(2) The common object may develop and come into existence at any stage during the progress of the activities of the assembly. *AIR 1956 SC 513.*

(3) Members of an unlawful assembly may have a community of object 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 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. *AIR 1960 SC 725.*

9. All members must share the common object.—(1) It is necessary that all the members must share the common object. *AIR 1956 SC 513.*

(2) A group of persons A, B, C, D and L and another group of persons M, N, O, P, Q assemble. The common object of the first group is one and that of the second group is another of the objects specified in the section. The two groups cannot constitute together a signal unlawful assembly, but will constitute two different unlawful assemblies. *(1910) 11 CriLJ 30 (FB) (Mad).*

(3) Where some persons in an assembly had the common object of committing as offence under Section 188 of the Code and others had the object of abetting the commission of such offence, both the objects constitute only a single common object. *AIR 1925 Cal 903(905): 26 CriLJ 594 (DB)*

10. The common object must be immediate.—(1) The common object must be an immediate one and not one to be carried out at some future time. *AIR 1954 Pat 195.*

11. Presence in or near assembly.—(1) The mere presence of persons in or near the unlawful assembly is not sufficient to show that they are also members of the assembly. It must be proved that they also shared the common object. *AIR 1971 SC 2381.*

(2) It is a question of fact in each case as to weather a person happens to be innocently present at the place of the occurrence or was actually a member of the unlawful assembly. *AIR 1971 SC 2381.*

(3) It cannot be stated as a general proposition that a person present at the assembly cannot be said to be a member of the assembly unless some overt act is proved against him. *AIR 1965 SC 202.*

12. Presence under duress.—(1) A person compelled under duress to join an assembly cannot be said to share the common object of the assembly and cannot be considered to be a member of the unlawful assembly. He would be protected by Section 94 of the Code. *AIR 1957 All 184.*

13. Exercising under duress.—(1) An assembly exercising the right of private defence is doing a lawful act, and is an unlawful assembly. *AIR 1978 SC 1021.*

(2) The right of private defence applies not only to the defence of one's own person or property, but also to that of others. But where the right of private defence is exceeded, the assembly will become an unlawful assembly. *AIR 1956 SC 513.*

(3) If five or more exceed the original lawful object and each has the same unlawful intention in mind and they act together and join in the beating, then they, in themselves, form an unlawful assembly. *AIR 1956 SC 513.*

(4) Persons claiming possession of lands going with a party armed with deadly weapons to assert a person's title against the person in possession will constitute an unlawful assembly. The reason is that such persons cannot be said to be acting in defence. They must be treated as being aggressors and

trying to enforce a certain right and not defend such right. It can be easily seen that enforcing a right and defending a right are quite different matters. *AIR 1968 SC 702.*

14. Clause 'First'—"To overawe the Government, etc".—(1) The word 'overawe' connotes the creation of a situation in which the members of the 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 danger to the person; it well might be danger to public property or the safety of the members of the general public. *AIR 1951 Pat 60.*

(2) The conspirators may be liable to be punished under Section 121 for the graver offence of waging war, but that is no reason for saying that is not a riot. *AIR 1928 Pat 115.*

15. Second clause—"To resist execution of any law.—(1) Where an assembly which is already an unlawful assembly is ordered to disperse persons joining or continuing in the assembly with the knowledge of the order to disperse are punishable under Section 145, which is an aggravated form of the offence of being members of an unlawful assembly under S. 143. *AIR 1923 Pat 1.*

(2) The word 'to resist' connotes an overt act. *AIR 1923 Pat 1.*

16. Second clause—Execution of legal process.—(1) An order prohibiting a procession without obtaining licence is an execution of the law. It is also an execution of a "legal process." AIR 1923 Pat 1.

(2) The process must be a legal one ; otherwise, resistance to it will be lawful as being an exercise of the right of private defence. *AIR 1957 Orissa 130.*

(3) The clause deals only with the common object to resist execution of a legal process. Actual resistance is not necessary for a case to fall under this cause. If there is actual resistance it may amount to an offence under S. 186. If, again, force is used in resisting the process, the members of the assembly will be liable under Section 147 for rioting. *AIR 1938 Pat 548.*

17. Third clause—Mischief and criminal trespass.—(1) Where the common object is to commit mischief, the assembly is unlawful. *AIR 1953 All 749.*

(2) It is not necessary that object should have been carried out. Where, however, no mischief or criminal trespass is actually committed in pursuance of the common object, it will be very difficult to prove the common object, which is a state of mind of the members forming the assembly. *AIR 1955 Cal 515.*

18. Third clause—"Or other offence.—(1) An assembly with the common object of wrongfully confining a person and humiliating him is within the third clause of the section. *1971 CriLJ 1222 (Pr 4) (All).*

(2) A common object of obstructing the police by threats in the discharge of their duties will fall under this clause. *AIR 1924 All 233.*

(3) The common object of committing an offence under S. 188 falls under this clause. *AIR 1929 Bom 433.*

19. Fourth clause—Forcibly obtaining possession.—(1) Persons assembling with the object of maintaining even by the use of force, their possession as against aggression is not an unlawful assembly. *AIR 1942 Mad 58 (61) (DB).*

(2) The conception of obtaining possession of property by force is akin to the conception "enforcing a right" by the means of criminal force or show of criminal force, which is also mentioned in

this clause as an object which will render an assembly of five or more persons "unlawful". *AIR 1914 Sind 152.*

20. Fourth clause—Deprive any person of the enjoyment of a right of way, etc.—(1) Where though the right to the common use of a way has been reconised by the Civil Court, if an assembly of five or more persons use criminal force for enforcement of the right and not for defending the right, they would constitute an unlawful assembly and a right of self-defence cannot be claimed. *AIR 1955 Punj 90.*

(2) Where a Civil Court has declared the rights of parties in respect of right of way in favour of the accused and against the complaints, the accused cannot be said to have the common object as described in the fourth clause of S. 141 if they prevent the complainants from having any access to the pathway. *AIR 1954 Assam 57.*

21. Fourth clause—To enforce any right of supposed right, by means of criminal force or show of criminal force.—(1) "Force" is defined in S. 349 and criminal force is defined in S. 350. *AIR 1916 Mad 1222.*

(2) The assertion of right or supposed right within S. 141, fourth clause cannot comprise the assertion of a right of private defence within the limits prescribed by law. *AIR 1970 SC 27.*

(3) In the maintenance of a right, force may be used in the exercise of the right of private defence, subject to the limitation started in Ss. 99 to 106. *AIR 1950 FC 80.*

(4) The word 'enforce' connotes that the party trying to enforce a right is not in enjoyment of the right. *AIR 1968 SC 702.*

(5) Where the common object of an assembly of five or more persons is to maintain a right, in the exercise of the right of private defence, even by the use of force if necessary the assembly cannot be held to be an "unlawful assembly". *AIR 1950 FC 80.*

22. "Any right or supposed right"—(1) Where a right exists in fact or is merely supposed to exist, the essence of the fourth clause of this section is the use or show of criminal force to enforce that right. *AIR 1961 Mys 74.*

23. Fifth clause—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.—(1) If an assembly of five or more persons takes a decision to observe hartal by themselves and their associates, then the decision does not come under the mischief of fifth clause of section 141 of the Penal Code. This decision does not contemplate holding of any possession or picket or any activity or activities to implement the decision. But if an assembly of five or more persons takes the decision to observe hartal to be participated by the people at large so that their common object is to compel others obviously by show of criminal force to do what they are not legally bound to do, then the said assembly must be an unlawful assembly according to fifth clause of section 141 of the Penal Code and the members of that unlawful assembly are liable to be punished under section 143 of the Penal Code. Consequently the processions or other activities in support of or to force such hartal shall be unlawful assemblies. Similarly every assembly of five persons or more to protest or to oppose hartal shall be an unlawful assembly. Activities of the members of these assemblies shall be cognizable offences according to their behaviour under the relevant sections contained in Chapter VIII of the Penal Code. *The State Vs. Md. Zillur Rahman and ors., 19 BLD (HCD) 303.*

(2) Where A is entitled to do a thing, an assembly of five or more persons, compelling him by show of force to omit to do it, is an unlawful assembly. *AIR 1916 Pat 176 (177) : 18 CriLJ 110.*

(3) It is not sufficient merely to prove that the common object of the accused's party was to compel the complainanant by means of force to omit, for the time being, to do a certain act. The act omitted must be one which the complainant was legally entitled to do; if it is not such an act C1 5 cannot apply. *AIR 1925 Oudh 425(426) : 26 CriLJ 513.*

(4) The right to use a public highway is not a right which originates either in agreement or in custom. Every member of the public has a right to use it. Therefore, no person has a right to prevent a procession from proceeding along a public highway and if five or more persons assemble in order to prevent the procession by the use of force they will constitute an unlawful assembly. *(1883) ILR 6 Mad 203 (FB). AIR 1961 Mys 57.*

(5) The calling of a Magistrate or the Police for the purpose of preventing an act being done by the opposite party cannot be said to be the use of force or criminal force or show of criminal force under this section. *AIR 1949 All 351.*

24 Explanation.—(1) An assembly which was lawful at the inception becomes unlawful the moment one of them calls on others to assault a member of the other party and they in response to his invitation start to chase the member of the other party. *AIR 1954 SC 657.*

(2) The unlawfulness of an assembly depends on its behaviour, purpose of which it meets, the manner in which it expresses itself, and the means which are used by its members to consummate the common object, though the actual consummation of its purpose is not essential and it may remain unexecuted. *AIR 1960 Punj 271.*

25. Presumptions and proof.—(1) Persons assembled for the purpose of resisting by way of self-defence apprehended unlawful aggression by others cannot be called an unlawful assembly. *AIR 1978 SC 1021.*

(2) Whether an unlawful assembly was formed and what exactly was the common object of the assembly must be judged from the facts and circumstances of the of the case. *AIR 1978 SC 1021.*

(3) The object of the assembly at the particular time in question is largely a matter of inference from the acts, the conduct of the members and the surrounding circumstances of the case. *(1910) 11 CriLJ 30.*

26. Compoundability of offence.—(1) This section only defines an unlawful assembly. The section does not create any offence. But Section 143 makes it an offence to be a member of an unlawful assembly. Section 144 makes it an ofence for any person who is armed with a deadly weapon, etc., to be a member of an unlawful assembly. These offences are not compoundable. *AIR 1941 Sind 186.*

27. Charge.—(1) The mere fact that no definite finding was given as to the common object charged, will not necessarily render the conviction bad, where the common object charged was not objected to at the trial and the accused was not prejudiced. *AIR 1929 Pat 206.*

(2) Where the common object set out in the charge is itself a separate substantive offence and the evidence offered in proof of this substantive offence is also relied upon in establishing the common object, an acquittal for the charge for the separate offence must necessarily entail the acquittal of the charge under S. 143. *AIR 1968 Orissa 160.*

(3) Where the facts of the case were such that the accused could have been charged alternatively either under S. 302 read with S. 34 or with S. 302 read with S. 149, it was held that the conviction under section 149 can be altered by the High Court in appeal to one under S. 302 read with S. 34 upon the acquittal of the other accused persons. *AIR 1952 SC 167.*

Section 142

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.

Cases : Synopsis

1. *Scope of the section.*
2. *"Being aware of facts, which render any assembly an unlawful assembly intentionally joins."*
3. *"Or continues in it".*
4. *Person joining if should have the common object of assembly.*
5. *Liability for offence committed by unlawful assembly before a person joined it.*
6. *Presumption and proof.*

1. Scope of the section.—Three positions can be visualised while determining whether a person is a member of an unlawful assembly :--(i) A person may be one of those who come together and assemble for an unlawful object; (ii) he may join an assembly after the assembly has been formed with the knowledge of the facts that render it an unlawful assembly; (iii) he may join an assembly in ignorance of the facts that render it an unlawful assembly, but may continue in it after becoming aware of such facts. In all the three cases he will be a member of an "unlawful assembly" and liable to be dealt with as such under the Code. *AIR 1923 Pat 1.*

(2) The essential point in all the three cases is the awareness on the part of the accused of the facts which render the assembly an unlawful assembly. *AIR 1969 All 130.*

(3) The mere presence of the accused at the scene of occurrence when the complainant was injured does not prove their being members of an unlawful assembly. *AIR 1953 Mys. 41.*

(4) The proof of the fact that a person joining the assembly was aware of the facts which rendered the assembly an unlawful assembly must normally relate to circumstances and acts giving rise to such an inference which exist or are done prior to the prosecution of the common object. *AIR 1968 Orissa 160.*

2. "Being aware of facts, which render any assembly in unlawful assembly intentionally joins."—(1) The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified in S. 141. While determining this question it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as matter of idle curiosity. The presence of such persons in an assembly of that kind will not show that they were members of the unlawful assembly. *AIR 1965 SC 202.*

(2) A person forced by threats to be in the assembly cannot be said to 'join' the assembly and cannot be considered to be a member of the assembly. *AIR 1957 All 184.*

3. "Or continues in it".—(1) The word "continues" merely means physical presence with the awareness and intention referred to in the section. *AIR 1955 NUC (All) 166.*

(2) Where a person is disabled during the course of the acts of the unlawful assembly, he may still continue to be a member of the unlawful assembly if he shares the common objet subsequent to his being made helpless; he can, however, disavow his share in the common object by clear expressions to that effect unless he is so disabled as to be unable to express himself. In the latter case it can be presumed that he had withdrawn himself from the unlawful assembly. *AIR 1950 All 418.*

4. Person joining if should have the common object of assembly.—(1) A person joining an unlawful assembly cannot be said to be a member of that assembly if he does not share the common object of the assembly though in most cases the awareness of facts and the intentional joining of the assembly may give rise to a strong presumption that he shared the common object. *AIR 1957 All 184.*

5. Liability for offence committed by unlawful assembly before a person joined it.—(1) If a person is not aware of the common object of the assembly and the offence in which he is involved does not form part of the same transaction which had taken place before he joined the assembly, he cannot be said to be a member of the assembly when the former transaction took place. *(1910) 11 CriLJ 30.*

6. Presumption and proof.—(1) Where there could be no doubt in the mind of any member of the assembly collected by the leader of the unlawful assembly, that he was present for the purpose of causing hurt to the members of the party attacked, it is not necessary to establish precisely what part each took in the incident, every member of such unlawful assembly is liable for conviction under Section 149 of the Code. *AIR 1943 All 49.*

(2) Where a particular person who was present among the rioters pleads that he was there with an innocent intention, then the burden of proving that innocent intention lies upon him. *AIR 1952 Mad 267.*

(3) Once it is found that a person was a member of an unlawful assembly at the time the transaction began, the reasonable inference would be that he continued to be such members. *AIR 1958 Pat 12.*

(4) The mere fact that a person applied to be made a member of an association some months before it was declared unlawful cannot be said to be proof of his membership after it had been declared unlawful. Some overt act as member subsequent to such a declaration must be proved. *AIR 1931 Lah 361.*

Section 143

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.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *There should be an unlawful assembly.*
3. *Accused must be a member of such assembly.*
4. *Exercise of the right of self-defence.*
5. *Charge under S. 143 and also another offence—Acquittal in respect of the other offence—Effect.*
6. *Offences under this section and also another section—Separate convictions—Legality—Principles.*
7. *Judgement.*
8. *Sentence.*
9. *Practice.*
10. *Procedure.*
11. *Charge.*

1. Scope of the section.—(1) Death of the complainant does not put an end to the prosecution. The trying Magistrate has discretion to allow the matter to be continued by a fit and proper complainant if such person is willing to do so. *AIR 1926 Bom 178.*

(2) Case involving Ss. 143, 324 & 326 PC—None of the parties were in actual possession of the land but both were trying to establish their possession by force or criminal force—None of them were

entitled to protection of law but both are liable for committing the offence as members of two rival unlawful assemblies in prosecution of the respective common object to take or obtain by criminal force or to enforce their right or supposed right to property—In such cases the participants will be liable individually of the respective acts—In view of the peculiar facts and circumstances of the case the sentence of the appellant was reduced by the Appellate Division. *BCR 1987 AD 71 = BSCD, Vol VI, p 30.*

(3) There can be a conviction under sec. 143 on a charge framed under sec. 144 of the Penal Code provided that the charge stated what was the common object of an unlawful assembly. Where nothing was stated in the charge with regard to the common object of an unlawful assembly, the conviction under sec. 143 of the Penal Code could not be maintained. *Osman Ali Vs. Obaidul Hoq (1957) 9 DLR 72.*

(4) A and four others were convicted under sections 143, 447, 379 and 427 of the Penal Code and separate sentences under sections 143, 379 and 427 of the said Code imposed on each of them. Held: That separate sentences were legal. *1 PLR (Dac) 10.*

(5) Neither of the parties in the case and counter-case are entitled to protection of law as none of them were in actual possession in view of the peculiar facts and circumstances of the case the sentence of the appellants should be reduced. *7 BCR 71 (AD).*

(6) Charge framed under section 144—if the charge states what the common object was, there can be conviction under section 143 and not otherwise *(Ref: 1979 CrLJ 72). 9 DLR 72.*

(7) The very membership of an unlawful assembly is by itself an offence under this section. No overt act by the assembly is necessary. *AIR 1959 All 255.*

(8) The court should direct its enquiry as to what would be the conditions necessary to constitute an unlawful assembly in the particular case and should find whether these conditions have been satisfied. *(1910) 11 CriLJ 348.*

2. There should be an unlawful assembly.—(1) Two essential ingredients are necessary in order to constitute an assembly an unlawful assembly, namely that the assembly should consist of five or more persons, and that the common object of the persons composing the assembly should be one or more of the objects enumerated in S. 141. *AIR 1925 Rang 362.*

(2) In considering whether an object of an assembly of five or more persons falls within the categories enumerated in S. 141, the words of the section should be construed as they are and where they are clear, they should not be limited by the words used in the heading of the Chapter in which the section occurs. *AIR 1959 SC 960.*

3. Accused must be a member of such assembly.—(1) Thus, where the accused had no other business at the spot, a sandy tract, where the unlawful assembly was gathered, except to assist, if necessary, those who did the overt acts, it was held that the accused were guilty under this section. *AIR 1915 Mad 1055.*

(2) Before an accused can be convicted under this section there must be clear finding that he participated in the common object of the assembly *1971 CriLJ 559 (Pr 5) (Goa) ; AIR 1956 Orissa 212.*

4. Exercise of the right of self-defence.—(1) An assembly exercising the right of private defence is not an unlawful assembly, but if it exceeds that right it will become an unlawful assembly. *AIR 1927 Pat 27.*

5. Charge under S. 143 and also another offence—Acquittal in respect of the other offence—Effect.—(1) Theoretically, there can be an unlawful assembly the common object of which is one of those specified in S. 141 without anything further being done in carrying out the common object. Even though in such cases the common object is not achieved, technically a conviction under S. 143 could be maintained. But then, there must be evidence on record of the unlawful assembly having reached a consensus of purpose of achieving any of the various objects enumerated in S. 141, Penal Code, apart from the overt acts in proof of the common object constituting a separate offence of which the accused have been charged and acquitted. *AIR 1968 Orissa 160.*

(2) Where the charge is that the accused, as a member of an unlawful assembly, committed an offence under S. 186 of the Code, and he was acquitted of the charge under S. 186 for want of complaint of the public servant concerned under S. 195 of the Criminal Procedure Code, it was held that the accused could be convicted under this section. *AIR 1960 Punj 356.*

6. Offences under this section and also another section—Separate convictions—Legality—Principles.—(1) Acquittal under S. 143 is no bar to conviction under Section 147 or S. 148. *1979 CriLJ 72.*

7. Judgement.—(1) On a charge under this section the judgment of the Court should contain as one of the points for determination, a statement as to the existence of the elements constituting the unlawful assembly in the particular case and the decision thereon bearing in mind the provisions of S. 141 of the Code. *(1910) 11 CriLJ 348.*

8. Sentence.—(1) The imprisonment that may be awarded in default of payment of the fine inflicted, cannot exceed, in view of S. 65 of the Code, one-fourth of the maximum punishment fixed for the offence. *AIR 1941 Pat 48.*

(2) Where the charge against the accused is that they formed an unlawful assembly for committing theft, and where there is no finding as to who received the property, the award of separate sentences under both sections, viz., Ss. 143 and 379 is bad. *AIR 1920 Pat 196.*

9. Practice.—Evidence—Prove: (1) That the assembly in question consisted of five or more persons.

(2) That the object of the persons so assembled (either at the time it became an assembly, or during the time that it continued to be assembled) was any of the five objects mentioned in section 141.

(3) That such object was common to the persons assembled.

(4) That the accused joined, or continued in, such assembly.

(5) That he did so intentionally.

(6) That he did so being aware of the above facts.

It is not necessary to establish that the members actually met and conspired to do any of the acts enumerated in section 141 in order to establish its intention. Such intention can be inferred from the circumstances of the case. What the witnesses actually saw and heard as to what the mob was doing and saying all that is admissible and not their impressions and opinions.

10. Procedure.—(1) Where the real offence committed is one under S. 188, Penal Code, the accused cannot be tried for a minor general offence under Sec. 143 without a proper complaint under S. 195 of Criminal P. C. In such a case conviction and sentence under Section 143 are without jurisdiction. *AIR 1948 Mad 474.*

(2) Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate and by Village Court where less than ten persons are involved in the unlawful assembly read with third, fourth clauses of section 141.

11. Charge.—(1) The common object should be clearly specified in the charge. But the omission to do so will not vitiate the trial where the common object is specified in the complaint, and the accused is not prejudiced by the omission. *AIR 1926 Bom 314.*

(2) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, were a member of an unlawful assembly, the common object of which was (specify the object), and thereby committed an offence punishable under section 143 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 144

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.

Cases and Materials

1. Scope of the section.—(1) This section deals with an aggravated form of the offence under S. 143. *1957 CriLJ 146.*

(2) In order to constitute an offence under this section two ingredients must be established: first the existence of an unlawful assembly with a common object and secondly that the accused was armed with a weapon such as described in the section. *1957 CriLJ 146.*

(3) Where some members of an unlawful assembly with the common object of shooting a man came to the assembly armed with deadly weapons, they committed the offence under this section in prosecution of the common object of the unlawful assembly and therefore all the members of the unlawful assembly would be guilty of an offence under this section read with Section 149 and so would be liable to the enhanced punishment under this section. *AIR 1930 Mad 857.*

(4) The charge under section 144 of the Penal Code should state the common object of the assembly. The omission to state the common object in the charge does not, however, vitiate a conviction if there is evidence on record to show what the common object was all that can be gathered from the evidence in the case. *20 DLR 428.*

2 . Practice.—Evidence—Prove: (1) That the accused joined or continued in an assembly.

(2) That the assembly in question consisted of five or more persons.

(3) That the object of the assembly was any of the objects mentioned in section 141.

(4) That such object was common to the persons assembled.

(5) That the accused intentionally joined the assembly being aware of the object of the assembly.

(6) That the accused was armed with a deadly weapon or with any weapon of offence which is likely to cause death.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being armed with a deadly weapon, to wit, (or armed with something which was used as a weapon of offence, is likely to cause death, to wit) were a member of an unlawful assembly, and thereby committed an offence punishable under section 144 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 145

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.

Cases and Materials

1. *Scope of the section.*
2. *"Unlawful assembly".*
3. *"Commanded in the manner prescribed by law".*
4. *Sentence.*
5. *Practice.*
6. *Procedure.*
7. *Charge.*
8. *Trial.*

1. Scope of the section.—(1) This section and section 151 are connected with each other so far as the principle underlying both of them is concerned. Section 188 of the Penal Code provides for the disobedience of any lawful order promulgated by a public servant. This section and section 151 deal with special cases as the disobedience may cause serious breach of the peace. If there is no order to disperse or the accused was not aware of it there can be no conviction under this section. *AIR 1931 Mad 484.*

(2) Command to disperse should be lawful. The essential ingredient of offence under sections 151 and 145 is that the accused is lawfully commanded to disperse after he joins or continues in an assembly of five or more persons or in an unlawful assembly. If a person was not lawfully commanded to disperse he does not come within the mischief of section 151 or section 145. In the accusations in these cases it was not stated that the officer commanded the petitioners to disperse. Offering resistance is distinct from commanding to disperse. Thus the accusations, as they are, do not constitute an offence under section 151 of the Penal Code. For the same reason they do not also constitute an offence under section 145. *20 DLR 461.*

(3) The essential elements of this section are:

(a) that there was an unlawful assembly ;

(b) that the assembly was ordered to disperse, in the manner prescribed by law ;

(c) that the accused joined or continued in the assembly with knowledge of the order of dispersal. *AIR 1922 Lah 135.*

(4) An order duly promulgated, not to hold a public meeting or take out a procession or not to do so without taking out a licence, is not the same as an "order to disperse", as the latter kind of order can only come into existence after an unlawful assembly has been formed. But a procession taken out or meeting held in violation of a lawful order prohibiting such procession or prohibiting such meeting without obtaining a licence, will be an unlawful assembly under S. 141(3) read with S. 188, and its members will be liable for punishment under S. 143 or 144, as the case may be. *AIR 1923 Pat 1.*

(5) Where the order banning a meeting is not valid, a public meeting held in defiance of the order does not constitute an unlawful assembly and hence, in such a case, the failure of the members to disperse on being commanded to do so is not an offence under this section. *AIR 1955 Manipur 41.*

(4) Where the common object of an assembly of five or more persons is to resist an order of the police to disperse, they will constitute an unlawful assembly under Section 141 (Cl. 2) and if they do not disperse on being lawfully commanded to disperse they will become liable to the enhanced punishment under this section. *AIR 1923 Pat 1.*

2. "Unlawful assembly".—(1) An assembly which is lawful may become unlawful by reason of its refusal to obey an order of dispersal. *(1942) 43 CriLJ 871(874, 875) (DB) (Pat).*

(2) A member of unlawful assembly is punishable under S. 143 and not under this section. This section applies only when an assembly which is already unlawful is subsequently ordered to be dispersed. *AIR 1951 Orissa 84.*

3. "Commanded in the manner prescribed by law".—(1) Where the order of dispersal is not lawful, not being authorised, this section will not apply. *AIR 1951 Orissa 84.*

4. Sentence.—(1) Where a heavy sentence was imposed on an accused under this section, but he did not prefer any appeal from the sentence, it was held that the High Court would not entertain an application for reduction of sentence at the instance of third party. *AIR 1933 Cal 361.*

(2) Separate sentences under this section and other sections are legal. *(1934) 12 MysLJ 41.*

5. Practice.—Evidence—Prove: (1) That there was an assemblage of five or more persons.

(2) That the object of the assembly was to commit any one of the offences enumerated in section 141.

(3) That the accused shared the object of the assembly with at least four persons.

(4) That the accused intentionally joined the meeting:

(a) having knowledge and its objects ; and

(b) continued to be a member of that assembly after being fully aware of its objects.

(5) That such assembly was ordered to be dispersed.

(6) That such order to disperse was given in the manner prescribed by law.

(7) That the accused joined or continued to be a member of that unlawful assembly even after it was ordered to disperse.

(8) That the accused did so knowing that he had been ordered to disperse.

6. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

7. Charge.—(1) The failure to specify the common object in a charge under this section would not be fatal to the trial if it can be shown that there is ample evidence on the record to prove what the common object of the assembly is. *AIR 1931 Bom 520.*

(2) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, joined or continued in an unlawful assembly, knowing that such assembly had been commanded in the manner prescribed by law to disperse, and thereby committed an offence punishable under section 145 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

8. Trial—Place of.—Magistrate's discretion in the matter of choice of the place of trial other than the Court shall be announced by a formal order. A Magistrate can in his discretion hold trial at any place other than the Court house but in that case, it is essential that he should pass a formal order declaring the place where the trial would be held. Unless a formal order is passed declaring that the trial would be held in any specified place, the accused persons are likely to be prejudiced in as much as, in that case they are deprived of the opportunity of having recourse to higher authority for redress if they feel aggrieved by such order.

Section 146

146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Distinction between "waging war" and "committing a riot".*
3. *There must be an unlawful assembly.*
4. *Common object.*
5. *Abetment of rioting.*
6. *Person not present in the assembly.*
7. *Presence in assembly.*
8. *"Force" or "violence".*
9. *In prosecution of the common object.*
10. *Section is subject to General Exceptions.*
11. *Presumption.*
12. *Burden of proof—Appreciation of Evidence.*
13. *Court's duty.*
14. *Procedure.*
15. *Charge.*
16. *Offence of rioting not compoundable.*

1. Scope of the section.—(1) *Ingredients:*

(a) Five or more persons were assembled.

(b) They constituted an unlawful assembly.

(c) The members of the unlawful assembly used force or violence.

(d) The accused was a member of that unlawful assembly.

(e) In prosecuting a common object, the unlawful assembly used force.

(2) This section applies where an overt act is done by the assembly or by any member thereof in pursuance of the common object, and the overt act is done by the use of force or violence. It is not necessary that any overt act must be done by the accused member of the assembly. *1970 CriLJ 1316.*

(3) In order that this section may apply:

(a) there must be an unlawful assembly as defined in S. 141, and

(b) force or violence must have been used by the unlawful assembly or by any member thereof in pursuance of the common object. *(1972) 1 SCJ 561.*

(4) Where an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, the case will be covered by S. 149. If in such a case the offence is one which involves the use of force or violence, the members of the unlawful assembly will be guilty not only of the offence of rioting under this section but also of the particular offence committed in the course of the rioting. This principle will also apply where the act constituting the offence is done in the exercise of the right of private defence but the right is exceeded. *AIR 1958 All 348.*

2. Distinction between "waging war" and "committing a riot".—(1) Where there was conspiracy to overthrow the Government, and the conspirators attacked and fought the Township Officer's party who had come to arrest them. **Held,** that the attack constituted the act of waging war. It was not riot. *(1913) 14 CriLJ 514.*

3. There must be an unlawful assembly.—(1) In a charge of rioting the first thing to consider is whether there was an "unlawful assembly" and whether the accused was a member thereof. If there was no unlawful assembly no conviction for rioting under this section can be maintained. *1968 CriLJ 1676.*

(2) Where it is not proved that more than four persons were inspired by a common object referred to in S. 141 or where the assembly has no such common object as is enumerated in S. 141 there can be no unlawful assembly and no member of such assembly can be convicted of rioting. It is not however, necessary that the identity of all the five or more persons should be stated in the charge. If the Court comes to the conclusion that there were five or more persons with a common object but some of them are not identified, the persons who are identified, though less than five in number, can be convicted of rioting. *AIR 1954 SC 457.*

4. Common object.—(1) Since the offence of rioting presupposes the existence of an unlawful assembly and since an unlawful assembly presupposes the existence of a "common object" (as enumerated in S. 141), the question of "common object" becomes an essential element of the offence of rioting. *AIR 1921 Cal 181.*

(2) There should be a clear charge and finding as to the common object of the assembly before a conviction can be properly maintained for the offence of rioting. *AIR 1957 Orissa 190.*

5. Abetment of rioting.—(1) Where the accused instigates the members of an unlawful assembly to use force or violence for overcoming any resistance that may be offered, he will be guilty of abetment of rioting. *AIR 1953 Trav-Co 251.*

(2) Where the accused instigates the members of an unlawful assembly to use force or violence for overcoming any resistance that may be offered he may be guilty of the offence of rioting inasmuch as in such a case, the abettor and the members of the unlawful assembly share in the same common object. *AIR 1942 Pat 311.*

6. Person not present in the assembly.—(1) Where an unlawful assembly consisted of the servants of X and its common object was to do something which was in the interest of X, but X was not present at or anywhere near the scene of occurrence and there was no evidence that he abetted the acts done, it was held that X could not be convicted of rioting or of the abetment thereof. *1974 WLN (UC) 26.*

7. Presence in assembly.—(1) The mere presence of a person in the assembly cannot make him a member of the assembly, unless it is proved that he shared the common object of the assembly. In the absence of such proof he cannot be guilty of rioting. *AIR 1979 SC 1265.*

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(2) If a member of an unlawful assembly gets hurt and is disabled from going away from the place, he may nevertheless be still a member of the assembly unless he expressly disavows his share in the common object. *AIR 1950 All 418 (419): 51 CriLJ 1133 (DB).*

8. 'Force' or 'violence',—(1) The graveness of the offence of rioting is the use of force or violence by the unlawful assembly or by any member thereof. *AIR 1963 Mad 310.*

(2) Where two words are used 'force' or 'violence' in S. 146, Penal Code, each word will connote a different and distinct concept. While 'force' is narrowed down by the definition under S. 350, Penal Code, to persons, the word 'violence' is comprehensive and is used to include violence to property and other inanimate objects. *AIR 1955 All 232.*

(3) The words "whenever force or violence is used" as used to in this section show that the actual use of force and not merely the show of force is necessary to constitute the offence of rioting under this section. *AIR 1927 Oudh 151.*

(4) The word 'riot' is a term of art and that, contrary to popular belief, it may not involve noise or disturbance of the neighbours though there must be force or violence. *(1957) 1 All ER 577.*

(5) Chasing persons who escape, or merely advancing to attack a person may amount to an assault or preparation to use force or violence but does not amount to the use of force or violence. *AIR 1937 Pat 34.*

(6) If parties assemble for a purpose which, if executed, would make them rioters, but they do nothing and separate without executing their purpose into effect, there is no 'riot' though the assembly may have been an unlawful assembly. *AIR 1928 Mad 21.*

9. In prosecution of the common object.—(1) Where the act involving the use of force or violence constitutes any specific offence (e.g.) hurt (S. 325), grievous hurt (Section 326), mischief (S. 425), etc., then, the members of the assembly will be guilty not only of the offence of rioting under this section but, by virtue of S. 149, also of the specific offence committed by one or some of them. *1954 Madh BLR (Cri) 363.*

(2) Where special offence under S. 325 or S. 326 or S. 425 etc. is not committed in prosecution of the common object of the unlawful assembly but by a member of the unlawful assembly, in his individual capacity, then, the other members will be guilty neither of rioting under this section nor of the specific offence by virtue of Sec. 149, and it is only the particular member who commits the offence that will be liable for it. *AIR 1942 Lah 59.*

10. Section is subject to General Exceptions.—(1) This section is subject to Chapter IV dealing with General Exceptions from criminal liability. *1889 Pun Re No. 4 (Cr.) P. 7.*

(2) An assembly exercising its right of private defence of person or property is not an unlawful assembly and no member thereof can be convicted under this section. *1978 UJ (SC) 924.*

(3) Cases of resistance to illegal arrest, attachment, searches, proceedings for delivery of possession of property, defence against attempts to cause hurt, etc. *AIR 1976 SC 2423 ; 1978 CriLJ (NOC) 40 ; 1977 WLN 566 ; AIR 1960 Tripura 43 ; AIR 1957 Orissa 130 ; AIR 1955 NUC (Pat) 1869.*

(4) The following cases are cases of party in possession resisting aggression : *AIR 1950 FC 80 ; AIR 1955 Manipur 21 ; AIR 1953 All 327.*

(5) Where the exceptions do not apply, as where there is no right of private defence or the right is exceeded, the assembly with the common object referred to in S. 141 will be an unlawful assembly and

if force or violence is used in prosecution of such object the offence of rioting is established. *AIR 1976 SC 2273.*

(6) The following are cases of resistance to acts of public servants covered by S. 99 of the Code—No right of private defence : *(1962) (1) CriLJ 91. AIR 1960 All 453. AIR 1945 Nag 269. AIR 1940 Mad 18; AIR 1936 Pat 37.*

(7) Disputes often arise between rival parties as to the possession of, or the right to, property. In such cases it is necessary to see whether one or other of the parties is exercising the right of private defence. The Court is bound to record a clear finding as to possession before the accused can be convicted. *AIR 1950 FC 80.*

(8) A party enforcing a right of which he is not in enjoyment, cannot be said to act in self-defence and an assembly in this case would be an unlawful assembly and the members would be guilty of rioting. *AIR 1968 SC 702.*

11. Presumption.—(1) In the absence of evidence or reasons to the contrary, the common object of a riotous mob is presumed to be that indicated by their conduct, and it is also presumed that they entertained it from the beginning and throughout their proceedings. *AIR 1923 Nag 100.*

(2) Where the accused were charged under Ss. 147, 149, 399 and 402 but the offence of dacoity was not proved to have been actually committed, it was held that from the presence of a large quantity of arms and ammunitions in the possession of the accused, it could be safely presumed that such possession was not consistent with the theory of a peaceful assembly and they could be convicted under Ss. 147 and 148. *AIR 1962 All 13.*

12. Burden of proof—Appreciation of evidence.—(1) On the charge under S. 147 the burden is on the prosecution to prove that the accused took part in a riot. *AIR 1943 Mad 590.*

(2) The first information reports to the police in riot cases are not safe guides to charge the persons mentioned therein ; the reason is, that friends and relations of the real culprits are more often than not promiscuously implicated. *AIR 1931 Lah 465.*

(3) Where there is a volume of evidence which is prima facie acceptable but which is sought to be rebutted, it is the duty of the Court to apply its mind to the evidence and analyse it to find out whether the prosecution has affirmatively and satisfactorily proved its case, making use of the defence evidence for the purpose of testing whether the prosecution case is true. If there is any reasonable doubt as to the guilt of the accused, and there is no moral certainty of such guilt, the accused should be given the benefit of doubt. *AIR 1958 Mad 127.*

(4) The alleged common object of an assembly, which renders it unlawful must be established by evidence. In the absence of a clear finding as to how a fight originated, a conviction for rioting cannot be maintained. *AIR 1953 Mys 41.*

(5) It is not permissible to base a conviction upon a hypothetical state of facts, which is quite unsupported by evidence, which was never put forward by the prosecution and was never suggested to the accused as being the case they had to meet. *AIR 1955 NUC (Cal) 4845 (Pr 7).*

(6) Where the prosecution alleges that the riot was the result of the threats and attempts of the accused to prevent the servant of the complainant from working for his employer, the only way the prosecution can prove these threats is by the evidence of someone who heard them uttered. The hearsay evidence of the complainant with regard to what the servant told him that the accused persons said, is inadmissible unless possibly it is impossible to secure the attendance of the servant. *AIR 1939 Pat 659.*

(7) Where the presence of all the accused at the time of the occurrence is fully proved by the evidence of the prosecution witnesses, it is not further necessary for the prosecution to prove in a case of riot what each individual rioter was responsible for. *AIR 1933 All 535 (537).*

(8) Where the presence of all the accused at the time of the occurrence is fully proved by the evidence of the prosecution witnesses, then it is for the individual accused to prove that he was there owing to no fault of his own and that he could not get out of the crowd. *AIR 1928 Pat 115.*

(9) The absence of injuries on the person of the alleged rioters arrested shortly after the occurrence is a point which in a case where the evidence is partisan, must operate as a ground for giving the benefit of doubt as to participation. *AIR 1952 Mad 267.*

13. Court's duty.—(1) In cases of charges under S. 147, Penal Code, the Court should discuss the evidence as against each of the accused and view the case of each accused separately. *AIR 1956 SC 181.*

14. Procedure.—(1) A case of rioting should not be tried summarily and when a grave offence is committed, it should not be minimised in order to justify a summary trial. *AIR 1929 All 349.*

(2) The offences under Ss. 147 and 148 are not compoundable at all and therefore no acquittal can be allowed by reason of a compromise in regard to the offences under these sections. But if circumstance requires, the Court can discharge the accused in respect of the charge under S. 147. *AIR 1925 Lah 464.*

(3) In a conviction for rioting even where the plea of self-defence is raised for the first time in appeal the appellate Court should examine the plea. *AIR 1925 All 664.*

(4) Where the accused are charged with theft and riot and the charges have reference to property which forms the subject-matter of a civil suit already pending it is desirable in the interests of fair administration of justice that the criminal proceedings should be stayed till the disposal of the civil suit. *AIR 1917 Pat 621.*

15. Charge.—(1) It is the usual form of charge in rioting case, where the common object of the assembly was to use criminal force to some person, to state that the common object was to "assault" a person or persons. It is immaterial whether the common object was to commit assault, simple hurt or grievous hurt, and a charge stating that the common object was to "assault" a certain person or persons would cover all those cases. *AIR 1927 Pat 398.*

(2) Accused cannot be convicted under Ss. 147 and 148 where the charge against them is merely under S. 395 unless the case is one to which S. 21, Criminal P.C. is applicable. *AIR 1945 All 87.*

(3) A charge for rioting based on a particular common object of the assembly will vitiate a conviction based on another common object. *AIR 1963 Cal 3.*

(4) An offence under S. 147 has been made a substantive offence by the Penal Code and there is no illegality in the accused being charged under that section in addition to charges under Ss. 323 and 325. *AIR 1933 Oudh 95.*

(5) Where a series of events constituted one and the same transaction, the Court is justified in framing charges in respect of each of the offences committed by the accused in the course of one and the same transaction under S. 220, Criminal P.C. *AIR 1938 Pat 548.*

(6) In the absence of a charge under S. 147, P.C., it is only the persons who caused the injuries that can be punished for their individual acts. *AIR 1959 Andh Pra 102.*

16. Offence of rioting not compoundable.—Offences under Ss. 147 and 148 are not compoundable. But if circumstances require it the Court can discharge the accused of the charge of rioting. *1978 All Cri C 108.*

Section 147

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.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Previous acquittal of some members of unlawful assembly in respect of wrongful confinement—Whether bar to prosecution for rioting.*
3. *Sentence.*
4. *Jurisdiction.*
5. *Separate sentences for rioting and hurt or other offence.*
6. *Charge under Section 147 and also under other sections.*
7. *Practice.*
8. *Procedure.*
9. *Charge.*

1. Scope of the section.—(1) This section must be read along with section 141. The basis of the law as to rioting is the definition of an unlawful assembly. It is only the use of force that distinguishes rioting form an unlawful assembly. Persons who act in the exercise of right of private defence cannot be convicted under this section *(1953 CrLJ 6).* Section 141 indicates what objects are deemed unlawful. If the common object of an assembly is not illegal, it is not rioting. If the common object is not unlawful, then there can be no unlawful assembly and consequently no rioting. There can be no right of private defence where the riot is premeditated on both sides. Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that a particular party was acting within the legal limits of the right of private defence *(25 CrLJ 983).* To sustain a conviction it is essential that person forming unlawful assembly should be animated by a common object and in the absence of such a finding the conviction is not sustainable and on that ground alone the conviction should be set aside *(43 CrLJ 654).* Mere followers in rioting deserve a much more lenient sentence than leaders who mislead them into violent acts by emotional appeals, slogans and cries *(AIR 1952 Mad 267).* In a charge of rioting where a number of men are accused the Court should deal with the case of each of the accused separately and discuss the evidence against each of the accused especially when the evidence against each of the accused is by no means equally strong *(16 CrLJ 809).* Where the evidence of the prosecution is interested and where a considerable amount of enmity exists between the factions, the Court must scrutinise the evidence very carefully *(28 CrLJ 685).*

(2) *Ingredients:* There are two essentials which make every member of an unlawful assembly guilty of rioting—

(i) Use of force or violence by an unlawful assembly or by any member thereof.

(ii) Such force or violence should have been used in prosecution of the common object of such assembly.

(iii) The Sessions Judge found the appellants guilty of charge under section 147 of the Penal Code and granted interim bail pending filing of the appeal. In the facts of the case it will be

less than charitable to attribute to the appellants that they were "fugitive from Law". Sentence being in excess of one year, Sessions Judge was not competent to grant such bail. *40 DLR (AD) 281.*

(4) Mere assembly of five persons or more is not an unlawful assembly—An assembly of five persons or more is an unlawful assembly if it has as its common object any of the unlawful acts which has been specifically described in section 141 of the Penal Code—When force or violence is used by an unlawful assembly or any of its members then the offence of rioting is committed. When rioting is committed by a member of an unlawful assembly being armed with deadly weapon he is liable to higher punishment under section 148, Penal Code. Rioting is punishable under section 147 of the Penal Code. Corroborative evidence (Medical Certificate) cannot be considered without the substantive evidence unless the substantive evidence is dispensed with under section 510A of the Code of Criminal Procedure. *7 BCR (AD) 6.*

(5) Disputed land—Order of injunction granted by the trial Court was set aside by the lower appellate Court—High Court Division stayed the said order—Appellants chased and attacked the informants and their party who were ploughing the disputed land—Question of possession raised—Non-consideration of the effect of the stay order in determining the question of possession has caused failure of justice—Appeals allowed but case sent back on remand to the High Court Division for disposal of the Revision case in the light of the observations made. *7 BCR (AD) 162.*

(6) One of the accused, was charged with many others, under sections 147 and 448 of the Penal Code, with an additional charge under section 304 of the Code, but when he was examined under section 342 CrPC he was not told that he was facing trial under section 304 in addition to common charge under sections 147 and 448—As such, his conviction under section 304 is illegal when so many persons were collectively charged some under section 304 and some under sections 147/448. It appears that failure of justice has been occasioned by the omission. It is too late to direct retrial but the conviction under sections 147/448 of the Penal Code is maintained (*Ref: 5 BCR 272 AD; 1979 CrLJ 72); 37 DLR (AD) 113.*

(7) If it is found that the accused were members of an unlawful assembly within the meaning of section 147, Penal Code, the fact that some of them did not do any overt act will not exonerate them from the charge of rioting. The learned Single Judge has observed that "though presence of six respondents on the spot during the incident was established, yet they could not be held guilty of any offence as they did not do any overt act". This observation is wrong both factually and on point of law. Two of them namely, Aman and Alimuddin, were seen by PWs 1, 4 and 7 catching hold of the guard in order to prevent him from putting any obstruction to the act of looting and arson ; and as to legal effect of their presence during the incident, since they were members of an unlawful assembly which used force or violence in prosecution of the common object of that unlawful assembly, to wit, to destroy a dwelling hut by fire—"rioting" was committed, an offence of which every member of the unlawful assembly is guilty, even if he did not do any other act. Charge being one of rioting under section 147, Penal Code—All who are members of the unlawful assembly are guilty of rioting but individuals who did not commit mischief by fire, an offence punishable under section 436, cannot be held guilty under that section by applying section 147 *(Ref: 4 BLD 324 AD, 4 BCR 186 AD, 1 BSCD 240). 36 DLR (AD) 234.*

(8) Acquittal—probabilities, relation between the petitioner and witnesses, delay of nine months in lodging First Information Report and omission in the statements recorded by the police under section

161 CrPC. No. exception can be taken in law and fact doubting the evidence of such witnesses in Court implicating the accused. *1 BSCD 240.*

(9) Six persons formed unlawful assembly—Two discharged—Conviction of four others for unlawful assembly valid in law. When the evidence has clearly established that 6 persons had formed the unlawful assembly it is immaterial whether all the 6 persons were charged for the offence or not and it does not make any difference that only 4 persons have been charged with the offence under section 147 and two others have been discharged. So, in the facts of the present case the conviction of the 4 accused under section 147 of the Penal Code is legally sustainable *(Ref: 4 BLD 94). 35 DLR 311.*

(10) When the unlawful assembly cannot become riotous. The accused cannot be said to be guilty under section 147 of the Penal Code because when their common object of the entire assembly was the commission of criminal trespass and were causing hurt or grievous hurt was a separate object of only one of the members of the assembly and was committed by that single member in prosecution of that object, then in could not render the unlawful assembly riotous. Conviction of several accused persons on omnibus statements of the PW cannot be sustained *(Ref: 2 BLD 170). 34 DLR 94.*

(11) Consecutive sentences—Sentences for rioting and trespass whether sustainable—Although accused persons could be convicted for both the offences, there ought to have been only one sentence for any of the offences and even if there was two separate sentences they ought to have been made concurrent—consecutive sentences cannot be upheld. Offence of assault—Finding as to individual accused imperative—Where there are a number of accused and the offence alleged is one of assault it is imperative to record a finding as against individual accused—Conviction of the petitioners on the basis of a lump finding is not sustainable in law. *5 BLD 65.*

(12) Evidence goes to show that hired labourers cut paddy but there is no evidence that they cut paddy in furtherance of a common object—they are entitled to the benefit of doubt on charges under sections 147 and 148 of the Penal Code. Criminal trial—when from the charge sheet it appears that the persons whom therein are treated as accused—They should be treated as accused. Body of the man murdered not found—dead body is not absolutely necessary. *33 DLR 104.*

(13) Separate sentences under sections 147 and 324 of the Penal Code not illegal. *24 DLR 207.*

(14) Four convicted out of eleven (others acquitted) cannot form an unlawful assembly. Eleven persons were on trial under section 147 of the Penal Code of whom four were found guilty under the same charge and the rest were acquitted. There was no finding in the judgment that other seven persons were also present with the common object of the unlawful assembly. Held: The four convicted persons could not form an unlawful assembly and, therefore, their conviction under section 147 of the Penal Code cannot be sustained. *16 DLR 185; 25 DLR 185.*

(15) There may be a common intention formed on the spur of moment. *11 DLR (SC) 226.*

(16) Where the common object of the whole assembly is stated to be theft, and the common object of some is stated to be theft and assault—conviction under section 147 and 148, PC is not legal. *9 DLR 71.*

(17) Separate sentences under section 147 as well as under section 426 not legal—Conviction under both the sections, valid. When common object alleged is causing mischief, conviction under section 147 of the Penal Code automatically goes, if conviction under section 426 is set aside. *8 DLR 95.*

(18) Alteration of a charge under section 147 to one under section 323—when not proper. If the common object of an unlawful assembly had been to beat the complainant and his party men and if the

evidence establishes that the accused did so beat them, it might have been argued that the alteration of the conviction from section 147 to 323 of the Code was not illegal, because section 323 may then be held to be covered by the common object of the assembly: but when the charge recites the common object of the assembly as merely to steal away paddy seedlings, the alteration of the section from 147 to 323 of the Code was illegal and has prejudiced the accused. *3 DLR 144.*

(19) Charge of rioting when defective—Where the charge stated that four persons were members of an unlawful assembly, it is not a charge bad in law. But where the wording of the charge was to the effect that four persons formed or constituted an unlawful assembly that would be a bad charge, as a charge against four persons to the effect that they committed dacoity was bad in law. *2 DLR 241.*

(20) Impossible common object—It is an impossible common object where the common object stated in the charge framed under section 147 of the Penal Code in the commission of culpable homicide not amounting to murder. *2 DLR 73.*

(21) Common object of the unlawful assembly—Conviction cannot be sustained if the common object of the unlawful assembly set out in the charge fails. Held: When once the occurrence with regard to plot A had come to an end, the common object which motivated the accused persons to surround K on plot B was not to take forcible possession of plot A. The common object of the assembly having been erroneously given in the charge the conviction both under sections 147 and 302/149 of the Penal Code could not be sustained. *1 DLR 137.*

(22) The accused persons were ultimately placed on trial before the learned Additional Sessions Judge, Rajshahi and on consideration of evidence and facts and circumstances of the case he convicted the appellants under sections 147/379 of the Penal Code and sentenced each of them to suffer RI for one year under each count with direction that the sentences under both the sections are to run concurrently. The trial Court further convicted co-accused Amiruddin, Asiruddin and Tamizuddin under sections 304/34 of the Penal Code and sentenced them to suffer RI for 7 years each and to pay a fine of Taka 2000.00, in default, to suffer RI for one year more. In disposing of an appeal, the appellate Court is required to examine the evidence before affirming or reversing the order of conviction passed by the trial Court, which has not been done in this case. The trial Court in an elaborate judgment considered the evidence of the parties and found that the complainant grew the paddy, was in possession and the grown paddy was forcibly taken away by the accused persons. Hence appeal was dismissed. *4 BCR (AD) 339.*

(23) *Ingredients:* Petitioners, members of unlawful assembly in prosecution of the common object, used force by causing injuries to complainants—ingredients for the offence proved—no interference with the order of the High Court Division. *1 BSCD 239.*

(24) Taking away of paddy by the accused persons and causing injury to the deceased—Conviction and sentence u/s 147/379, PC—Sentence of R.I. for one year under each count—Sentences under both the sections to run concurrently—Criminal Appeal—High Court Division did not at all refer to the evidence while affirming the order of conviction of the appellants and simply reduced the sentence of the appellants observing that "with the modification in the sentence the appeal is dismissed on merit"—Validity of the High Court's decision—In disposing of an appeal, the Appellate Court is required to examine the evidence before affirming or reversing the order of conviction passed by the trial Court which has not been done in this case—Normally, the case should have been sent back to the Appellate Court for disposal of the appeal in accordance with law, but in the instant case no useful purpose will be served by doing that—The trial Court in an elaborate judgment considered the entire evidence and

the facts and circumstances of the case—It believed the evidence of two eye witnesses of the occurrence and another witness who came immediately after the occurrence and saw the accused persons running away from the place of occurrence—The Trial court further found on consideration of the evidence that the complainant party was in possession of the land and they grew paddy which had been forcibly taken away by the accused persons—In that view of the matter it cannot be said that the conviction is not based on evidence—The facts established in the case have made out a clear case U/Ss. 147 & 379 PC against the appellants—High Court Division has reduced the sentence substantially—In the facts and circumstances of the case no useful purpose would be served by sending the case back to the High Court Division. *5 BSCD 36.*

(25) The finding of fact is that the complainant grew the paddy and the accused persons by forming an unlawful assembly stole away the paddy—The question of ownership is not relevant. *5 BSCD 36.*

(26) Every member of the unlawful assembly is equally guilty and liable to punishment. *Bazlur Rahman Howlader @Jillu and 3 others Vs. The State 4. MLR (1999) (HC) 101.*

(27) Where the common object of the entire assembly was the commission of criminal trespass and where causing hurt was a separate object of only one of the members of the assembly then it could not render the unlawful assembly riotous. *Ali Akbar Khan and others Vs. The State 2 BLD (HCD) 170.*

(28) When two of the six accused are discharged whether the remaining four accused could be charged and convicted for rioting—It was mentioned in the charge framed that the accused persons along with others formed an unlawful assembly for committing riot and it was also proved that six persons including the four accused persons formed the unlawful assembly—Under such circumstances the conviction of the four accused persons under Section 147 of the Penal Code is legally sustainable. *Mozammel Haque and others Vs. The State 4 BLD (HCD) 94.*

(29) Where there are a number of accused and the offence alleged is one of assault, it is imperative to record a finding as against individual accused—Conviction on the basis of a lump finding is not sustainable in law. *Badu Mia Vs. The State 5 BLD (HCD) 65.*

(30) Sentences for rioting and criminal trespass whether sustainable—Although the accused persons could be convicted for both the offences, there should have been only one sentence for any of the offences—Even if there are two separate sentences they ought to have been made concurrent and not consecutive—Consecutive sentences cannot be upheld. In the absence of any reliable witness it is unsafe to rely on the uncorroborated testimony of a single witness for convicting the accused for the offence of rioting. *Dr. Abdul Jalil Chowdhury and others Vs. The State 12 BLD (HCD) 467.*

(31) Compelling someone to write resignation letters—Case involving this section. *BCR 1986 (AD) 243.*

(32) All the accused persons assembled to attack the informant. Though only one accused Abdul Khaleque attacked the informant, other accused are also guilty under section 147 because every member of an unlawful assembly is guilty irrespective of whether he had any overt act or not. *Bazlur Rahman Howlader alias Jillu and 3 others Vs. State, represented by the Deputy Commissioner 51 DLR 457.*

2. Previous acquittal of some members of unlawful assembly: Respect of wrongful confinement—Whether bar to prosecution for rioting.—(1) Where two members of an unlawful assembly of five or more police constables were, in a previous case charged with wrongful confinement of X and Y and were acquitted, such acquittal was held not to be a bar under Section 403 of the

Criminal P.C., to the prosecution of the members of the unlawful assembly for rioting, where the charge was that the common object of the assembly was the wrongful confinement of A, B and others. *AIR 1921 Cal 181.*

(2) An acquittal on the charge under the Police Act is equivalent to an acquittal under S. 147 of the Code. *AIR 1935 Rang 436.*

3. Sentence.—(1) Where a large number of people armed with arms assembled at a place with the intention of using force against the complainant who, though feeling himself aggrieved, did not take the law into his own hands but had recourse to the authorities and sought and obtained the assistance of those in charge of the forces of law and order, it was held that the case did not call for an exercise of leniency. *AIR 1954 SC 657.*

(2) Where in a violent countryside, a large number of people collected together to resist a real or fancied encroachment on their rights but so far controlled themselves that they committed no violence against any person, it was held that considerable leniency should be shown in the matter of sentence. *AIR 1935 Pesh 65.*

(3) Where the accused are charged under S. 147 and convicted, the Court would not be justified in imposing a more severe punishment on one of the accused if there is nothing in the evidence to show that he had assaulted anybody or had taken a prominent part in the occurrence. *AIR 1952 Madh B 205.*

(4) Considering the circumstances of the case and particularly six years period which had elapsed, it was held that they should be released on probation. *1984 CriLR 96 (96) (Raj).*

4. Jurisdiction.—(1) A subordinate District Council Court is not competent to try an offence under S. 147, Penal Code, but the jurisdiction of the Assistant to Deputy Commissioner to do so is saved. *AIR 1970 Assam 130.*

5. Separate sentences for rioting and hurt or other offence.—(1) Where proof of rioting is complete, and where besides such proof there is also proof of the commission of hurt or grievous hurt, separate convictions and sentences may be properly ordered. *(1966) 2 Audh WR 475.*

(2) Where the accused are found guilty for offence punishable under S. 147 and also under S. 307 read with S. 149, it is not desirable, in view of S. 71, to pass any separate sentence under S. 147 considering that the common object of the unlawful assembly, which happened to commit rioting, was mainly to murder the deceased. *1981 JabLJ 407.*

6. Charge under S. 147 and also under other sections.—(1) Where the accused are charged under Ss. 304 and 147 and the Sessions Judge found them guilty under both sections but convicted them only under S. 304, it was held that the High Court could convict them under S. 147 also and that it could not be said that the Sessions Judge in merely convicting under Section 304, acquitted them by implication of the charge of Sec. 147. *AIR 1933 All 565.*

(2) Where it is not shown that the accused did any act which caused the death of the deceased, he can only be convicted under S. 304 if it is shown that there was an unlawful assembly of five or more persons, whose common object was to commit an offence under S. 304 and that the accused was one of them. *AIR 1921 Mad 687 (688).*

(3) A conviction under S. 160 (affray) of the Code is maintainable even though the accused were charged only under the section. *AIR 1927 Nag 163 (164): 28 CriLJ 189.*

(4) A conviction for an abetment of assault on a charge under this section cannot stand. *AIR 1922 Mad 110(111): 23 CriLJ 206.*

(5) Conviction for offences outside the common object of rioting is not illegal if they constitute one transaction. *AIR 1928 Oudh 401.*

(6) Where persons are charged with offences under Ss. 323 and 147 and the offence u/s. 323 is compounded and acquittal recorded it will not amount to an acquittal under S. 147. *AIR 1970 All 235.*

(7) Where a charge was framed under Section 148 specifying the common object of the unlawful assembly but all accused were acquitted of the offence of rioting under S. 147 or S. 148, they cannot be convicted under Section 302 read with S. 149. *1983 CriLJ 1029.*

7. Practice.—Evidence—Prove: (1) That five or more persons were assembled.

(2) That such assembly was unlawful when it was convened or subsequently became unlawful.

(3) That such object was the common object of those composing such assembly.

(4) That the accused, or any member of such unlawful assembly, used force or violence.

(5) That such force or violence was used in the prosecution of such common object.

8. Procedure.—(1) Once there is an acquittal of the accused of the charge under S. 148 by the trial Court, the appellate Court has no jurisdiction to alter the conviction to one under this section. *AIR 1961 Orissa 29 (30): (1961) 1 CriLJ 132(2).* [See also 1983 WLN (UC) 369(372) (DB) (Raj).]

(2) Where in a confused fight both sides indulged in stone throwing against each other and consequently it was difficult to fasten the liability on a certain member of the accused party for the injury on the deceased, the accused party can be punished under this section alone for rioting. *AIR 1954 Mad 15.*

(3) Where accused were found to be members of unlawful assembly and were armed with sticks and stones, the accused, as they had caused injuries to the complainants, were held guilty under S. 147. *1984 CriLR (Mah) 70.*

(4) Cognizable—Warrant—Bailable—Compoundable by the person against whom force used—Triable by any Magistrate and by Village Court where less than ten persons are involved in the unlawful assembly read with third and fourth clauses of section 141 .

9. Charge.—(1) Where the accused are charged under S. 147, a separate charge for abetment is unnecessary and does not, in fact, arise. This section is sufficient, in its punitive scope, adequately to punish such minor overt acts since in a rioting case the overt acts constitute evidence of participation in the riot. *AIR 1949 Mad 663.*

(2) A charge for an offence of rioting need not include the words "by force or by show of force" as the word "rioting" itself involves the use of force. *AIR 1936 Pat 627.*

(3) Since the offence of rioting itself requires a specified common object as described in S. 141, the charges under Ss. 455/149, 152/149 and 323/149 stating the common object as to commit rioting are defective. *AIR 1961 Orissa 29.*

(4) Where an assembly of five or more persons was formed to exercise the right of private defence of property and force was used in pursuance of this object, the members of such assembly cannot be charged or convicted under this section nor for any other offence read with S. 149 or S. 34. *1973 CriLJ 811.*

(5) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, were a member of an unlawful assembly, and, in prosecution of the common object of such assembly, viz., in—committed the offence of rioting, and

thereby committed an offence punishable under section 147 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 148

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.

Case and Materials : Synopsis

1. *Scope of the section.*
2. *Accused must be guilty of rioting.*
3. *"Whoever...being armed with."*
4. *"Deadly weapon".*
5. *Evidence.*
6. *Sentence.*
7. *Practice.*
8. *Procedure*
9. *Charge.*

1. Scope of the section.—The common object must be common to at least five persons. A common object of assaulting, even established with regard to four persons cannot be used to justify a conviction for rioting *(48 CrLJ 165)*. Before a conviction can be made under section 148, it must be proved that the unlawful assembly had a common object. Where the assembly had a common object and they came armed with deadly weapons with the common object of dealing with the complainant party, and knowing that they were likely to be faced with armed resistance if they persisted in prosecution of common object, this section would apply *(1968 P CrLJ 371 Lahore)*. But if the group had acted on the spur of the moment without there being any common object, section 148 does not apply *(17 DLR (SC) 186)*. Even in the case of a free fight resulting from an attack by the accused, they may be convicted of an offence under sections *326/148 (48 Cr LJ 522 Lah)*. The offence punishable under this section is an aggravated form of rioting under section 147. This section will be attracted only when a rioter is armed with a deadly weapon or with a weapon of offence likely to cause death. Failure to record either of conviction or acquittal on a charge under section 148 is fatal and cannot be rectified later on. *(AIR 1966 (SC) 302)*.

(2) Mere plea of right of private defence cannot be a ground for quashing the criminal proceeding, for such plea is to be established by the accused who takes it. A criminal proceeding is liable to be quashed only if the facts alleged in the First Information Report or complaint petition, even if admitted, do not constitute any criminal offence or the proceeding is barred by any provision of law. Where disputed facts are involved evidence will be necessary to determine the issue. The appellants have produced an order of temporary injunction against the complainant's party. This must be considered along with other evidence during the trial. Their application for quashing the proceedings is found to have been rightly refused by the High Court Division *(Ref: 7 BCR 162 AD). 42 DLR (AD) 62.*

(3) If both parties are found to have committed offence u/s 148 PC—none of them to be acquitted. *50 DLR 564.*

(4) Member of unlawful assembly-Rioting committed in prosecution of their common object—Accused Tayeb Ali assaulted PW 1—conviction of both the accused under section 148 of the Penal Code and Tayeb Ali's conviction under section 324 of the Penal Code based on good evidence—But

heir conviction under sections 302/149 not sustainable as their participation in assault upon deceased Bazlur Rahman doubtful *(Ref: 10 BCR 87 AD). 41 DLR (AD) 147.*

(5) Accused charged under sections 148, 302/149 Penal Code but convicted under sections 302 of the Penal Code—On the question whether such conviction is sustainable in law, Court held: Conviction under sections 302/34 Penal Code is sustainable in law. *41 DLR 373.*

(6) Evidence on record does not justify the order of conviction under sections 302/109 and 148 of the Penal Code upheld by the High Court Division—The learned Judges did not at all consider the evidence relating to the alleged abduction of Sohrab, Mahtab and Mobarak for which the appellants were convicted also under sections 302/149 of the Penal Code. We have come to the conclusion that the evidence on record does not justify the order of conviction under sections 302/109 and 148, Penal Code *(Ref: 8 BCR 17 AD). 40 DLR (AD) 38.*

(7) Court must specify the common object of the unlawful assembly in the charge—Merely saying the common object was rioting not enough. No mention of the object in the charge, as enumerated in section 141, PC—Trial fails. After acquittal under section 379 of the Penal Code charge under section 148 of the Penal Code must fail *(Ref: 4 BLD 13), 38 DLR 299.*

(8) In view of the discussion on evidence in respect of rioting allegedly indulged in by accused appellants 2-4 there being no slogan calling for action prompting the other accused to indulge in rioting, and the lone contention raised by the appellant's lawyer the application of section 34 or 109 for linking the appellants 2-4 with the offence of murder cannot be justified. Appeal allowed in part but the conviction of appellant No. 1 under section 302 is maintained. *7 BCR (AD) 463.*

(9) Prima facie case against the accused persons of the basis of examination of 7 witnesses through a judicial enquiry by a Magistrate to whom the case was sent by the SDM after examination of the complainant. No exception can be taken to this. The observation by the High Court Division is unwarranted. No interference is called for *(Ref: 7 BCR 150 AD) 7 BCR (AD) 168.*

(10) A clear case of benefit of doubt emerged in favour of the accused—Dead bodies were not proved—No disinterested witness examined. The High Court Division found that for non-examination of any independent witness an adverse inference could be drawn against the prosecution. The High Court Division further found that there was delay in lodging the FIR and defence witnesses were independent and disinterested as those witnesses were residents around the alleged place of occurrence. Practice and procedure—In a case of acquittal by the High Court there has always been aversion not to interfere with the findings of the High Court unless there has been something so irregular or outrageous to shock the very basis of justice. There is no foundation for appellants' Advocate's submission to make up for the lapse of the prosecution that the villagers who did not depose in court were not sympathetic to the deceased as they were bad elements of the locality. Even the relations of the deceased (PWs 3, 6 and 7) completely shipwrecked the prosecution. There is nothing perverse or unreasonable in the impugned judgment of acquittal passed by the High Court Division. There is direct positive and impregnable man of evidence that the accused persons along with others tied the deceased Khijir with a rope, assaulted him and dragged him all the way to the ditch after which his whereabouts were known. The accused cannot be acquitted, straight acquittal caused gross miscarriage of justice, the respondents are convicted under section 364 of the Penal Code *(Ref: 39 DLR 166 AD) 7 BCR (AD) 253.*

(11) Common object of unlawful assembly—The Additional Sessions Judge did not give any finding on the unlawful assembly and any common object of committing any particular offence—In the

absence of any proof or any finding of any common object none of the accused could be found guilty. *4 BLD 13.*

(12) Prosecution to prove what weapon each of the accused carried to avoid involvement of innocent persons. There is no evidence that accused appellant Ali Akbar Khan was assisted by any of the other accused appellants in the act of firing the gun-shot. Under such circumstances it was incumbent on the prosecution to lead evidence as to which deadly weapons each of the accused was carrying so that all chances of roping in innocent by-standers, spectators and uninvolved relations and friends of accused party is eliminated so that they may not be convicted for their mere presence at or near the scene of the crime. *34 DLR 94.*

(13) Specific charge under section 148 not made. An accused can nevertheless be convicted for sharing a vicarious responsibility under section 149. It is however proper to add a charge under section 148. If a person is not charged under section 148 it does not mean that section 149 cannot be used. When an offence such as murder is committed in prosecution of the common object of the unlawful assembly knew to be likely to be committed, individual responsibility is replaced by vicarious responsibility and every person who is a member of the unlawful assembly, at the time of committing the offence becomes guilty. It is not, therefore, obligatory to charge a person under section 148 when charging him for an offence with the aid of section 149 because the ingredients of section 148 are implied in a charge under section 149. There is also no legal bar to frame a charge under section 148 along with a charge under sections 302/149. A charge under section 148 needs be framed if it is sought to secure a conviction thereunder. It this case there has been a conviction also under section 148 and sentence has also been imposed. In those circumstances convictions both under sections 148 and 302/149 are permissible in law *(Ref: 1 BSCD 249), 28 DLR (SC) 170.*

(14) An object, like an intention, is generally to be gathered from the acts which the persons do and the result that follows therefrom in the instant case, the charge under section 148 of the Penal Code clearly mentioned the common object of the unlawful assembly to be the commission of murder and the inference of such common object can legitimately be drawn from the circumstances and facts proved by evidence, namely, that the accused persons, most of whom were armed with deadly weapons, were lying in wait and that as Shamsul Huq and PW 2 were passing by, the accused persons surrounded them and dealt severe injuries to them as a result of which Shamsul Huq died on the spot. Common object under section 148 having been found to be killing, the common intention was also killing under sections 302/34. The criminal act which constitutes the basis of the charge under section 148 of the Penal Code is identical with that of the charge under sections 302/34 of the Penal Code. In other words, the common object and the common intention in this case is one and the same. The evidence and circumstances which led to the finding that the common object of killing Shamsul Huq had been proved, were sufficient for an inference of the existence of the common intention to kill him *(Ref: 1 BSCD 240; 1 BCR 171) 27 DLR (SC) 22.*

(15) Benefit of doubt, when extended—The mere fact that the accused were identified in a crowd and were arrested from the house where the occurrence had taken place is not sufficient to establish that they also shared the common object of the unlawful assembly. It may be that they were silent spectators who out of fright took shelter with others there. In the circumstances they should be given the benefit of doubt and acquitted. *20 DLR (SC) 347.*

(16) For a conviction under section 148. It must be found that each of the accused individually carried a dangerous weapon. Under section 148 of the Penal Code it is the duty of the Court to find

whether the accused individually carried any dangerous weapon within the meaning of that section. In the absence of such a finding, the conviction under section 148 of the Penal Code cannot be maintained. The finding that the petitioners took away fish from the possession of the complainant party, while forming an unlawful assembly carrying dangerous weapons with them with the common objective of forcibly ousting the complainant from the land and taking away fish, it is not enough for a conviction under section 148. The Court should have found that each of the individual accused carried a dangerous weapon in his hand. *10 DLR 518.*

(17) Where the common object of the whole assembly is stated to be theft, and assault—conviction under sections 147 and 148 of the Penal Code is not legal. *9 DLR 71.*

(18) Sections 380/379/148/147/448—Written complaint to SDM after six years of commission of alleged offences—Complaint petition and statement on oath made by the complainant do not implicate accused appellant. Inquiry officer's report states that a prima facie case is made out against accused appellant and others—Cognizance taken by SDM—High Court Division refused to quash proceedings on ground that inquiry officer's report discloses a prima facie case—High Court Division's view held incorrect—Continuance of such proceedings amounted to abuse of process of law. *1 BCR (SC) 68.*

(19) 'Object' meaning aim, purpose and may be defined as anything whether concrete or abstract, real or imaginary that may be perceived or apprehended by the mind. It is, therefore, a mental conception and no direct evidence upon the same can be available. An object, like intention, is generally gathered from the acts which the persons do and the result that follows therefrom. The Charge u/s 148, PC clearly mentions the common object of the unlawful assembly to be the commission of murder and the inference of such common object can legitimately be drawn from the circumstances and facts proved by evidence. *27 DLR (AD) 22.*

(20) Gun-shot murder—Specific charge U/s 148 not made, nonetheless an accused can be convicted u/s 149. It is proper to add a charge u/s 148. *28 DLR (SC) 170.*

(21) The Criminal Act which constitutes the basis of the charge u/s 148 of the Penal Code is identical with that of the charge u/s 302/34 of the Penal Code. In other words, the common object and the common intention in the case is one and the same. The evidences and circumstances which led to the finding that the common object of killing the victim had been proved, were sufficient for an inference of the existence of the common intention to kill him. *27 DLR (AD) 22.*

(22) Rioting—ingredients—Medical evidence to show that deadly weapons were used in committing Rioting—for a conviction under this section, no medical evidence is necessary simply because actual use of a deadly weapon is not an ingredient of this offence which is committed when a deadly weapon is simply carried. *4 BSCD 25.*

(23) Mere plea of private defence cannot be a ground for quashing of proceeding—Criminal Proceeding is liable to be quashed if the alleged facts in the FIR or complaint petition do not constitutes any offence or is barred by any specific law. *42 DLR (AD) 62 = (1990) BLD (AD) 1.*

(24) The finding that the petitioners took away fish from the possession of the complainant party, while forming an unlawful assembly carrying dangerous weapons with them with the common object of forcibly ousting the complainant from the land and taking away fish, is not enough for a conviction under section 148, P.C.. The court should have found that each of the individual accused carried a dangerous weapon in his hand. *Abdul Hamid Molla Vs. State (1958) 10 DLR 518.*

(25) The common object of the entire assembly was theft, and if assault was separate object of only four of the members of the assembly and was committed by them in prosecution of that object, it could not render the unlawful assembly riotous. *Amir Hossain Vs. Crown (1957) 9 DLR 71.*

(26) The mere fact that the accused were identified in a crowd and were arrested from the house where the occurrence had taken place is not sufficient to establish that they also shared the common object of the unlawful assembly. It may well be that they were silent spectators who out of fright took shelter with others there. In the circumstances they should be given the benefit of doubt and acquitted. *Babar Ali Vs. The State, (1968) 20 DLR (SC) 347.*

(27) In the instant case, the charge under section 148 of the Penal Code clearly mentioned the common object of the unlawful assembly to be the commission of murder and the inference of such common object can legitimately be drawn from the circumstances and facts proved by evidence, namely, that the accused persons, most of whom were armed with deadly weapons, were lying in wait and that as Shamsul Huq & P. W. 2 were passing by, the accused persons surrounded them and dealt severe injuries to them as a result of which Shamsul Huq died on the spot. *Abdul Matin Munshi Vs. Idris Pandit (1975) 27 DLR (AD) 22.*

(28) Prosecution to prove what weapon each of the accused carried to avoid involvement of innocent persons. *Ali Akbar Vs. The State (1982) 34 DLR 77.*

(29) There is no evidence that accused appellant Ali Akbar Khan was assisted by any of the other accused appellants in the act of firing the gun-shot. Under such circumstances it was incumbent on the prosecution to lead evidence as to which deadly weapons each of the accused was carrying so that all chances of roping in innocent by-standers, spectators and uninvolved relations and friends of accused party is eliminated so that they may not be convicted for their mere presence at or near the scene of the crime. *Ali Akbar Khan Vs. The State (1982) 34 DLR 94.*

(30) The criminal act which constitutes the basis of the charge under section 148 of the Penal Code is identical with that of the charge under sections 302/34 of the Penal Code. In other words, the common object and the common intention in this case is one and the same. The evidence and circumstances which led to the finding that the common object of killing Shamsul Huq had been proved, were sufficient for an inference of the existence of the common intention to kill him. *Abdul Matin Vs. Idris Pandit (1975) 27 DLR (AD) 22.*

(31) Specific charge u/s. 148 not made: An accused can nevertheless be convicted for sharing a vicarious responsibility u/s. 149. It is however proper to add a charge u/s. 148. *Tozammel Hussain Chowdhury Vs. State (1976) 28 DLR (SC) 170.*

(32) After acquittal u/s. 379, charge u/s. 148 must fail. *Ali Ahmed Vs. State (1986) 38 DLR 299.*

(33) Error in recording conviction—The charge framed and findings of the Court show the accused to be guilty of rioting punishable under section 148. But the trial Court erroneously recorded conviction under section 149, although this section 149 does not independently punish any offence. The High Court Division attempted to correct it, but unnecessarily added section 149 to section 148. This is a mere irregularity which does not touch the merit of the case as the charge specifically said they were members of an unlawful assembly. The order of conviction needs be modified so as to record the conviction under section 148. *Abdus Samad Vs. State 44 DLR (AD) 233.*

(34) Accused charged under section 149, Penal Code but convicted under section 302—On the question whether such conviction is sustainable in law, Court held: Conviction under sections 302/34, Penal Code is sustainable in law. *Md. Hossain Vs. State 41 DLR 373.*

(35) Alteration of charge from section 302 to that of sections 302/34, Penal Code is permissible in the facts and circumstances of the case. *Md. Hossain Vs. State 41 DLR 373.*

(36) Members of unlawful assembly—Rioting committed in prosecution of their common object—Accused Tayeb Ali assaulted PW 1—Conviction of both the accused under section 148, PC and Tayeb Ali's conviction under section 324 PC based on good evidence—But their conviction under sections 302/149 not sustainable as their participation in assault upon deceased Bazlur Rahman doubtful. *Tayeb Ali Vs. State 41 DLR (AD) 147.*

(37) If both parties are found to have committed offence under section 148 of the Penal Code none of them is entitled to be acquitted on the ground that the other is the aggressor and in this respect law spares none. *Bachu Miah Vs. Samad Miah and others 50 DLR 564.*

(38) Common object of an unlawful assembly—The Additional Sessions Judge did not record any finding that the unlawful assembly had any common object for committing any particular offence—In the absence of any proof or any finding of the common object none of the accused persons could be found guilty under this section. *Md. Babu Mia and others Vs. The State 4 BLD (HCD) 13.*

(39) Doubt as to the complicity of the accused has to be established in the light of the evidence on record in the mind of the judge. That certain accused is given the benefit of doubt cannot be the ground for claiming the same treatment by the other accused who stands on different footing. When charge against the convict-petitioner stands proved beyond all reasonable doubt he cannot claim acquittal on benefit of doubt. *6 MLR (AD) 100.*

(40) As the other 4 accused persons being armed with deadly weapons arrived at the scene of occurrence just immediately after the other accused persons had committed the offence, subsequent arrivers have not committed the offence of rioting. *Madris Miah and others Vs. State (Criminal) 2 BLC 249.*

(41) In the instant case, the observation of the learned Judges "about the offence under section 148 of the Penal Code against the accused Tofazzal Hossain and Abul Kalam evidence before us is not sufficient as the independent PWs 3 and 4 did not state that they assembled with deadly weapons" hits at the very root of the prosecution story for giving benefit of doubt to the petitioner and thus, the submissions merit no consideration. *Moazzem Hossain Vs. State (Criminal) 6 BLC (AD) 122.*

(42) Where a rioter is armed with a deadly weapon, the offence falls under this section and is an aggravated form of the offence under Ss. 143, 146 and 147. *1984 CriLR (Mah) 70.*

(43) The essential ingredients of an offence under this section are:

(i) the accused must be a rioter, that is, he must be a member of an unlawful assembly which, or a member of which, use force or violence in prosecution of the common object of the assembly;

(ii) he must be armed with a deadly weapon or with anything which, when used as a weapon of offence, will cause death. *1979 CriLJ 72(74) (Bom).*

(44) Where there was no satisfactory evidence to prove the formation of any unlawful assembly with a common object to commit crimes and the whole fight started suddenly on the spur of the moment in a heat of passion the accused though more than five in number could only be liable for the individual acts committed by them and could not be convicted under Ss. 149, 148 or 147. *AIR 1980 SC 573.*

(45) Unlawful assembly formed with common object to give beating to victim—One member committing murder—Common object to commit murder not proved—Only accused committing murder held guilty under S. 302—Other members of the assembly held were guilty under Ss. 148, 323/149. *1981 CriLJ (NOC) 177.*

(46) Charges for rioting, mischief by fire, trespass, etc.—Crowd assembled as consequence of inaction of police in one criminal case—No intention to commit criminal trespass, arson, loot, damage, proved—No presumption of common object—Offence of rioting not proved—Accused could be held liable for their individual acts only. *1982 CriLJ 1998 (2002): 1982 AllCriR 314.*

(47) All the essentials necessary to constitute an unlawful assembly must be present in cases falling under this section. *(1972) 2 SCJ 561.*

2. Accused must be guilty of rioting.—(1) An assembly of persons using force for the purpose of maintaining their rights is not an unlawful assembly at all. This section will not apply to the members of such assembly while acting within the limits of the right of private defence. *AIR 1976 SC 2423.*

(2) Appellants along with others came in a body being armed with deadly weapons—Complainant's land trespassed—Conviction of appellants under S. 148—Held, proper. *1982 CriLJ (NOC) 5 (DB) (Gauhati).*

(3) "Rioting" presupposes an unlawful assembly (S. 146) which, in its turn, requires as an essential element that there must be at least five members of the alleged assembly (S. 141). Hence, where in a charge under Sections 147, 148 and 149, three of the six accused are acquitted, the remaining three accused cannot be convicted. *AIR 1976 SC 2027.*

3. "Whoever.....being armed with".—(1) A, B, C, D, E are members of an unlawful assembly, and force is used in prosecution of the common object. They are all armed with deadly weapons and hurt or grievous hurt is caused by B to X in prosecution of the common object, they are all guilty under this section. *973 MPLJ 721.*

(2) A, B, C, D, E are members of an unlawful assembly, and force is used in prosecution of the common object. They are all armed with deadly weapons and hurt or grievous hurt is caused by B to X in prosecution of the common object, they are guilty under S. 323 or S. 326 read with S. 149. *AIR 1942 Lah 40.*

(3) Common object of accused only to commit assault with lathis and country-made pistol and not to commit dacoity but 2 of the accused while committing assault taking away victim's gun—Held: since assault was not made with object of thieving the guns, act did not amount to dacoity or robbery under Section 390 but accused could be held guilty under Ss. 323, 324, 149, 148. *1983 AllLJ 33.*

(4) Post-mortem examination report giving probable cause of death as tuberculosis and heart failure—No offence under S. 302 or S. 304 proved—However, there was material on record to show that accused assaulted accused—Conviction can be one under Ss. 147, 148, 149, 330, 341 or S. 325 if not under Section 323 of the Code. *(1982) 1 BomCR 928.*

(5) Where the accused who were 16 in numbers armed with deadly weapons opened the attack according to the prosecution, the fact that complainant party remained unhurt makes the prosecution story false and hence conviction under S. 148 was set aside. *1981 CriLJ (NOC) 18 (Punj).*

4. "Deadly weapon".—(1) A deadly weapon is a thing designed to cause death, e.g., gun, bomb, rifle, sword. *(1947) 48 CriLJ 522.*

(2) It is not necessary that a thing should be carried for the purpose of using it as a weapon of offence. The test is not the purpose for which it is carried but, as seen above the nature of thing carried, whether it may be used as a weapon. *AIR 1968 Mad 310.*

(3) It is not necessary that the deadly weapon or anything which is used as weapon of offence likely to cause death was actually used in rioting. It would suffice if it was merely displayed. *1982 CriLJ 654.*

(4) A knife, hammer, crowbar and spade may all be used as weapons for causing death. *AIR 1968 Mad 310.*

(5) Where an accused is disarmed before he forms a member of an unlawful assembly, he cannot properly be convicted of an offence under this section. *AIR 1937 Pat 603.*

(6) Where the accused had formed the unlawful assembly and were armed with iron rods and lathis in prosecution of their common object, and assaulted certain persons ; such simultaneous attack by lathis and iron rods could impute knowledge to such assailants of death of victims. Hence conviction of accused under S. 148 was proper. *1981 CriLJ (NOC) 34 (DB).*

5. Evidence.—(1) Exact facts uncertain—Benefit of doubt to be given to accused. *1978 UJ(SC) 924.*

(2) Conviction under S. 148 and S. 324 read with S. 149—Prosecution case consistent with FIR—Witnesses testifying that accused were armed with spear and pharsas—Doctor opining that injuries could be caused by sharp weapon—Conviction is proper. *1982 AllLJ (NOC) 90.*

(3) Offence under S. 148—Prosecutrix knowing accused not only by face but also by name—Accused not specifically incriminated in her F.I.R.—Other evidence existed to show that accused were fictitiously implicated—Accused entitled to acquittal. *1983 CriLJ 607.*

(4) Witness categorically stating that the victim was dragged by the accused persons—Independent witness supporting prosecution case that accused were members of unlawful assembly being armed with deadly weapons and shared common object of assaulting and breaking of houses etc., as stated by witness—Evidence also corroborated by other witnesses—Held, that the accused were guilty under Sections 323 and 148. *1982 CriLJ (NOC) 94 (Orissa) (DB).*

(5) Prosecution for offence under S. 148—Accused armed with gun but did not use it for committing murder as per prosecution story—Fact that accused had not used gun make the prosecution story improbable—Had the common object of unlawful assembly been to commit murder in all probability accused would have made use of his most effective weapon—Conviction set aside. *(1983) 1 Crimes 411 (DB) (All).*

(6) Prosecution for offence under S. 148—Pellet and bullet recovered from the body of the deceased persons not sent to Ballistic expert for examination and opinion—On the other hand prosecution making effort to secure evidence of existence of weapons with accused which are a combination of a shot-gun and a rifle—Prosecution story held unbelievable. *1983 Pak LD 117 (125) (SC).*

(7) F.I.R. lodged after 24 hours—Delay not explained—Conflict between oral evidence and medical evidence—Explanation given by the appellant-accused plausible—Benefit of doubt given to the accused and acquitted. *(1984) 1 Crimes 204 (209) (DB) (P & H).*

(8) Injuries on the persons of appellants far larger in number than those on the injured P.Ws.—P.Ws. and their companions held by trial Court to be armed by sharp-edged weapons—State not challenging the findings of trial Judge—Held, in view of the findings of trial Court the convictions of appellants under Ss. 148, 307, 302/149 etc. could not be sustained. *(1984) I Crimes 447 (450) (P&H).*

(9) Accused appellants convicted under Sections 148/326/325/324/323/149—Held—In view of inherent improbabilities, serious infirmities; the interested and inimical nature of the evidence and other circumstances, the prosecution had miserably failed to prove the case against the revision-petitioners beyond reasonable doubt—Convictions of the accused set aside. *(1984) 1 Crimes 478 (481).*

(10) Charges under—Conviction with aid of S. 148—Counsel for State conceding that charge under S. 148 related to murder subsequent to alleged abduction of deceased and did not relate to abduction—Common object would not be available for sustaining conviction for abduction. *AIR 1984 SC 911.*

6. Sentence.—(1) The quantum of sentence, within the limits laid down by the law is a matter within the judicial discretion of the Court to be adjusted according to the circumstances of each case, including the gravity of the offence in the particular case, the depravity of the offender, his age and other factors. *1979 CriLR (Bom) 87.*

(2) Where an unarmed man peacefully registering a protest in the very manner contemplated by law is attacked by an assembly of persons armed with deadly weapons, then, in the matter of sentence, no leniency is called for. *AIR 1954 SC 657.*

(3) In charges for offences under S. 148 and causing hurt and grievous hurt, it was held that there cannot be one conviction under this section and another conviction for the offence of causing hurt or grievous hurt. *(1893) ILR 17 Bom 260 (270) (FB).*

(4) Conviction for riot—Accused only 17 years old at the time of occurrence—Benefit of Probation of Offenders Act extended to such accused. *1982 AllLJ (NOC) 90.*

7. Practice.—Evidence—Prove: (1) That five or more persons assembled.

(2) That the said assembly was an unlawful assembly within the meaning of section 141, Penal Code.

(3) That the accused was a member of that assembly.

(4) That force or violence was used by one or more of the members of that assembly.

(5) That it was used in prosecution of the common object.

(6) That the accused was armed with a deadly weapon or with a weapon of offence likely to cause death.

8. Procedure.—(1) Offence under S. 148—Cognizable—Bailable—Not compoundable—Offence under S. 148 is tribal by the Magistrate of the first class. *AIR 1948 Pat 58.*

(2) If any party to rioting does not raise the plea of private defense in the lower Court but raises it in appeal for the first time, he is not disentitled to have the plea examined by the Court. *1969 CriLJ 80.*

(3) Where a person was charged under Section 402, it was held that he could be convicted under this section or S. 147. *AIR 1962 All 13.*

(4) Unlawful assembly—Murder—Specified charge framed under S. 148—Acquittal of accused under that charge convicting them under S. 302/149—Conviction invalid—Once accused were acquitted of offence of rioting under S. 148 it was no longer possible to convict them under S. 302/149. *1983 CriLJ 1029.*

(5) When a number of persons were prosecuted for a number of offences which included offences under Ss. 148, 147, P.C. and the conviction of the accused on counts other than Ss. 147, 148 was set aside by the first appellate Court which held the evidence unreliable, partisan and lacking in reliability the High Court in appeal held that the lower appellate Court should have given benefit of doubt to the accused for offences under Ss. 148, 147, P.C. also. *1979 MadLJ (Cri) 692.*

(6) Cognizable—Warrant—Bailable—Compoundable by the person against whom force has been used—Triable by Metropolitan Magistrate or Magistrate of the first class or second class.

9. Charge.—(1) Discrepancy between common object of alleged unlawful assembly as stated in the charge and as proved—Accused prejudiced in his defence—Accused acquitted. *1976 RajLW 385: 1977 CriLJ (NOC) 170.*

(2) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, were a member of an unlawful assembly, and did, in prosecution of the common object of such assembly, viz, in—commit the offence of rioting with a deadly weapon (or with something, which used as a weapon of offence, was likely to cause death) to wit—, and thereby committed an offence punishable under section 148 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 149

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 object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Section creates an offence.*
3. *This section and Section 34.*
4. *This section and S. 148.*
5. *This section and S. 396.*
6. *"If an offence is committed."*
7. *Unlawful assembly.*
8. *Five or more persons necessary.*
9. *Common object.*
10. *"Free fight."*
11. *Right or private defence.*
12. *"In prosecution of the common object."*
13. *"Knew to be likely."*
14. *At the time of committing that offence.*
15. *Whether conviction under this section can only be for an offence of which the principle offender has been convicted.*
16. *Separate conviction for separate offences.*
17. *Charge under S. 149— Conviction under S. 34 vice versa—Propriety.*
18. *Convictions for offences under other enactments read with S. 149.*
19. *Sentence.*
20. *Jurisdiction.*
21. *Burden of proof—Evidence.*
22. *Practice.*
23. *Procedure.*
24. *Charge.*

1. Scope of the section.—(1) Section 149 does not create a new offence. It is declamatory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such an offence as members of unlawful assembly knew to be likely to be committed in prosecution of the object. For application of section 149 it is necessary (a) that one be a member of unlawful assembly, (b) that in prosecution of common object of that assembly an offence should be committed by a member of that unlawful assembly and (c) that the offence should be of such

a nature that members of that assembly knew the offence to be likely to be committed in prosecution of their common object. If these three elements are satisfied then only a conviction under section 149 may be sustained. It is essential to prove that the persons sought to be charged with an offence by the aid of this section was a member of the unlawful assembly at the time the offence was committed and the burden of proof lies on the prosecution. It is necessary to show among other things that the offence sought to be impugned has been committed by a member of the assembly either known or unknown. When it is established that the number of offenders was five or more than five, the mere fact that some of them could not be identified does not affect the application of this section (*47 CrLJ 909).* Where there is a spontaneous fight between two parties each individual is responsible for the injury inflicted by him and the probable consequences of the pursuit by his party of their common object. In such circumstances the right of private defence does not arise. *AIR 1956 (SC) 513, 17 DLR (SC) 186.*

(2) *Ingredients:* Commission of an offence by any member of an unlawful assembly. Such offence must have been committed in prosecution of the common object of that assembly, or must be such as the members of that assembly knew to be likely to be committed.

(3) Accused charged under sections 148, 302/149 Penal Code but convicted under section 302—On the question whether such conviction is sustainable in law, Court Held: Conviction under sections 302/34 Penal Code is sustainable in law. In view of the decisions cited above, it is clear that accused if charged under sections 302/149 of the Penal Code may be convicted under sections 302/34 of the Penal Code. The liability under these two distinct heads of offences are almost similar involving constructive liability. It is to be noticed that under section 149 the elements of constructive liability consist of common object and participation in the unlawful assembly whereas under section 34 the electments are common intention and participation in the crime. Common intention or object in both the sections are common as well as joining the unlawful assembly and joining or participation in the crime are the elements in both the sections constituting constructive liability. The line of demarcation in these two sections in threadbare very thin and almost identical overlapping the distinctive features of these two sections. Alteration of charge from section 302 to that of sections 302/34 of the Penal Code in the facts and circumstances of the present case, is permissible and accordingly alter the conviction of accused appellants Khurshed and Sujak from the charge under section 302 of the Penal Code to that under sections 302/34 of the Penal Code as both of them are so found guilty of causing the death of Sona Mia *(Ref: 1 BCR 171) 41 DLR 373.*

(4) Appellant Nos. 2-6 cannot be convicted under S. 326 of the Penal Code without framing any charge under section 34 or 149 of the Penal Code and without leading any evidence as to their acting in concert or in pursuance of any common object. The prosecution case is that it was Azit who threw the bomb at the order of the Chairman, the charge under the said section was not framed by adding section 34 or 149 of the Penal Code and no evidence was led as to acting in concert or in pursuance of any common object. The appeal is allowed, the conviction and sentence is set aside. (*Ref: 7 BLD 248 AD). 40 DLR (AD) 218.*

(5) Murder-appellants convicted under section 302 read with section 149 of the Penal Code and sentenced to transportation for life—Defence plea was that the incident took place when the victim opened fire upon the appellants causing injuries to four of them, that they exercised their right of private defence of life and property and they filed a counter case against Bazlur Rahman's men—Trial Court sentenced them as aforesaid. Accused did nothing to discharge the onus and their plea was rightly rejected by the Court below. *10 BCR (AD) 86.*

(6) Distinction between sections 34 and 149. Under section 34 in case of a criminal act in furtherance of common intention by several persons, each shall be individually liable for the act which he has committed—Under section 149 every member of the unlawful assembly is guilty of the offence committed in prosecution of the common object. Under section 34 each of the accused must do some act in furtherance of common intention. *38 DLR 17.*

(7) Both sections 34 and 149 deal with liability for constructive criminal action. Distinct features of these two sections—points on which both are similar and on which they are different. Neither section 34 nor section 149 creates and punishes any substantive offence; but they are intended to deal with liability for constructive criminality, that is to say, liability for an offence not committed by the person, charged. Section 34 applies in a case where criminal act is done by two or more persons in furtherance of the common intention of all, whereas section 149 applies in case of members of an unlawful assembly when a criminal act is committed by any member of the unlawful assembly in prosecution of the common object of the unlawful assembly. These two sections, both deal with combinations of persons who became punishable as 'sharers in an offence'. They have a certain resemblance and may to some extent overlap. Section 34 applies to a case in which several persons both intend to do and act and in fact do that act; it does not apply to a case where several persons intend to do an act but someone or more of them do an entirely different act; i.e., in such a case section 149 may apply provided other requirements are fulfilled. Mere membership of an unlawful assembly makes one liable under section 149; under section 34 there is participation in an act with common intention. So, where common intention and common object are the one and same in a given case, both these may apply. *36 DLR (AD) 234.*

(8) Charges under sections 147 and 148 read with section 149—Additional charge should be framed against each accused. It should be stated for the guidance of the trial Courts that in all cases where charges are framed under sections 147, 148 for substantive offence read with section 149 of the Penal Code, additional, separate charges should be framed against each individual accused for an offence directly committed by him while being a member of such assembly and they should carefully take note of the provisions of sections 221, 233 and 236 of the Code of Criminal Procedure. Charge which causes prejudice to the accused due to error or irregularity makes out a case for retrial. It is found in an appeal that there was an error or omission of irregularity in the framing of a charge against an accused causing prejudice to the accused in his defence, that would merely be a ground for retrial of the accused after framing a proper charge. Conviction of other accused under sections 148, 324/149 and 326/149 of the Penal Code cannot be sustained merely on the basis of omnibus statements of the witnesses that they and several others came armed with weapons like leja and a sarki. For coming to a definite finding whether each of the accused persons were members of the unlawful assembly and did commit the offence of rioting in prosecution of the aforesaid common object of the assembly, overt act of each accused and weapon used by each accused have necessarily to be considered. *34 DLR 94.*

(9) Expression "in prosecution of the common object" explained—Ingredients that must be established to bring the charge home under section 149. In a case of vicarious liability the law provides that the offence must be committed in prosecution of the common object of the assembly or the offence committed must be such as the members of the assembly knew it likely to be so committed. The word "knew" imports a sense of expectation founded upon facts that an offence of a very particular kind would be committed in prosecution of common object of the assembly, which is something more than mere speculation. Further acts committed in prosecution of the common object must also be proved by

some overt act, committed by others to that effect and in the absence of proved individual overt act the charge of acting jointly shall also fail. To warrant a conviction vicariously by the application of section 149 these ingredients must be proved beyond all reasonable doubt and when they are wanting a person cannot be visited with the consequences of the offence and with the vengeance of the law, vicariously by the application of section of the Penal Code. Arms carried serves as indication what kind of offence is likely to be committed. A choice of arms by the members of an unlawful assembly is an important factor to be taken into consideration to come to the finding of fact as to the types of opposition expected and the type of possible injury to be inflicted by the members in case of opposition. *33 DLR 334.*

(10) Conviction of a person under section 302 whether amounted to an acquittal of a charge under sections 302/149. Held : conviction being under section 302, no question of acquittal under sections 302/149 arose. The trial Court having found the appellant guilty for the specific offence of murder under section 302 of the Penal Code the alternative charge framed against the appellant needed no consideration. It was also not necessary to record any finding with respect to that charge and as such there was no question of acquittal or the appellant of the said charge. High court held the charge under sections 302/149 proved and a charge on specific offence under section 302 not proved and altered conviction under section to one under sections 302/149 : High Court competent to do it. (*Ref : 1 BSCD 240). 28 DLR (SC) 170.*

(11) Difference between sections 34 and 149—Ingredients of section 34 must be fulfilled to justify its application in the absence of which no conviction under section 34 valid. The common intention may grow in the course of the event. A common intention or common object is a thing which cannot always be proved by direct evidence and it should be inferred from the surrounding facts and circumstances of the case. Bur in a case of rioting, the facts and circumstances which constitute the common object of the unlawful assembly may not by itself be always sufficient to attract the common intention of the party. A common intention and common object would not be mixed up together. In order to bring the case within the mischief of section 34, it is essential that some additional circumstances, beyond the materials necessary to prove rioting, should be brought on record to show that there was a pre concert or mixing of minds to do a thing other than the thing for which the common subject was formed. In the present case a party of twelve persons was initially actuated with the common object to do a certain thing but if they are then alleged to have intended to do a different thing , it is for the prosecution to bring those new circumstances on record to take the aid of section 34, Penal Code. There should be some materials on record to justify the findings of common intention and in the absence of any circumstances or evidence such common intention should be incapable of being tethered in a case. In some cases the possibility of developing common intention during the course of the event cannot altogether be excluded but justify such an inference of common intention in each case should be deduced from facts and circumstances of the case. If a charge is framed under section 302 with the aid of section 34 or 149 the conviction and sentence can be made under section 302 alone. Where it is found that each of the accused is individually guilty of murder under section 302 notwithstanding that the charge preferred against them in respect of the murder, is one of constructive liability, i.e. under section 302 read with section 34 or 149 of the Penal Code. If on evidence the Court is satisfied that each on the accused appellants is individually liable for murder, it can convict and sentence them straight under section 302 Penal Code (*Ref : 6 DLR 22 WP). 25 DLR 232.*

(12) Common object was to abduct a girl—Accused were armed with deadly weapon—In course of carrying out their common object one of the accused's fired a shot and killed a person. Held: All the

accused guilty of capital charge under sections 302/149—Original common object of the accused was to abduct a girl and in furtherance of this objet, they armed with deadly weapons, broke open the door of a dwelling house and one of them fired a shot killing a woman (not the girl). The trial Judge acquitted them of the capital charge under section 302/149, holding that the object of the unlawful assembly was to abduct and not to kill anybody and that there was no evidence as to which particular person fired the shot. The conviction and sentences were upheld by the High Court on appeal. In a petition for special leave to appeal the Supreme Court held: The Courts below fell into an error in acquitting the accused of the capital charge. Even if no reliable evidence was available as to which of the particular person killed the woman yet all the accused charged were burdened with vicarious liability under section 149, Penal Code notwithstanding that the original common object was to forcibly abduct the girl. The accused being armed with deadly weapons the intention to use these arms in case of resistance was, therefore manifest. The petitioners were therefore guilty of the offence under sections 302/149. Supreme Court—Evidence—Re-examination of evidence when not allowed. Unless it is shown that the Court below have in their appraisal of evidence contravened any new principle for ascertaining the guilt of an accused person or disregarded any procedure applicable to criminal trial. Supreme Court will not interfere in as much as no proper case is made out to justify re-examination of evidence by the Supreme Court. *22 DLR (SC) 127.*

(13) Section 149 consists of two parts with respect of the common object of all, may be found guilty but those who individually commit a lesser offence, they may individually be convicted of such offence under the second part of section 149. It was contended that since the principal offenders had been convicted under sections 302/34, Penal Code, neither they nor any of the others could be convicted under sections 326/149, Penal Code. On a plain reading of sections 149, Penal Code it would appear that it is in two parts and that an accused who is found to be a member of an unlawful assembly can be convicted of a lesser offence if under the second part of that section it is clear that he was aware that such a lesser offence was likely to be committed in prosecution of the common object. Although some members of the assembly may have travelled beyond that object and committed a graver offence. In construing this section each case has to be judged upon its own facts, for, it has to be determined with reference to the facts of each case what offence the members must have known to be likely to be committed. If such offence is minor to the offence committed by the principal offenders there is no reason why they should not be convicted accordingly. Again, if some members of the unlawful assembly commit a more serious offence which was not the object of common assembly they can be convicted for offence of their individual acts in addition to punishment for offence done in pursuance of the common object. If the common object of the unlawful assembly is to inflict no more than grievous hurt but some of the members of the assembly deliberately went beyond the common object and killed the victim, the killers would be liable for murder but the remaining members would be constructively liable for inflicting grievous hurt. The wording of section 149, Penal Code when applied, as it must be, to the case of each individual accused appears to be perfectly straight forward. Thus even the principal offenders have in such a case who committed grievous hurt, the common object of the assembly, and therefore, the other members can legitimately be held to have constructively committed grievous hurt. Thus where the accused are members of an unlawful assembly which starts beating the deceased and the assembly is armed with deadly weapons but the accused are found not guilty of murder then there is no reason why they cannot be held to be constructively liable for the lesser offence of grievous hurt read with section 149, Penal Code, because, they must have in the circumstances of the case, known that a grievous injury was likely to be caused *(Ref: 12 DLR 808) . 20 DLR (SC) 347.*

(14) The intention in using a fire arm was clearly to cause death and, therefore, the two deaths that have been caused can be rightly held to be the result of a joint attack by the four persons before us thus attracting the application of section 34, Penal Code which employed, yet, it would have been similar and in fact, not in any way in contravention of either fact or law, to hold that these four persons with others who had not been identified beyond doubt, carried out the attack in which case the liability would be extended to all of them under section 149, Penal Code. Cross examination—Purpose of cross examination to find out truth—Confusing a witness by prolonged cross, deprecated. *9 DLR (SC) 216*

(15) Where a number of accused participated in beating a man to death under circumstances which amount to murder under sections 302/149 of the Penal Code, the conviction should be under some lesser section than under section 302. Section 149 does not create a new offence but provides for vicarious liability for offences committed by others in furtherance of the common object. Under this section the liability of the other members expect those who assaulted the deceased for the offence committed during the continuance of the occurrence rest upon they fact whether they knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may be reasonably inferred from the nature of the assembly, arms or behaviour at or before the sence of occurrence. *19 DLR 927.*

(16) Provisions of S. 149 not applicable to offence under S. 397—S. 397 applicable only to accused actually armed with deadly weapons or causing or attempting to cause death or grievous hurt—Mere fact that one of accused at the time of dacoity used deadly weapon or caused grievous hurt—Does not render all accused equally liable on principle of constructive or joint liability. *PLD 1966 Lah 643.*

(17) Charge under sections 302/149 but convicted under sections 304(1)/34. The question was whether the accused could be convicted under sections 304(1)/34 of the Penal Code when the charge against them was under section 302 read with section 149. Held : Both section 34 and 149, Penal Code, deal with constructive liability and it is to be considered whether the accused who have been convicted under sections 304(1)/34 have been prejudiced in the absence of a charge under that section. A slight variation in the facts established from the facts alleged in the charge and a conviction for an offence on the facts established would not render it by itself bad in law in view of the provisions of section 236, read along with the illustrations as well as section 237 of *CrPC [Ref : 8 DLR (WP) 128.] 12 DLR 365.*

(18) If there is some element of doubt, can be validly framed for a substantive offence read with section 149, Penal Code, in view of sections 236 and 237, CrPC and conviction and sentence can legally be passed for the substantive offence. The precise evidence was that the two accused shot dead two persons, one of the accused shooting and killing one person and the other accused shooting and killing another person; on account of an allegation that there was third shot by another person which hit none, the Court framed a charge against the two accused under section 302 read with section 149, Penal Code. The Court, however, convicted each of the accused under section 302 and sentenced each to death. The contention was raised that the two accused had been prejudiced by failure at the trial to place them upon a charge of direct liability. Held : It is true that specific charge under section 302, Penal Code might also have been framed against each of the accused individually, but by section 236, CrPC the Court is expressly permitted to frame a charge in respect of any of the several offences which might have been charged. By the application of section 237, CrPC a conviction can legally be obtained, in a case of this kind of any offence which appears from the evidence to have been committed,

although it was not expressly charged. When, therefore, at conclusion of the trial, the learned Sessions Judge was satisfied regarding the individual liability of each of the accused it was open to him to record a conviction against each of them under section 302, Penal Code. Plea of provocation raised in the Supreme Court for the first time—When can be upheld. A plea of provocation by wanton injury was successfully raised before the Privy Council on behalf of the appellant who was convicted for murder, on the ground that there was evidence to support a plea of provocation sufficient to reduce the crime to manslaughter and the Privy Council upholding that plea reduced the crime to manslaughter. The Supreme Court held that a plea of provocation by wanton injury cannot be available to a person other than person provoked by the infliction, on his person, of injuries. *9 DLR (SC) 1.*

(19) Common object—real factor. The relevant question is not whether the intention of the assailants was to cause death of the members of the OP but whether their common object was to cause such death or such a death was likely result of their action. It may be that the circumstances of a particular case did not prove that the assailants had the common intention to kill the two deceased but in view of the fact that the number of assistants being at least five, S. 149 of the Penal Code was applicable and the relevant question was not whether the intention of assailants was to cause death of the members of the OP, but whether their common object was to cause such death or such death was so likely a result that each member should have known that it was likely to be caused. *8 DLR (WP) 128.*

(20) When a person is charged under sections 302/149 there is no necessary implication that he himself committed the murder unless in the charge it is so alleged, that he is not in fact called upon to meet any such charge. It is immaterial whether he committed it or not, It does not profit him in the least to prove that he himself did not commit. The foundation of a constructive charge under section 149 is quite different from that of a direct charge. The primary basis of a constructive charge under section 149 is the existence and membership of an unlawful assembly and the commission of an offence by a member thereof in prosecution of the common object or such as the members knew it to be likely to be committed in prosecution of such object. Joinder of charges under sections 302/149 and 201 is permissible in cases coming under section 236 of the CrPC *(Ref : 7 DLR 45 WP).7 DLR 572.*

(21) Beating, common object of assembly—No intention to commit murder—Murder committed—Only persons taking part in murder and not all members of unlawful assembly are liable—The common object of the unlawful assembly was found to be only the giving of beating to certain persons and the highest offence which members of such assembly knew to be likely to be committed was grievous hurt. In the absence of evidence of any special intention or knowledge (apart from the general object or knowledge attributable to all members of assembly) two of the members of such assembly could not be convicted of murder under section 302 read with section 34, Penal Code. Unless there be intention or knowledge of one of the kinds specified in section 299, Penal Code no conviction for culpable homicide can be had. *5 DLR (FC) 44.*

(22) Conviction under sections 302/149 and 147 cannot be sustained if the common object of the unlawful assembly as set out in the charge fails. *1 DLR 137.*

(23) The phrase 'in prosecution of the common object' in the two clauses have different shades of meaning and these words 'in prosecution of the common object' in the first clause must be strictly construed as equivalent to 'in order to attain the common object'. When that is the case, every person, who is engaged in prosecuting the same object, may well be held guilty of an offence which fulfils or tends to fulfil the object which he is himself engaged in prosecuting. And an offence will fall within the second clause if the members of the assembly, for any reason, knew beforehand that it was likely to be

committed in the prosecution of the common object, though not knit thereto by the nature of the object itself. *Janab Ali Vs. State (1960) 12 DLR 808=(1961) PLD (Dac.) 430.*

(24) Application of section 149 is not dependent on the fact that at least five of the accused must ultimately be convicted. *Juma Vs. Crown (1955) 7 DLR (WP) 45.*

(25) The common object of the accused was to abduct a woman, but as they carried dangerous weapons, like hatchets and spears, it may be safely presumed that they knew that in case of resistance death of one or more of the inmates of the house was the likely result. *Juma Vs. Crown (1955) 7 DLR (WP) 45 : PLD 1954 (Lah) 783.*

(26) In view of the provisions of Ss. 236 and 237 of the CrPC, if there is some element of doubt, a charge can be validly framed for a substantive offence read with S. 149, P.C., and conviction and sentence can legally be passed for the substantive offence. *MD. Anwar Vs. State 9 DLR (SC) 1.*

(27) When a person is charged under S. 302/149, there is no necessary implication that he himself committed the murder unless in the charge it is so alleged. *Rahman Sardar Vs. Crown 7 DLR 572.*

(28) The primary basis of a constructive charge under section 149 is the existence and membership of an unlawful assembly and the commission of an offence by a member thereof in prosecution of the common object or such as the members knew it to be likely to be committed in prosecution of such object. *Rahman Sardar Vs. Crown (1955) 7 DLR 572*

(29) Where six accused were charged under sections 302/149 P.C., two of the accused having been proved to have fired the two fatal shots which caused the death of two persons. Held: that conviction of the two aforesaid accused for murder under section 302, P.C., direct was by virtue of sections 236 and 237, Criminal P.C. not illegal although they were not directly charged under that section. There was on the evidence, an element of doubt in regard to the precise offence—Whether under sec. 302 or sections 302/149, P.C.—committed, which was sufficient to justify, within the terms of section 236 Criminal P.C., the framing of a charge under sections 302/149 P.C., and convicting the two accused under section 302, P.C., on the basis of direct evidence of eye-witnesses. *Md. Anwar Vs. State (1957) 9 DLR (SC) 1=PLD 1956 (SC) 440.*

(30) The common object of the unlawful assembly was found to be only the giving of beating to certain persons and the highest offence which members of such assembly knew to be likely to be committed was grievous hurt. In the absence of evidence of any special intention or knowledge (apart from the general object of knowledge attributable to all members of assembly) two of the members of such assembly could not be convicted of murder under section 302, P.C. read with section 34, P.C. Unless there be intention or knowledge of one of the kinds specified in section 299, P.C. no convicted for culpable homicide can be had. *Fazal Elahi Vs. Crown (1953) 5 DLR 44.*

(31) If the common object of the unlawful assembly of which Fazal Dad and Jumma were two members, was to cause death or death was known to be the likely result, all will be guilty of the offence of murder in spite of the fact that some of them may not have taken part in the beating given to the deceased. But as they carried dangerous weapons, like hatchet and spears, it may be safely presumed that they knew that in case of resistance death of one or more of the inmates of the house was likely result. Therefore, they were all punishable for the offence under sec. 149. *Jumma Vs. Crown (1955) 7 DLR (WP) (Lah) 45 : PLD (1954) (Lah) 783.*

(32) Sections 34 and 149 have some common features, but some difference between them is that while section 34 may apply to a case where the culprits are five, more than five; or less than five;

section 149 can apply only to a case in which the culprits are five or more. *Nawab Vs. Crown. (1954) 6 DLR (WP) 22.*

(33) Application of and distinction between secs. 34 and 149 (see under sec. 34 above). *(1954) 6 DLR (WP) 22; (1956) 8 DLR (WP) 128.*

(34) Distinction—Offence known to be likely to follow—Section 34 not necessarily applicable. *PLD (1956) (Lah) 157.*

(35) Conviction under secs. 302/149 and 147 cannot be sustained if the common object of the unlawful assembly as set out in the charge fails. *Hakim Ali Vs. Crown (1949) 1 DLR 137.*

(36) The relevant question is not whether the intention of the assailants was to cause death of the members of the opposite party, but whether their common object was to cause such death or such a death was likely result of their action. *Feroz Vs. State (1956) 8 DLR (WP) 128.*

(37) In the case where the number of assailants is five or more than five, section 149 of the P.C., is attracted. This section has no concern with the common intention of the participants in the crime but concerns itself mainly with their common object and provides that even if the offence committed by any member of the unlawful assembly was not committed in furtherance of the common object of that assembly, every one of the members of the unlawful assembly would be liable for the offence if the result was such as was known to be likely. *Feroz Vs. State (1956) 8 DLR (WP) 128.*

(38) Section 149 does not deal with a common intention but applies to an offence committed by any member of an unlawful assembly in furtherance of the common object of the assembly. Section 149 will apply even if the common intention of the culprits was not to commit the offence committed if that offence was committed in order to gain the common object of the unlawful assembly. *Nawab Vs. Crown (1954) 6 DLR (WP) 22.*

(39) Member of an unlawful assembly—Whether he can be convicted when the principal offender has not been convicted—Once the court finds that an offence has been committed by any member of an unlawful assembly in prosecution of its common object, then whether the principal offender has been convicted or not all other members may be constructively liable for conviction. *Abdus Samad Vs. State 44 DLR (AD) 233.*

(40) Applicability of the provision under section 149—Even after acquittal of the five accused there could be an unlawful assembly if there was evidence that besides the accused on trial there were others even though not stated as such in the charge or in the FIR. *Rafiqul Islam Vs. State 44 DLR (AD) 264.*

(41) Offence committed in prosecution of common object—Section 149 Penal Code by itself creates no offence. It carries the liability of each member of an unlawful assembly for the act done in prosecution of their common object. *Tenu Miah and others Vs. State 43 DLR 633.*

(42) Constructive liability—The occurrence appears to have taken place upon sudden quarrel and in a fit of rage deadly weapons were freely used. Both the parties appear to have suppressed material facts. In such a situation a charge under section 149 is not maintainable. Mere presence of the accused at the scene of the occurrence of murder is not sufficient to charge him with constructive liability. *State Vs. Giasuddin 45 DLR 267.*

(43) The two accused had no premeditation to kill the victim and as such the application of section 149 for tagging them to face trial on murder charge appears to be illegal. *State Vs. Khalilur Rahman 48 DLR 184.*

(44) When a particular offence is committed by an individual member of the unlawful assembly, which was neither done in prosecution of common object of the assembly nor other members of the assembly knew that the offence would be committed, other members of the assembly cannot be held liable for the offence. The word "likely", in the later part of S. 149 of the Code means some clear evidence that an unlawful assembly had such a knowledge. In view of other offences committed, such as criminal trespass and assault, it is difficult to hold that all the appellants are consecutively liable under section 149 of the Code when Appellant No. 1 Abdus Sattar alone stuck a Katra blow on the right side of the chest of deceased which proved fatal and strictly speaking, S. 149 of the Penal Code is not attracted in this case. There being overwhelming evidence of inflicting katra blow on deceased Aminul Haq by Appellant No. 1, the appeal in respect of Appellant No. 1 Abdus Sattar is dismissed and his conviction and sentence under S. 302/149 of the P. C. is altered to S. 302 of the Penal Code and his sentence of imprisonment for life is maintained. *Abdus Sattar and others Vs State 46 DLR (AD) 239.*

(45) Common object—When can a member of an unlawful assembly be made vicariously liable for an offence under Section 149 of the Penal Code. In a case of vicarious liability, the law provides that the offence must be committed in prosecution of the common object of the assembly or the offence committed must be such as the members of the assembly knew it likely to be committed—Further, acts committed in prosecution of the common object must also be proved by some overt act committed by others to that effect in the absence of any proved individual overt act the charge of acting jointly also fails. *Anil Krishna Somaddar and others Vs. The State 1 BLD (HCD) 401.*

(46) Common object—To warrant a convicted under Section 149 of the Penal Code it is incumbent upon the prosecution to lead evidence as to which weapon each of the accused persons was carrying—The case of each individual accused has to be examined so that mere spectators or friends and relations of the accused party who had not joined the assembly and who were unaware of its motive had not been branded as members of the unlawful assembly. *Ali Akbar Khan and others Vs. The State 2 BLD (HCD) 170.*

(47) Section 149 of the Penal Code by itself does not create any offence at all—It carries the liability of the members of an unlawful assembly for the act done in prosecution of the common object—The specific object of the unlawful assembly when known to all, each and every member of such an assembly is actuated or animated to achieve that object and in furtherance of the common object the same is achieved. Section 149 of the Penal Code applies irrespective of the fact whether such act was done by one or more members of the unlawful assembly and every member of such an assembly shall be saddled with the constructive liability under this section. *Tenu Miah and others Vs. The State 11 BLD (HCD) 196.*

(48) For applying section 149 of the Penal Code against an accused, three conditions must be fulfilled : (a) the accused must have been a member of the unlawful at the time the offence was committed ; (b) the offence must have been committed in prosecution of the common object, or (c) the offence must be such as the members of the assembly knew likely to be committed in prosecution of that object. Before applying section 149, the Court must have indubitable evidence that the members of the unlawful assembly constituted the statutory number of five, though some of them might not have been named, or identified, or brought to trial. *Rafiqul Islam Vs. The State, 13 BLD (AD) 117.*

(49) Common object is distinctly different from motive. Motive has nothing to do with common object. Prosecution is not bound to prove motive. Motive may be a matter based on consideration in a

case mainly based on circumstantial evidence. Settled law is that prosecution does not fail even if motive is not proved where there is direct evidence. *Bangladesh Vs. Gaishuddin and other, 4 MLR (1999) (AD) 29.*

(50) The section creates a distinct and separate offence in the sense it imposes vicarious or constructive criminal liability of the members of an unlawful assembly for any offence committed by any member of such assembly in prosecution of the common object. *Munsur Fakir and others Vs. State (Criminal) 55 DLR 307.*

(51) When the section provides for vicarious or constructive liability of one for an offence committed by another, the section requires strict construction. *Munsur Fakir and others Vs. State (Criminal) 55 DLR 307.*

(52) When five or more persons being armed with deadly weapons and forming an unlawful assembly encircled the deceased and variously assaulted him who as a result died, each and every such accused is equally guilty of the charge of murder u/s 302 committed in furtherance of their common object as contemplated by section 149 of the Penal Code. *Ishaque Peada (Mridha (Md.) Vs. The State. 6 MLR 296.*

(53) It is a general principle that a person is liable for what he himself does and not for what other persons do. This section is an exception to the general rule, in that it makes a member of an unlawful assembly vicariously liable under the circumstances mentioned in the section for an offence committed by another member of the assembly. *AIR 1979 SC 1761.*

(54) Section 149 of the Penal Code is declaratory of the vicarious liability of 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. *AIR 1960 SC 725.*

(55) In order that this section may apply the accused must be a member of an unlawful assembly. *AIR 1970 SC 2.*

(56) In order that this section may apply the members of the assembly must have known that such offence was likely to be committed in prosecution of the common object of the assembly. *AIR 1970 SC 27.*

(57) Where the common object of the unlawful assembly was to give a good thrashing to the deceased, and no more, and the fatal blow by one of the accused to the deceased was not given in the prosecution of the common object of that assembly, the other accused persons could be held variously liable for the fatal blow given by one of the accused. *AIR 1982 SC 1224.*

(58) The vicarious liability of the members of the unlawful assembly will apply only when the offence has been committed in prosecution of the common object of the unlawful assembly or the members of the assembly must have known that such offence was likely to be committed in prosecution of the common object of the assembly. *AIR 1978 SC 191.*

(59) There are two ways in which the liability of A, a member of an unlawful assembly, may arise for an offence committed by B, another member of the assembly :

(i) where the offence committed by B is the direct object of the assembly or, as has been expressed in some cases, "immediately" connected with the common object" of the assembly;

(ii) where the common object of the assembly is to commit a particular offence X but B commits another offence Y which is not the common object of the assembly. In this case, A will be

liable for the offence Y only if he knew that such offence was likely to be committed in the course of the prosecution of the common object to commit the offence X. *AIR 1960 SC 725.*

(60) Section applies not only to offences committed in prosecution of the common object but also to offences which the accused knew was likely to be committed. *AIR 1961 SC 1541.*

(61) Offence committed not in prosecution of common object, nor known to be likely to be committed—Other members not liable. *AIR 1974 SC 753.*

(62) Common object not murder—But assembly prepared to go any length to achieve common object—Murder committed—All are liable. *1970 SCD 168.*

(63) Different members of the unlawful assembly may, under this section, be liable for different offences committed by other members of the assembly during the prosecution of the common object according to the knowledge they individually had as to the likelihood of the commission of the crime. *AIR 1972 SC 209.*

(64) A, B, C, D, E, F are members of an unlawful assembly with the common object of ousting X from his property and in the course of the prosecution of the common object A commits grievous hurt which D knows is likely to be committed and C commits mischief by fire which B knows is likely to be committed. D will be liable under S. 326 read with S. 149 and B will be liable under S. 436 read S. 149. Both B, D and other members of the assembly would be liable, in addition, for the offence which was the common object of the assembly and which was committed in prosecution of such object. *AIR 1960 SC 725.*

2. Section creates an offence.—(1) This section constitutes in itself a substantive offence. *AIR 1979 SC 1509.*

3. This section and S. 34.—(1) There are substantial differences between Ss. 149 and 34 although to some extent they may overlap. *AIR 1963 SC 174.*

(2) This section creates a substantive offence; S. 34 does not. *AIR 1956 SC 116.*

(3) A common object is different from a common intention. The former does not require a pre concert and a common meeting of the minds before the assembly is formed Section 34 does require a prior common meeting of minds to perpetrate a crime. *AIR 1963 SC 174.*

(4) Section 34 applies only where the accused participates in the criminal act. This section on the other hand punishes a member of an unlawful assembly where another member commits an offence in prosecution of the common object. *AIR 1963 SC 118.*

(5) The distinction between 'common intention' under S. 34 and 'common object' under S. 149 is of vital importance. Under S. 34 it has to be established that there was the common intention before the participation by the accused. *AIR 1971 SC 1444.*

4. This section and S. 148.—(1) This section deals with cases of vicarious liability, where S. 148 deals with direct liability. There is no scope for reading S. 148 along with this section. *AIR 1955 Assam 105.*

(2) Where an accused was charged with offences under Ss. 324, 148 read with this section and was acquitted of the charge of rioting, it was held that the accused could not be convicted under S. 324 read with this section. *AIR 1966 Mys 53.*

(3) When an accused is acquitted on charges under Ss. 147/148, P.C. he cannot be convicted under S. 302 read with S. 149. *1983 CriLJ 1029.*

5. This section and S. 396.—(1) This section would not ordinarily apply to the offence under S. 396 but where the unlawful assembly had existed from the very outset before the dacoity with murder was committed, and then the common object developed into one for committing dacoity and it was in the course of the riot that occurred that such offence was committed this section can be applied. *AIR 1935 Oudh 190.*

(2) Common object of accused only to commit assault with lathis and country-made pistol and not to commit dacoity but 2 of the accused while committing assault taking away victims guns—Held: since assault was not made with object of thieving the guns, act did not amount to dacoity or to robbery under S. 390—Hence, accused could not be held guilty under S. 395 or 397 but could be held guilty under Ss. 323/324/149/147 and 148. *1983 AllLJ 33.*

(3) Where the common object of unlawful assembly was to commit dacoity at all costs including use of firearms the murder caused while committing dacoity could be said to constitute a separate transaction. *1980 CriLJ (NOC) 131.*

6. "If an offene is committed".—(1) Two opposing parties A and B each consisting of more than five persons indulged in stone-throwing and a member of party B was hit by a stone throw by a member of party A and was killed. It was held that the accused member of party A cannot be convicted under this section but only under S. 147. *AIR 1954 Mad 15.*

(2) In a case of riot with murder if an old man and two children who were also accused has not shared the intention to "kill", they cannot be convicted for murder but would be convicted for the actual offence committed by them. *1980 Raj Cri C 18.*

7. Unlawful assembly.—(1) The existence of an unlawful assembly is a necessary ingredient of the offence under this section. Where the existence of such assembly is not proved or the accused is not a member of the unlawful assembly at the time of the commission of the offence, he cannot be convicted under this section. *AIR 1978 SC 1021.*

(2) Where the prosecution fails to show that there was an unlawful assembly, a charge under this section must fail. *AIR 1954 Mad 785.*

(3) The mere presence of the accused in or near an unlawful assembly cannot form the basis of a conviction under this section unless the accused is shown to have shared in the common object of the assembly. *AIR 1978 SC 1647.*

8. Five or more persons necessary.—(1) An assembly of less than five members is not an unlawful assembly within the meaning of S. 141 and cannot therefore form the basis for a conviction under S. 147 or under this section. *AIR 1976 SC 1084.*

(2) If it is proved that there were five or more persons with the common object specified in S. 141, it is not necessary that the identity of all the five or more persons should be proved. *AIR 1975 SC 1917.*

(3) Where it is doubtful if there were five or more persons at all in the assembly with the common object, it cannot be assumed that there was an unlawful assembly, and this section would have no application. *AIR 1954 SC 648.*

(4) Where the accused were lying in wait at different places, splitting themselves in smaller groups and they joined together at the place of incident without much appreciable interval of time and attacked the deceased jointly and in succession, it could be said that all the accused must have been animated by common object and become members of unlawful assembly. *AIR 1983 SC 179.*

9. Common object.—(1) In order to constitute an assembly an unlawful assembly there must be a common object such as is specified in S. 141. *AIR 1979 SC 1504.*

(2) Where the Court convicts any person or persons of an offence with the aid of S. 149 a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under S. 149, the essential ingredient of S. 141 must be established. *AIR 1981 SC 1219.*

(3) In order to constitute an unlawful assembly there must be a common object such as is specified in S. 141. The Court must find with certainty that there were at least 5 persons sharing the common object. *AIR 1972 SC 254.*

(4) No overt act by the members of the assembly is necessary to attract the applicability of this section. *AIR 1979 SC 1504.*

(5) The original common object may be abandoned and a fresh common object developed in the course of the activities of the assembly; and in such cases excepting those members of the assembly who proved that they did not share in the common object and were not parties to the commission of the offence the other members will be liable. *AIR 1975 SC 274.*

(6) The questions whether an assembly had a common object at a given time, or what the common object was is a matter of inference from the facts and circumstances of each case. *AIR 1979 SC 1116.*

(7) The question whether an assembly had a common object at a given time, or what the common object was in a matter of inference from the facts and circumstances of each case, such as the weapons with which they were armed. *1978 CriLJ 428 (431) (SC).*

(8) Where there is no proof of the common object or that the offence was committed in prosecution of the common object or that the accused shared in the common object this section cannot be applied. *AIR 1978 SC 1759.*

10. "Free fight."—(1) There is no common object in a "free fight" and the accused in such a case cannot be convicted by having recourse to S. 149. *AIR 1976 SC 2423.*

11. Right of private defence.—(1) An assembly acting in the exercise of the right of private defence is not an unlawful assembly. This section cannot be applied to a member of such assembly. *AIR 1954 SC 695.*

(2) Where the plea of self-defence is not established, or the assembly exceeds the right of private defence, the assembly will be an unlawful assembly. *AIR 1979 SC 1230.*

(3) Where the accused were aggressors and armed with various weapons then even if they had received injuries from the victims of their aggression could not claim right of private defence. *AIR 1981 SC 1379.*

(4) Admitted enmity between two factions—Injuries on both sides—Nature of injuries on prosecution party and gunshot injuries on accused party suggesting that attack by accused party followed firing of pistol though nothing could be determined with certainly—Injuries on prosecution party inflicted after pistol was snatched resulting in death of one of them —Held, accused had exceeded their right of private defence and were guilty under S. 326 r/w S. 149 though charge under S. 302 r/w S. 149 was not proved. *AIR 1980 SC 864.*

12. "In prosecution of common object."—(1) This section makes a member of an unlawful assembly liable for an offence committed by another member of the unlawful assembly in two ways : (a)

when the offence is committed in prosecution of the common object in the sense that the commission of the said offence is the common object of the assembly and (b) where an offence which is not the common object of the assembly is committed in the course of the prosecution of the common object, and which accused knew was likely to be committed. *AIR 1978 SC 1525.*

(2) There is a clear distinction between the two parts of the section. Though the same expression "in prosecution of the common object" is used in both parts, yet the expression in the first part means that the offence is immediately connected with the common object and in the second part, it means that the offence committed is not the common object, but is committed during the prosecution of the common object. *1975 CriLJ 1350.*

(3) Where all the accused happened to be present in the street per chance and they did not know that the deceased and his son could come out of their house with kirpan and Gandasi in their hands, the provisions of S. 149 did not apply as there could be no meeting of minds between the accused and the common object of the assembly could not be held to murder the deceased. *1981 CurLJ (Cri) 156.*

13. "Knew to be likely.—(1) The expression "know" does not refer to a mere possibility that might or might not actually materialise. *1970 SCD 1085.*

(2) In every case, it would be a question of fact whether it was an offence which the members of the assembly knew to be likely to be committed in prosecution of the common object. *AIR 1974 SC 1564.*

(3) The existence of knowledge may be reasonably inferred from the nature of the assembly, arms carried or behaviour of the members of the assembly at or before the scene of action. *AIR 1977 SC 1756.*

(4) If knowledge may not necessarily be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise. *AIR 1954 SC 695.*

(5) Where the member of the unlawful assembly commits murder of a peaceful intervener, who suddenly appears on the spot on hearing noise, in the absence of any evidence to the contrary it could not be presumed that the remaining members of intervener was likely to be caused in prosecution of common object thereof. They could not, therefore, be convicted under S. 302 read with S. 149. *1981 CriLJ 196.*

14. At the time of committing that offence.—(1) A member of an unlawful assembly who ceases to be a member, as when he retires from the assembly or gets disabled and separates himself from the assembly cannot be convicted under this section. *AIR 1974 SC 1228.*

(2) Murder committed by accused after dragging victim out of a house carrying him away to a chowk—Accused, member of unlawful assembly till deceased was dragged out of the house—Accused cannot be convicted for murder with aid of S. 149. *AIR 1981 SC 1223.*

(3) Where one set of accused was alleged to be far away from the place of incident and was not alleged to have played any role in the incident leading to murder and, as such, was given benefit of doubt as a matter of abundant caution it would not mean that the other set actively participating in the incident would also be equally entitled to such benefit. *1983 AllLJ 232.*

15. Whether convicted under this section can only be for an offence of which the principal offender has been convicted.—(1) Where a member of an unlawful assembly is convicted of murder, such conviction will necessarily imply a findi g that he has committed grievous hurt as such offence is only a minor offence which necessarily forms part and parcel of the offence of murder. Hence in such a

case, although the principal offence who is a member of an unlawful assembly is convicted of murder other persons who are members of the unlawful assembly at the time when the offence is committed can be convicted of the offence of causing grievous hurt. *AIR 1960 SC 725.*

(2) Where the common object of the unlawful assembly is to cause grievous hurt to the opposite party, but one member commits murder the other members of the assembly who did not know that murder was likely to be committed, would not be liable for the offence of murder, but they would certainly be liable for an offence under S. 326 the commission of which was the common object of the assembly and which is a minor offence in its relation to murder. *AIR 1969 SC 689.*

(3) A member of an unlawful assembly may be convicted for an offence committed by another member of that assembly pursuant to a common object even though the particular person charge as the principal offender is acquitted on some ground including absence of sufficient evidence to prove the guilt of the accused beyond reasonable doubt. *AIR 1951 All 660.*

16. Separate conviction for separate offences.—(1) A conviction for an offence and also for an aggravated form of the same offence will not be legal. Therefore, by application of this section a person cannot be convicted of an offence as well as the aggravated form of the offence, but can be convicted only for one offence. *AIR 1957 Punj 278.*

(2) Where one offence committed is part of or an element of the other offence, e.g., where the common object of the unlawful assembly was assault, and assault was committed and both Ss.. 323 & 147 applied two separate convictions and sentences are not justified. *1901 Pun Re No. 4, P. 9.*

(3) An unlawful assembly was formed with the common object of beating the opposite party. Intention to commit murder was not proved. Only such person who committed murder would be liable for offence of murder. Others would be committed under S. 323 read with Sec. 149 P.C. *1981 CriLJ (NOC) 177.*

(4) Three accused armed with knives, one with pistol and three others bare handed—Conviction of all accused under Ss. 302/149 and further conviction of armed accused under S. 148 and barehanded accused under S. 147—Held on facts that S. 149 was not attracted. *1983 CriLJ (NOC) 86.*

17. Charge under Section 149—Conviction under Section 34 and vice versa—Property.—(1) There need not be a specific charge under S. 34 when a charge is framed for an offence under Sec. 149. *AIR 1961 SC 1787.*

(2) Where the charge under S. 149 falls through as there is no "unlawful assembly" the accused can nevertheless be convicted for a substantive offence with the aid of S. 34 where such offence is proved to have been committed by a number of persons (inclusive of the accused in pursuance of their common intention. *AIR 1976 SC 2273.*

18. Convictions for offences under other enactments read with S. 149.—(1) The word 'offence' under S. 149 means only an offence under the Penal Code and does not cover offences committed under other enactments. *AIR 1953 Bhopal 8.*

19. Sentence.—(1) For an offence under S. 302 read with S. 149 no sentence less than rigorous imprisonment for life can be imposed. *AIR 1977 SC 709.*

(2) Where the accused was only a member of the assembly which chased the deceased and there was no overt act on his part, sentence of two years R. I. was imposed on him having regard to his age. *AIR 1980 SC 1716.*

(3) Conviction of accused under S. 302/149 altered to one under S. 326/149 by High Court in respect of accused other than actual assailant—Accused released on bail by Supreme Court after accused had already undergone sentence of about 2.5 years—Case pending in Supreme Court for about 6 years—Sentence reduced to period already undergone in respect of accused other than actual assailant. *AIR 1983 SC 166.*

20. Jurisdiction.—(1) A special Judge constituted under the Public Security Act is not competent to try a case under Sec. 149 of the Code. *AIR 1957 Madh Bha 134.*

21. Burden of proof—Evidence.—When the prosecution has proved its case, then it would be for the accused if he so wishes to give evidence to rebut the prosecution case. *AIR 1972 SC 2544.*

(2) Section 302 read with S. 149—Deceased shot dead by accused with gun at the exhortation of other accused who were also armed—All accused convicted by Sessions Judge on testimony of eye-witness—Acquittal by High Court in appeal—Sole ground on which testimony of eye-witness was rejected by High Court found to be baseless by Supreme Court—Order of acquittal set aside. *AIR 1983 SC 187.*

(3) Where of the two accused charged under S. 304/149 accused No. 1 was found to have exceeded his right of private defence and accused No. 2 was not shown to have assaulted the deceased, charge under S. 149 fails—Conviction of Accused No. 1 altered from one under S. 304/149 to one under S. 323, Accused No. 2 acquitted. *AIR 1979 SC 1259.*

(4) Where the evidence showed that no less than 12 injuries were caused to the deceased and at least one of them was on the vital part of the body and the weapons used were lethal weapons it was held that the accused were rightly convicted for the offence under Section 302/149, P.C. *AIR 1977 SC 2040.*

(5) As participation of the appellants in the offence was not proved beyond doubt they were entitled to benefit of doubt and to be acquitted. *AIR 1977 SC 672.*

(6) Where it is doubtful whether some members of the assembly shared the common intention to murder and where their participation in the murder was small, they should be convicted for small offences and not murder. *AIR 1975 SC 1808.*

(7) Where the case against some of the accused whose conviction was maintained by the High Court was not at all distinguishable from the case of other co-accused whom the High Court had acquitted, the Supreme Court on appeal against acquittal reversed the acquittal and convicted the accused. *AIR 1974 SC 2267.*

22. Practice.—Evidence—Prove: (1) That there was an unlawful assembly.

(2) That the accused was a member of that unlawful assembly.

(3) That he had intentionally joined or continued in such unlawful assembly .

(4) That an offence was committed by a member of such assembly.

(5)That such offence was committed (a) in prosecution of the common object of such assembly or (b) such as the members of the assembly knew to be likely to be committed in prosecution of the common object.

23. Procedure.—(1) The procedure on trial for an offence under this section shall be the same for that offence committed with the exception that the offence under this section is not compoundable. *1972 CriLJ 666.*

(2) Where there was evidence to show that the accused who were more than five, and armed with deadly weapons, shared the common intention to inflict injuries on the deceased and the eye-witness, they could not be enlarged on bail. *1982 CriLJ (NOC) 57 (Kant).*

(3) House breaking and assault by an unlawful assembly—Identify of persons who had done some overt act or taken an active part in commission of offence—Possibility of some of persons being mere spectators having nothing to do with the commission of offences could not be reasonably ruled out—Only those names mentioned by the complainant and the victim should be adopted which found corroboration from the evidence of at least one of eye-witnesses. *(1983) 2 Crimes 116.*

(4) Cognizable or not-cognizable according as arrest may be made without warrant—Warrant or summons, according as a warrant or summons may issue for offence—Bailable or not bailable according as offence is bailable or not—Triable by the Court by which the substantive offence is triable.

24. Charge.—(1) The charge under this section should specify clearly all the necessary ingredients of the offence and which render the accused liable, viz., that he was a member of an unlawful assembly with a particular common object, that an offence was committed by another in prosecution of the common object or that an offence was committed by another member of the unlawful assembly, which offence the accused knew to be likely to be committed in prosecution of the common object. *AIR 1978 SC 1759.*

(2) A defect in the charge will render the conviction bad if it has caused prejudice to the accused, but not if it has cause no prejudice. *AIR 1961 SC 803.*

(3) An offence under a particular provision of the law read with S. 149 is a distinct offence and must be specifically charged. *AIR 1978 SC 1759.*

(4) When an accused is charged only with an offence under this section read with the section dealing with a substantive offence conviction in such cases for substantive offence would be bad if the accused has suffered prejudice. *AIR 1955 SC 419.*

(5) Where an accused is charged only with an offence under this section read the section dealing with a substantive offence, a conviction in such cases for substantive offence would not be bad if he has suffered no prejudice. *AIR 1925 Mad 1.*

(6) Where the charge is for a major offence, e.g., Section 302 read with this section, the conviction for a minor offence read with this section e.g., Section 326 read with this section, is not illegal. *AIR 1966 SC 302.*

(7) The charge should run as follows:

I (name and office of the Magistrate/Judge etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, were a member of an unlawful assembly, and in prosecution of the common object of which viz, in—one of the members—caused (specify the offence) to—, and you are thereby, under section 149 of the P. C. guilty of causing the said (offence) and offence punishable under section—of the Penal Code, and within my cognizance (or within the cognizance of the Court of Sessions).

And I hereby direct that you be tried by the said Court on the said charge.

Section 150

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.

Cases and Materials

1. Scope.—(1) This section creates a specific offence. While under section 149 a person must be a member of an unlawful assembly, under section 150 he need not be a member but yet be guilty of an offence which may be committed by a member in the circumstances set out in the section (*AIR 1955(SC)724).* The words "hires ,engages or employs" mean to procure for use for the services to be rendered. The hiring must be complete and the hirer and hired must come to an agreement. The word "promotes" shows active assistance, and the word "connives" shows closing one's eyes and passively allows the hiring *(AIR 1974 SC 1256)*

(2) Section 150 creates a specific offence. Under the section a person, though not actually a member of an unlawful assembly himself, may be held guilty of being a member of an unlawful assembly and may also be held liable for an offence which may be committed by a member of the unlawful assembly in the circumstances mentioned in the section. *AIR 1956 SC 274.*

(3) While this section contemplates a particular unlawful assembly comprising the persons hired by the accused. S. 157 is wider and provides for an occurrence that may happen hereafter and make the harbouring, etc. of persons who may be engaged (hereafter) as members of an unlawful assembly, an offence *(1902) ILR 29 Cal 214(217).*

(4) The offence of hiring a person to take part in a riot is a separate and distinct offence from the riot itself and ordinarily the hiring and the riot would be separate transactions. But circumstances may justify holding that the hiring and the riot were parts of the same transaction. *AIR 1925 Cal 903.*

(5) Where a person is charged with an offence under S. 304 read with S. 150 and the charge against him is a definite one of having engaged a person to commit culpable homicide not amounting to murder, and the jury holds that the person engaged did not commit the culpable homicide the person charged with having engaged him cannot be convicted of constructive homicide under S. 150. *AIR 1925 Cal 903(904): 26 CriLJ 594.*

2. Practice.—Evidence—Prove: (1) That the accused hired or engaged etc. the person in question, or that he promoted or connived at such hiring. etc. In the case of connivance it should also be proved (a) that the accused was legally bound to prevent the hiring; (b) that he was physically able to prevent it; and (c) that he did not prevent it, or do all that lay in his power towards preventing it.

(2) That such hiring, etc. was to join, or to become a member of an unlawful assembly.

3. Procedure.—Cognizable—Not compoundable—Bailable or not bailable according as the offence committed is bailable or not bailable—Triable by the Court by which the offence committed is triable.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—hired (or engaged or employed or promoted or connived at the hiring or engagement or employment) of one XY to join as (or become) a member of an unlawful assembly, and that the said XY as a member of such unlawful assembly in pursuance of such hiring or engagement or employment committed (specify the offence and the person), and that you have thereby committed an office punishable under sections 150 and—of the Penal Code and within my cognizance (or cognizance of the Court of Session).

And I hereby direct that you be tried on the said charge.

Section 151

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.

Cases and Materials

1. Scope.— (1) This section should be read along with sections 127, 128 and 129 CrPC. The offence under this section consists in the disobedience to the mandate of the law, which has ordered the assembly to disperse. The assembly under this section need not be an unlawful assembly. It must only be an assembly likely to cause a disturbance of the public peace. Section 151 can be invoked only if there is command to disperse. *AIR 1978 (SC) 1015.*

(2) No man can be convicted for doing a lawful act merely because he knows that his doing the act may cause somebody else to do an unlawful act. *(1882) 9 QBD 308.*

(3) The disobedience by the members of lawful assembly of the order to disperse given by appropriate authority by knowingly joining or continuing in such assembly after the order will be an offence under this section. *AIR 1925 All 165.*

(4) Where the object of only three persons was to draw a crowd of fifty or sixty persons and their action was such as was calculated to cause a disturbance of the public peace, it was held that the gathering constituted an assembly of "five or more" persons within the meaning of S. 151 and a refusal to disperse after being commanded to disperse rendered every member of the gathering liable to conviction under the section. *(1882) 7 Bom. 42.*

(5) The section does not apply to cases in which the assembly was unlawful from its inception or had become so before the command for dispersal was given. *AIR 1934 Lah 243.*

(6) An assembly which is not unlawful in its inception does not become "unlawful" within the meaning of S. 141 merely because it continues without dispersing in defiance of the lawful order to disperse. *AIR 1922 Lah 135.*

(7) Dictionaries can not be taken as final authorities on the meanings of words used in acts of the Legislature, "as the plainest words may be controlled by a reference to the context". *AIR 1962 SC 955.*

(8) In order to sustain a charge under S.151 it is not sufficient merely that, in the opinion of the Magistrate or police officer who ordered the particular assembly to disperse, such assembly was likely to cause a disturbance of public peace; it is necessary to establish by evidence to the satisfaction of the court that the assembly was in fact likely to cause such disturbance. *AIR 1954 Mys 58.*

(9) The section only penalises a disobedience to a lawful command for dispersal. *AIR 1978 SC 1021.*

(10) The criminal courts have jurisdiction to determine the legality of the command , though the police officer's opinion is relevant and of great weight. *AIR 1933 Nag 277(282):34 CriLJ 705.*

(11) An order, the disobedience to which is made penal under s. 151 is an order to disperse and not any other order. *AIR 1978 SC 1021.*

(12) Command to disperse should be lawful. The essential ingredients of offences under section 151 and 145 is that the accused is lawfully commanded to disperse after he joins or continues in an assembly of five or more persons or in an unlawful assembly. If a person was not lawfully commanded to disperse he does not come within the mischief of section 151 or section 145. In the accusations in these cases it was not stated that the officer commanded the petitioner to disperse. Offering resistance is distinct from commanding to disperse. Thus the accusations, as they are, do not constitute an offence under section 151 of the Penal Code. For the same reason they do not also constitute an office under section 145. Trial—Place of, Magistrate's discretion in the matter of choice of the place of trial other than the Court should be announced by a formal order. A Magistrate can in his discretion hold trial at any place other than the Court house but in the case it is essential that he should pass a normal order declaring the place where the trial would be held. Unless a formal order is passed declaring that the trial would be held in any specified place, the accused persons are likely to be prejudiced in as much as, in that case they are deprived of the opportunity of having recourse to higher authority for redress if they feel aggrieved by such order. *20 DLR 461.*

2. Practice.—Evidence—Prove: (1) That there was an assembly of five or more persons.

(2) That such assembly was likely to cause disturbance to the public peace.

(3) That it was commanded to disperse.

(4) That such command was lawfully made.

(5) That the accused joined the assembly or continued in such assembly after it was commanded to disperse.

(6) That the accused knowingly joined the assembly.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:-

That you, on or about the—day of—, at—, joined (or continued in) an assembly of five or more persons likely to cause a disturbance of the public peace, after knowing that such assembly had been lawfully commanded to disperse and thereby committed an offence punishable under section 151 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 152

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 yeas, or with fine, or with both.

Cases and Materials

1. Scope.—(1) This section may be read along with sections 21, 141, 146, 159, 350, 251 of the Penal Code. This section deals with active opposition shown to public servant in the discharge of his duty of suppressing a riot or affray. The public servant in the exercise of his lawful duties is protected if he acts in good faith under colour of his office.

(2) Section 186 also deals with an offence of obstructing a public servant in the discharge of his public functions. But this section is specific section dealing with obstruction caused under particular circumstances and hence in case coming under this section it is this section and not S. 186 that will apply. *(1939) 17 Mys LR 461.*

(3) Where the common object of an assembly of five or more persons is to commit the offence under this section, S. 141, third clause will apply and render the assembly an "unlawful assembly". *AIR 1924 All 233.*

(4) Where the Magistrate gave the benefit of doubt to the accused and discharged him under S. 152. He had jurisdiction to frame a charge for the offence of affary which was disclosed by the evidence. *AIR 1933 Sind 173.*

2. Practice.—Evidence—Prove: (1) That an unlawful assembly was held.

(2) That an endeavour to disperse such assembly was made.

(3) That the person endeavouring to disperse was a public servant.

(4) That the said public servant was then acting in discharge of his official duties.

(5) That the accused knew of it.

(6) That the accused assaulted or threatened to assault or obstructed such public servant while discharging his duties.

3. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:-

That you, on or about the—day of—, at—, assaulted (or threatened to assault or used or threatened to use criminal force to)—, a 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 affary) and thereby committed an offence punishable under section 152 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 153

153. Wantonly giving provocation with intent to cause riot—If rioting be committed : If not committed.—Whoever malignantly or wantonly 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 ; 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.

Cases and Materials

1. Scope.— (1) To make out a case under section 153 of the Penal Code it must not only be established that a provocation was given by the act complained of, but it must also be shown that the act was done malignantly or wantonly. A mere charge of provocation, however, is not sufficient to justify a conviction under section 153 of the Penal Code. If the riot was not committed the accused would be liable under the first clause, if it was, then the offence would be punished under the second clause. "Wanton" means recklessly. 'Malignantly' means maliciously, virulently inimical.

(2) In order to make out a case under this section, it is essential to establish:-

(i) that the accused did an act which is illegal,

(ii) that by such act he gave provocation to others,

(iii) that he did so malignantly or wantonly, and

(iv) that he did so (a) intending that the provocation will cause the offence of rioting to be committed or (b) knowing it to be likely that such provocation will cause the offence of rioting to be committed. *AIR 1966 Orissa 192.*

(3) The section is not ultra vires the Constitution. *AIR 1971 Bom 56.*

(4) A 'malignant act' means a wrongful act done intentionally without just cause or excuse. *AIR 1962 Madh Pra 292.*

(5) The word 'wantonly' means 'recklessly', 'thoughtlessly', without regard for right or consequence. *AIR 1952 Pat 138.*

(6) The word 'illegal' is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action. This section cannot apply unless that act of the accused causing provocation is illegal. *(1903) ILR 26 Mad 554.*

(7) Where the accused deliberately threw bricks at a temple hoping that the Hindus would believe that the bricks came from a nearby Mahomedan quarter and that thereby the Hindus would be enraged against the Mahomedans and there would be a riot between them but nobody was hurt by the act, it was held that the throwing of a brick at a temple is not an offence and is not prohibited by law and that therefore the act of the accused was not illegal. *AIR 1928 All 745.*

(8) The section applies to such provocative words or acts as do not amount directly to instigation or abetment but which involve the doing of some illegal act, which infuriates the feelings of the people who ultimately come to riot. The section implies instigation in the sense of causing a riot by an illegal act, which originates the feelings of anger of a so far peaceful assembly. *AIR 1933 Bom 162.*

(9) The act of killing a cow by a Mahommedan not done in the presence of any Hindu would not amount to giving provocation, though on subsequently hearing of it the religious feelings of Hindus would be very much hurt. *AIR 1919 All 307.*

(10) A mere chance of provocation is not sufficient to justify a conviction under this section. *AIR 1966 Orissa 192.*

2. Practice.—Evidence—Prove: (1) That the accused did an act which was illegal.

(2) That the illegal act was the cause of provocation.

(3) That he did it malignantly or wantonly.

(4) That such rioting was committed in consequence of such wanton provocation.

(5) That he did this intending or knowing it to be likely that such provocation may cause a riot to be committed.

3. Procedure.—Cognizable—Warrant (if riot be committed), otherwise, Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:-

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:-

That you, on or about the—day of—, at—malignantly (or wantonly) by doing—which was illegal, gave provocation to—intending (or knowing it to be likely) that such provocation would cause the offence of rioting to be committed, and thereby committed an offence punishable under section 153 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 153A

[2][**153A. Promoting enmity between classes.**—Whoever by words, either spoken or written, or by sings or by visible representations, or otherwise promotes, or attempts to promote, feelings of enmity or hatred between different classes of [3][the citizens] of [4][Bangladesh], shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of [3][the citizens] of [4][Bangladesh].

Cases and Materials : Synopsis

1. ***Scope and object of the section.***
2. ***Constitutional validity.***
3. ***"Mens rea".***
4. ***Promotes or attempts to promote feelings of enmity or hatred.***
5. ***Forfeiture—Criminal Procedure Code, Section 99A and this section.***

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2. This section was added by the Indian Penal Code Amendment Act, 1898 (Act IV of 1898), s. 5.
3. The words within square brackets were substituted for the words "Her Majestry's subjects" by A.O., 1961 (w.e.f. 23-3-56).
4. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, Second Sch. (w.e.f. 26th March, 1971).

6. *Practice*
7. *Procedure*
8. *Charge*
9. *Sanction*
10. *Sentence*
11. *Revision*

1. **Scope and object of the section.**—Section 153A of the Penal Code has been worded generally to apply to all classes of citizens and not to classes to be distinguished on grounds of religion, race, language, caste or community. This section applies where the hatred or enmity is created between different classes of people of Bangladesh. If a book promotes feelings of enmity or hatred between different people of the same class that would not come within the mischief of this section *(PLD 1961 Kar 129, 1961 PLR 818 FB)*. It must be recognized that in countries where there is religious freedom certain latitude must of necessity be considered. In respect of the free expression of religious opinions together with a certain measure of liberty to criticise the religious belief of others it is contrary to all reason to imagine that liberty of citizen includes a licence to use abusive language *(29 CrLJ 963)*. Where a book contains passages in it which might be construed to create some feeling of disaffection against the rich and the wealthy, but it is not easy to hold that they have a direct effect of actual promotion of ill-feeling or hatred, particularly as the theme is a conflict between capitalism and labour throughout the world and in all stages of history, the book cannot be said to contain objectionable matter within the meaning of section 153A and the benefit of doubt should be given to the accused (*AIR 1936 All 561*). For conviction under section 53A there must clearly be an intention to promote feelings of enmity and hatred between different classes of subjects *(PLD 1962 Lah 850)*. In order to ascertain the intention of the accused the offending article or the pamphlet must be read as a whole and the circumstances attending the publication must also be taken into account. Adverse criticism however pungent misdirected or unjust, against a Ministry or a Government does not properly fall within the purview of section 153A(*AIR 1945 Sind 106*). Explanation appended to section is not the same as a proviso. Therefore explanation to section 153A cannot be used to enlarge, the provisions of the substantive section any more than a proviso can be used to enlarge the provision to which it is a proviso (*AIR 1926 Cal 1133*). The first and the most important ingredient in the connotation of the term "class" is that the words used must point to a well—defined and readily ascertainable group of subjects. In the second place some element of stability in the group would have to be present before there can be an attempt to excite enmity against the group. Thirdly, the group indicated must be sufficiently numerous and widespread to be designated a "class" (*34 CrLJ 231*).

(2) Limits of religious controversy. The honest preaching of a creed, which a man sincerely believes will lead to the salvation of humanity, being an effort worthy of emulation, the injury attendant thereon may be ignored. But a limit must be drawn somewhere, and even a laudable effort knows limits. It is the limit where controversy ends and malice begins, that is to say, where the speech or writing does not further the ends of the controversy and says a thing which could be left unsaid without injuring the controversy, or saying it, not exactly "with sweets", but with a little bitterness as can be brought to the occasion. The law visits not the honest errors, but the malice of mankind. A willful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to a sacred subject, or by willful misrepresentations or artful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention, in law as well as morals a state of apathy and indifference as to the interest of society, is the boundary between right and wrong. *7 DLR (FB) Lah 17*.

(3) The object of the section is to prevent various classes from coming in to conflict by mutual abuse and recrimination and is intended to prevent breaches of public tranquillity which might result

from exciting feelings of enmity between different religious, racial or language groups or castes or communities. *AIR 1954 Pat 254.*

(4) Where the articles published in the newspaper, promoted the feeling of enmity, hatred and ill-will between two communities on grounds of community under the guise of political thesis or historical truth; the conviction under S.153A held was proper. *AIR 1980 SC 763.*

(5) Clause (a) must be construed as implying that the promotion of enmity and hatred between different communities or groups must be such as to be prejudicial to public order, etc. *AIR 1962 SC 955.*

(6) An offence under this section has been considered as an offence involving moral turpitude. *AIR 1922 All 140.*

(7) The offence under this section is distinct from and not a necessary ingredient of the offence of attempting to excite disaffection against the Govt. established by law. But it is also possible that the same article published in a newspaper criminates its author under Section 124A and S. 153A. *AIR 1925 Sind 59.*

(8) It is not necessary for the application of this section that the hatred and enmity between the classes must be reciprocal. It may be merely unilateral *AIR 1927 Lah 594.*

(9) It is not necessary for the application of this section that the hatred and enmity between the classes must be reciprocal. Nor is it necessary to prove that, as a result of the objectionable matter, hatred or enmity was in fact caused between the different classes. *AIR 1971 Bom 56.*

(10) The section will apply only to cases were the words etc. of the accused can be said to be prejudicial to public order. Although Section 124A only makes the excitement of hatred and contempt against the Government established by law an offence and does not expressly refer to any tendency to cause public disorders words importing the need for such tendency should be treated as necessarily implied in the section and there would be no offence under the section unless the impugned words were held to have such tendency. *AIR 1962 SC 955.*

2. Constitutional validity.—(1) This section is not ultra vires the Constitution in view of the words "in the interest of public order" in articles 37, 38 and 39 of the Constitution. *AIR 1971 Bom 56.*

3. Mens rea.— (1) Intention to promote hatred and enmity apart from what appears in 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 acts. *AIR 1971 Bom 56.*

4. "Promotes or attempts to promote feelings of enmity or hatred".—(1) A Hindu who ridicules the Mohmmedan Prophet not out of any eccentricity but in prosecution of a propagand started by a class of persons who are not Mohammedans, must be held to promote feelings of enmity and hatred between Hindu and Mohammedans and is guilty under this section. *AIR 1941 Oudh 310.*

(2) Though a mere criticism of a religion or of a religious leader, whether dead or alive, may not fall within the ambit of this section, the writing of a scurrilous nature and foul attack on such a religious leader would prima facie fall under this section. *AIR 1927 Lah 494.*

(3) Adverse criticism, however pungent, misdirected or unjustified against a Ministry or a Government (although such Ministry may have been formed on a communal basis) will not come within the ambit of this section. *AIR 1945 Sind 106(109); 46 CriLJ 674.*

(4) Where an article only emphasised the danger of good feelings between the two communities becoming strained due to delay in enforcing a particular Act, it was held that no offence was committed under this section. *AIR 1965 Pat 393(397); 1965 (2) CriLJ 401.*

(5) The impugned writing should be read as a whole in order to find out whether a publication tends to promote hatred between different sections of the public. *AIR 1971 Bom 56.*

(6) Rational criticism of religious tenders, couched in restrained language, is no offence either under Section 153-A or under S. 295-A *1971 CriLJ 19773.*

(7) The political party 'Telgu Desam' cannot be denied an election symbol by the Election Commission on the ground that the use of the word 'Telgu Desam' arouses chauvinism and sectarian tendencies and helps to propagate sessionist ideas. *AIR 1983 AndPra 96.*

5. Forfeiture—Criminal Procedure Code, Section 99A and this section.—(1) Any newspaper, book or document containing matter, the publication of which is punishable under this section is liable to be forfeited to the Government in accordance with the provisions of S. 99A of the Criminal P.C. But the scope of S. 99A, Criminal P.C. is wider than that of this section. *AIR 1957 All 538.*

(2) The scope of S. 153-A cannot be enlarged to an extent with a view to thwart history. An article containing a historical research cannot be allowed to be thwarted on a plea that the publication of such a material would be hit by S. 153A. *1983. CriLJ 1446.*

(3) Criminality under S. 153-A does not attach to the things said or done but to the manner in which they are said or done. If the words written or spoken are couched in temperate, dignified and mild language, and do not have a tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow. *AIR 1980 All 149.*

6. Practice.—Evidence—Prove: (1) That the accused promoted or attempted to promote feelings of enmity or hatred between different classes of the citizens of Bangladesh.

(2) That he did so by words, or by signs, or by visible representations or otherwise.

7. Practice.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by any Magistrate.

8. Charge.— (1) There is no misjoinder of the charges when an accused is charged with offences under Ss. 124A and 153-A, Penal Code, in a single trial. *(1910) 11 CriLJ 583.*

(2) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, by speaking (or writing) the words—(or by signs, or by visible representations), viz.—promoted (or attempted to promote) feelings of enmity (or hatred) between (specify the classes) the citizens of Bangladesh and thereby committed an offence punishable under section 153-A of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

9. Sanction.—(1) No court shall take cognizance of this offence unless upon complaint made by order of, or under authority from, the Government or some officer empowered by the Government in this behalf (*section 196 CrPC*). Where sanction given by the Government under section *196 CrPC* related only to an offence under section 124-A, the accused cannot be convicted under section 153-A, when it is found that he cannot be convicted under section *124A AIR 1948 Nag 71.*

(2) A complaint made by order of, or under authority from, the Government or some officer empowered by the Government in this behalf is necessary before a Court can take cognizance of an offence under this section. *AIR 1962 Pat 2.*

(3). The Magistrate can issue a warrant of arrest under Section 196(3) of the Criminal Procedure Code to facilitate investigation by police officers in appropriate cases. *AIR 1962 Pat 2.*

10. Sentence.— (1) Evidence regarding the truth of the statements made by the accused would be relevant on the question of sentence to be passed in the event of his conviction even if it may be insufficient for the purposes of proving him to be innocent of intending to promote class hatred. *AIR 1926 Lah 195.*

(2) Where the offences charged under Sections 124-A and 153A were not very serious and the accused appeared to be rather more of a silly young fool than a dangerous agitator, the Court held that a lenient punishment would meet the ends of justice. *(1940) 42 Pun LR 382.*

11. Revision.— (1) If the court had wrongly applied Section 153-A to a speech, the order can be revised by the Superior Court empowered to revise it. *AIR 1932 Lah 559.*

Section 153B

[5]**[153B. Inducing students, etc. to take part in political activity.**—Whoever by words, either spoken or written, or by sings, or by visible representations, or otherwise, induces or attempts to induce any student, or any class of students, or any institution interested in or connected with students, to take part in any political activity [6][which disturbs or undermines, or is likely to disturb or undermine, the public order] shall be punished with imprisonment which may extend to two years, or with fine, or with both.]

[6a][*Explanation.*—In this section "political activity" includes activities like processions, strikes, demostrations, and meetings arranged for a political purpose.]

Cases and Materials

1. Scope.—(1) Trial under this section is not possible. A new offence has been created by this section but no consequential amendment was made in the CrPC even in the Law Reforms Ordinance, 1978 to provide a mode for its trial. Under the circumstances no trial can be held under this section.

(2) Offence under section 153B of the Penal Code which has been newly inserted by Ordinance No. LXX of 1962 and which deals with inducing students etc. to take part in political activity is non-cognizable, non-bailable and non-compoundable. The Legislature wholly omitted to provide for procedure governing investigation, prosecution and trial of an offence under section 153B of the Penal Code. The High Court cannot lay down any such procedure. The primary and sole duty of a Court of law is to interpret and not to legislate. *16 DLR 690.*

2. Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by any Magistrate.

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5. Sections 153B was inserted by the Pakistan Penal Code (Second Amendement) Ordinance, 1962 (Ord. LXX of 1962), s. 2.
6. The words within square brackests were inserted by Act XX of 1964, s. 2.
6a. The Explanation was added by Ordinance No. LXXVI of 1962, s. 2.

Section 154

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 [7][taka], 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.

Cases and Materials

1. Scope.—(1) This section may be read along with sections 141 and 146 of the Penal Code. This section contemplates three different breaches of duty: (a) omission to give notice of a riot or unlawful assembly, (b) abstention from preventing it, and (c) negligence to suppress it.

(2) The language of the section is clear that the basis of the liability is the omission to do the things mentioned in the section, namely:

(i) Omission to give notice of the unlawful assembly or riot to the authorities when it takes place;

(ii) Omission to prevent such assembly or riot, if it is likely to take place;

(iii) Omission to disperse or suppress the riot when it does take place. *(1901) 5 CalWN 771.*

(3) Being a penal provision the section is to be strictly construed and the liability to punishment for the neglect of a statutory obligation cannot be extended by inferential reasoning. *(1901) 5 CalWN 771.*

(4) Very great caution is required before proceedings are started under this section. *AIR 1924 Cal 1018.*

(5) In order to convict a person of an offence under this section, the following facts must be established: (i) that an unlawful assembly is held or riot has taken place on the land owned or occupied by the accused or in which he claims an interest; (ii) that he or his agent, knowing that such an offence is being or has been committed, or having reason to believe that it is likely to be committed does not give the earliest notice thereof to the principal officer in the nearest police station; (iii) that he or his agent, having reason to believe that it was about to be committed does not use all lawful means in his power to prevent it, and (iv) that he or his agent, in the event of its taking place, does not use all lawful means in his power to disperse or suppress the riot or unlawful assembly. *(1906)8 CriLJ 27.*

(6) Where the agent or the manager has the required knowledge or reason for belief, it is not necessary that the owner should also have such knowledge or reason for belief. *(1901)5 CalWN 771.*

(7) Where the agent or the manager has the required knowledge or reason for belief it is not necessary to show that the owner or occupier was aware of the knowledge or the intention of the agent. *AIR 1924 Cal 1018.*

7. Subs, by Act VIII of 1973, s. 3 and 2nd Sch., for "rupees" (w.e.f. 26th March, 1971)

(8) A Police Officer has no power under this section to issue a temporary injunction or any orders restraining owners or occupiers of property from enjoying possession of the same. *1979 CriLJ 175.*

2. Practice.—Evidence—Prove: (1) That a riot took place.

(2) That the land upon which it was committed was owned or occupied by the accused, or that accused had or claimed an interest in the land upon which it was committed.

(3) That the accused (or his agent or manager) knew that it was being, or had been, committed or had reason to believe that such riot was likely to be committed.

(4) That the accused (or his agent or manager) omitted to give by the earliest notice in his power to the principal officer at the nearest police station.

(5) That the accused (or his agent or manager) omitted to use all lawful means in his power to prevent such riot, or to suppress it if it had taken place.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (Name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, (or your agent or manager) on or about the—day of—, at—, knowing (or having reason to believe) that an assembly of five or more persons, the common object of which was to—was likely to be (or was being or had been) held on certain land situated at—or which you are the owner (or occupier) (in charge under section 155) or in which you have a claim or interest as in the land and that force or violence was likely to be (or was being or had been) used in the prosecution of the object of the assembly, did not give the earliest notice thereof in your (or his) power to the principal officer at the Police Station at—and did not use all lawful means in your (or his) power to prevent it (or disperse or suppress the riot or unlawful assembly) and that thereby you committed an offence punishable under section 154, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 155

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.

Cases and Materials

1. Scope of the Section.— (1) Where two persons demand kabuliyats in respect of certain land from tenants and there is no evidence to show that they demanded the same on their own behalf, it is not proper to convict them under this section for claiming a false interest in land. *AIR 1914 Cal 634.*

(2) A conviction under the section for a riot which occurred not in respect of the Khalyan itself but with respect to the right to collect rent from the tenants is maintainable. *AIR 1917 Pat 523.*

(3) Knowledge on the part of the owner or occupier of land of the acts or intentions or the agent is not an essential element of an offence under the section and he may be in entire ignorance of the acts of his agent or manager. *AIR 1924 Cal 1018.*

(4) In a case where the accused persons are charged under this section and some of them are also charged for rioting which is the foundation of the former charge the trial for the offence under this section ought to be postponed till the disposal of the rioting case. *AIR 1920 Pat 700.*

(5) The records of another case should not be looked into as evidence in a trial for the offence under this section. *AIR 1914 Cal 634.*

2. Practice.—Evidence—Prove: (1) That the riot was committed.

(2) That it took place with respect to some land or that it arose out of some dispute.

(3) That the accused was the owner or occupier of such land or claimed an interest therein or claimed some interest in the subject of such dispute.

(4) That such riot was committed for the benefit or on behalf of the accused or that the accused accepted or derived some benefit therefrom.

(5) That the accused or his agent or manager had reason to believe,

(a) that such riot was likely to be committed, or

(b) that the unlawful assembly, which committed such riot, was likely to be held.

(6) That the accused, his agent, or manager did not respectively use all lawful means etc.

(a) to prevent such assembly or riot from taking pace, or

(b) for suppressing and dispersing the same.

(Note: No conviction could be made unless it is shown that the accused had interest in the land.)

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by an Magistrate.

4. Charge.— The charge should run as follows:

I, (name and office of the Magistrate/Judge) hereby charge you (name of the accused) as follows:

That you, (or your agent or manager) on or about the—day of— at—knowing that an assembly of five or more persons, the common object of which was to—was likely to be held on certain land situated at—of which you are the owner (or occupier) or in which you have a claim or interest as in the land and that force or violence was likely to be used in the prosecution of the object of the assembly, did not give the earliest notice thereof in your power to the principal officer at the police station at—and did not use all lawful means in your power to prevent it (or disperse or suppress the riot or unlawful assembly) and that thereby you committed an offence punishable under section 155 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 156

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.

Cases and Materials

1. Scope.— (1) In order to sustain a conviction under the section it must be proved:

(i) that the riot as defined in this Code was committed;

(ii) that the riot which was committed was for the benefit of or on behalf of the person who is the owner or occupier of or the person claiming an interest in, the land respecting which such riot took place or who claims an interest in the subject of dispute;

(iii) that the accused had reason to believe that such riot was likely to be committed or that the unlawful assembly is likely to be held;

(iv) that the accused did not use all lawful means in his power to prevent the riot or assembly from taking place and to suppress and disperse the same. *(1884) ILR 10 Cal 338.*

(2) Where the evidence established a state of affairs from which a reasonable inference could be drawn that the agent or the manager of the accused must have known that the riot was likely to take place and that he did not take all proper steps for the purpose of preventing such riot the conviction under this section would be proper. *(1900) 4 Cal WN 691.*

2. Practice.—Evidence—Prove: (1) That a riot was committed.

(2) That the riot if committed, was committed for the benefit of the accused.

(3) That the accused had reason to believe that riot was likely to be committed.

3. Procedure.—Not cognizable—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you (or your agent or manager) on or about the—day of—at—knowing (or having reason to believe) and an assembly of five or more persons, the common object of which was to—was likely to be held on certain land situated at—of which you are the owner (or occupier) or in which you have a claim or interest as—in the land and that force or violence was likely to be used in the prosecution of the object of the assembly did not give the earliest notice thereof in your power to the principal officer at the Police Station at—and did not use all lawful means in your power to prevent it (or disperse or suppress the riot or unlawful assembly) and that thereby you committed an offence punishable under section 156 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 157

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.

Cases and Materials

1. Scope.— (1) Section 157 is of wider application. It provides for an occurrence that may happen and makes the harbouring, receiving, or assembling of persons, who are likely to be engaged in any unlawful assembly, an offence. There again, the law contemplates the imminence of an unlawful assembly and the proof of facts which in law would go to constitute an unlawful assembly. *(1902) ILR 29 Cal 214.*

(2) Where the accused as charged for having harboured certain persons who were alleged to have formed an unlawful assembly in the past for the commission of an offence the accused cannot be convicted under this section. *AIR 1931 Cal 712.*

(3) To support a conviction under this section it must be shown that for the purpose of an unlawful assembly the persons were hired or engaged or employed. *AIR 1931 Mad 440.*

(4) Volunteers engaged for preparing salt cannot be said to have been hired or engaged or employed by their leader for purposes of forming an unlawful assembly. *AIR 1931 Mad 440.*

2. Practice.—Evidence—Prove: (1) That the house or premises in question was or were in the occupation or charge of, or under the control of, the accused.

(2) That the accused harboured, received, or assembled therein the persons in question.

(3) That such persons had been hired, engaged, or employed, or were about to become so, to join or become members of an unlawful assembly.

(4) That, when the accused did as in (2) above, he knew that such persons had been so hired, etc. for that purpose.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.— The charge should run as follows:-

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—harboured, received or assembled in any premises in your occupation or charge or control and the persons named knowing that such persons were hired, engaged or employed or about to be hired or engaged or employed to become members of an unlawful assembly and thereby committed an offence punishable under section 157 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 158

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.

Cases and Materials

1. Scope.—(1) Even in the absence of an unlawful assembly in existence or in contemplation the offence under this section can be committed whereas the offence under Ss. 150 and 157 can only be committed in view of an unlawful assembly in existence or in contemplation. *(1902) ILR 29 Cal 214.*

2. Practice.—Evidence—Prove: (1) That the engagement or hiring of the accused, or the offer or attempt by the accused to become so

(2) That the object of such engagement or hiring was to do or assist in doing, an act which would make an assembly an unlawful one (section 141).

Prove also (for the first part of the section) where the accused went or offered to go armed with a deadly weapon.

3. Procedure.—Cognizable – Summons (if the case comes under the first clause) warrant (if it falls in the second)—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby change you (name of the accused) as follows:

That you , on or about the—day of—, at—, engaged or hired (or offered or attempted to be hired or engaged) to do or assist in doing(here specify the act which amounts to an offence under section 141) and went armed (or offered to go armed) with a deadly weapon (or with which used as a weapon of offence) was likely to cause death and thereby committed an offence under section 158 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 159

159. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray.

Cases and Materials

1. For cases and materials on section 159, see under section 160.

Section 160

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 [8][taka], or with both.

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8. The word "taka" was substituted for the word "rupees" by Act VIII of 1973, Second Schedule (w.e.f. 26th march, 1971.

Cases and Materials : Synopsis

1. *Scope.*
2. *Affray.*
3. *Fight.*
4. *Public place.*
5. *Disturb the public peace,*
6. *Affray and rioting.*
7. *Affray and right of private defence.*
8. *Practice and procedure: Cases.*
9. *Conviction under Section 160—When bars second trial.*
10. *Sentence.*
11. *Practice.*
12. *Procedure.*
13. *Charge.*

1. Scope.—The word "fight" connotes 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. To constitute an affray there must be a fight. Fighting connotes necessarily a context or struggle for mastery between two or more persons against one another. A struggle or a context necessarily implies that there are two sides each of which is trying to obtain the mastery, so that unless there is some violence offered or threatened against one another there could be no fight but only a mere assault or beating. There must be a definite disturbance of public peace due to the fight in the public to make the offence an affray.

2. Affray.—(1) To constitute an affray as defined in Section 159 there must be (i) a fighting. (ii) between two or more persons, (iii) in a public place, and (iv) consequent disturbance of the public peace. I Weir 71.

(2) Where there is no finding as to who was the second person concerned in the fight, there can be no charge for an offence of affray under this section. *AIR 1933 Mad 813.*

(3) The offence of affray being a joint offence, each person concerned in it taking part in the fight, the Court must be satisfied that each one of the accused took an active physical part in the process of fighting before convicting him of the offence. *1983 CriLJ (NOC) 97.*

3. Fight.— (1) A fight is an essential element in any affray and necessarily connotes a context or struggle for mastery between two or more persons against one another in which each of the two sides is trying to obtain mastery over the other. *1962(1) CriLJ 339.*

(2) Where one person attacks and the other retaliates, it is legally correct to say that the two persons are fighting. *AIR 1931 All 8.*

(3) Where, one hearing the cries of help from the accused, twenty-persons rushed to the spot but none of them attacked the complainant nor did the complainant do anything to bring the matter to the pitch of fight, it was held that there was no affray within the meaning of S. 159. *AIR 1952 All 788.*

(4) An answering war cry or an active nonviolent resistance by one party to the violence used by the other party, is sufficient to constitute as 'fight'. *AIR 1950 Mad 408.*

4. Public place.— (1) A place which is dedicated in the use of the public or to which the public can go as of right is, of course, a public place. *AIR 1951 Orissa 51.*

(2) The question whether a place is a public place or not does not necessarily depend on the right of the public as such to go to the place. The places where the public are actually in the habit of going must also be deemed to be a public place for the purpose of the offence of affray. *AIR 1937 Mad 286.*

(3) A place may be a public place even though it is the private property of an individual. Where a place is owned privately and there is no dedication to the public the question whether it is a public

place depends upon the character of the place itself and the use actually made of it by the public. *(1904) 1 CriLJ 349.*

(4) Where there is evidence that the owner has taken action against the trespassers and ejected them, the place cannot be said to be a public place even though the public might have occasionally used it without any interference. *(1905)2 CriLJ 46.*

(5) A private well used by the public is a public place. *AIR 1916 Nag 15.*

(6) A small open space, not closed by gates adjoining a Hindu temple and forming part of its compound was held to be a place of public resort for the purposes of the Town Nuisance Act, 1889, though other religionists were excluded from its precincts. It was observed that it was not necessary that every member of the public should have a right of access to a place in order to make it a place of public resort. *AIR 1917 Mad 124.*

(7) The finding that the scene of occurrence is a public place must be distant and clear. Where there is a doubt about the same, conviction under this section would not be justified. *1974 MadLW (Cri)6.*

5. 'Disturb the public peace'.— (1) The word 'affray' is derived from the French 'affrayer' meaning that which affrights or puts in fear or terrifies. *AIR 1931 All 8.*

(2) For a charge under S. 160, it is a matter of importance to ascertain how the public peace was disturbed. There must be an indication of a definite disturbance of the public peace due to fight in a public place. *AIR 1933 Mad 843.*

(3) Where the evidence only shows that the people gathered on the public road and caused inconvenience to the public, the offence of 'affray' is not made out, as 'disturbance of the peace' and 'causing inconvenience to the public' are different notions. *1962(1) CriLJ 330.*

(4) Where a fight took place in an open field in which about 25 persons took part in throwing stones and a crowd of about 150 to 300 was present at the spot, the very presence of a large number of public at the time of the disturbance which lasted at least for a quarter of an hour, showed that the members of the public must have been alarmed by reason of the fight and that there was sufficient breaking of the public peace within the meaning of S. 159. *AIR 1937 Mad 286.*

6. Affray and rioting.—(1) Although an assembly of persons may not be found guilty of rioting (the case not being covered by s.146), the member of the assembly may be guilty of committing an 'affray' under this section. *1957 MPLJ 111.*

(2) Where two factions engage in a fight and injuries are caused to persons on both side but it is not proved who actually caused the injuries and there is no proof of common intention, the accused cannot be convicted under Section 323 on the presumption that some persons must have caused the injuries. The proper conviction would be under S. 169. *AIR 1921 All 261.*

7. Affray and right of private defence.—(1) Section 168 is controlled by Section 96, P.C. which provides that nothing is an offence which is done in exercise of the right of private defence. A party charged with committing an affray can plead that he exercised that right of private defence and if he establishes it he cannot be guilty of the offence under this section *1933 Mad WN 721.*

(2) Two persons, A and B, met and after abuse came to blows. Each one struck the other down. Others also participated in the quarrel. B died of the injuries. There was no evidence that A alone was the assailant of B. It was held that A could be convicted only under S. 160 and not under Part II of S. 304 here was nothing to choose between the fighters. *(1912) 13 CriLJ 718 (Lah).*

8. Practice and procedure: Cases.—(1) Where an accused is charged with causing grievous hut, he cannot be convicted of an offence of affray under this section without framing a fresh charge against him. *AIR 1933 Mad 843.*

(2) Where an accused is being tried for an offence under this section, he cannot be convicted for an offence under S. 290 of the Code as the ingredients of the latter offence differ from those of an affray of which he was charged. *AIR 1959 Mad 513.*

9. Conviction under S. 160—When bars second trial.—(1) The test for determining the legality of the trial of a person more than once is whether the offence for which he is being tried subsequently is distinct from the offence for which he was previously tried. As the offence of causing hurt is distinct from that of affray, the trial and conviction of the accused under S. 160 of the Code is no bar to a subsequent trial under S. 323 on a complaint filed by one of the parties to the affray. *AIR 1955 Mys 138.*

10. Sentence.—(1) Where an accused is charged with an offence under S. 160, the maximum sentence under which is an imprisonment of one month or a fine of Rs. 100, it is not necessary to fix the amount of bail bond at Rs. 1,000 or even Rs. 500. *AIR 1960 Punj 572.*

11. Practice.—Evidence—Prove: (1) That the accused and another person or other persons were fighting.

(2) That such fight was in a public place.

(3) That the fight disturbed the public peace.

(Note: A conviction under this section on a prosecution initiated by the police, would be no bar to a subsequent trial under section 323 on a complaint laid by the party injured.)

12. Procedure.— Not cognizable—Sûmmons—Bailable—Not compoundable—Triable by any Magistrate/Village Court.

13. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—by—fighting with each other (or with—) in a public place disturbed the public peace and thereby committed an offence punishable under section 160 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER IX
Of Offences by or relating to Public Servants

Chapter Introduction.—*As this Chapter is intended to reach offences which are committed by public servants, and are of such a description that they can be committed by public servants alone, so the next Chapter X deals with the contempt of the lawful authority of public servants in its various forms which can only be committed by members of the public in relation to such public servants. As this Chapter is intended to ensure probity among public servants, the next Chapter creates certain obligations on the part of the public to assist public servants in the discharge of their duty. It must not be understood that this Chapter is an exhaustive Code for public servants, since the State can make rules for the conduct of its own servants, though it cannot regulate the morality of the public at large, beyond that implied in the enactment of this Code. Misconduct and abuse of their power by persons other than public servants have to be left to be otherwise dealt with by the penal visitation of a Criminal Code.*

Those offences which are common between pubic servants and other members of the community, are left to the general provisions of the Code. If a public servant embezzles public money, he is left to the ordinary law of criminal breach of trust. If he falsely pretends to have disbursed money for the public, and by this deception induces the Government to allow it in his accounts, he is left to the ordinary law of cheating. If he produces forged vouchers to back his statement, he is left to the ordinary law of forgery. There is no reason to punish these offences severally when the Government suffers by them than when private people suffer, since the security of Government lies in the purity of its administration without which it would lose both revenue and prestige.

This Chapter does not provide punishments for all kinds of misconduct of public servants, and this the authors of the Code were not unaware of. They also admitted that the punishments enacted in the Chapter are not properly proportioned, either to the evil which the abuse of power produces, or to the depravity of a man who, having been entrusted with power for the public benefit, employs that power to gratify his own cupidity or revenge. But the penalty of an offence committed by a public functionary in the exercise of his public functions has been fixed on the supposition that it will often be only a part, and a small part of the penalty which he will suffer. It is in the power of the government to punish him for many acts which the law has not made punishable. "It is in the power of the Government to add to any sentence pronounced by the courts, another sentence which will often be even more terrible". Such a sentence may consist of degradation or dismissal, the infliction of which must be left to the executive government which may be trusted to suppress and punish corruption and oppression.

This Chapter makes the receiving of a bribe an offence while another punishes the giver as an abettor. The authors did not, however, consider this course advisable, being of opinion that, in many cases, the receiver is the tempter and the giver has no option. In other words, bribes in this country partake of the nature of extortion. But the Legislature has followed the normal law, and has made both the giver and the receiver criminally liable. Besides the normal cases of bribes, public servants are prohibited from using their office to benefit themselves in more indirect ways. The authors of the Code instanced two such cases viz. a deposit made with a private banker who pays the heavy rate of interest, and a house taken on low rent and furnished with costly furniture. Illegal gratification may take other forms, which may be penalized by the promulgation of rules for the conduct of public servants as mentioned in Sec. 166. Cases not covered by that section would, the authors hoped, be dealt with by the executive Government.

Section 161

161. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be, a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, [1][with the Government or Legislature], or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant".—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification".—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration".—The words "legal remuneration" are not restricted to remuneration which a pubic servant can lawfully demand, but include all remuneration which he is permitted by the [2][authority by which he is employed], to accept.

"A motive or reward for doing".—A person who receives 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, comes within these words.

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1. The words "with the Central or any provincial Government or Legislature" were first substituted for the words "with the Lesgislative or Executive G. of I., or with the Govt. of any Presidency, or with any Lieutenant-Governor" and than the word "Government" was substituted for the words "Central or any Provincial Government" by Act VIII of 1973 Second Schedule (w.e.f. 16th March 1971).

2. Substituted by the Criminal Law Amendment Act, 1953 (Act XXXVII or 1953), s. 2 for "Government, which serves".

Illustrations

(a) A, a Munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of [3][Consul at the court of a [4][foreign] Power, accepts a lakh of [5][taka] from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the [6][Government of Bangladesh]. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Cases and Materials : Synopsis

1. ***Scope.***
2. ***Public servant.***
3. ***"Accepts or obtains or agrees to accept or attempts to obtain".***
4. ***"Or for any other person".***
5. ***Gratification other than legal remuneration.***
6. ***"As a motive or reward".***
7. ***Official act.***
8. ***"With any public servant, as such".***
9. ***Capacity and intention to do the act not necessary.***
10. ***Abetment of offence under this section.***
11. ***Cognizance of an investigation into cases.***
12. ***Sanction to prosecute.***
13. ***Evidence and proof.***
14. ***Trap witness.***
15. ***Punishment.***
16. ***Practice***
17. ***Procedure***
18. ***Charge***
19. ***Appeal and revision.***

1. Scope.—(1) This section should be read along with section 21 of the Penal Code and Criminal Law Amendment Act (XL of 1958). Act XL of 1958 is a special Act and excludes the operation of the corresponding provisions of the Code of Criminal Procedure including Law Reforms Ordinance, 1978 by the use of the words "notwithstanding anything contained in the Code of Criminal Procedure" (*PLD 1956 FC 152)*. Act XL of 1958 is a procedural law. The Schedule appended to Act XL of 1958 (section 5) shows sections 161 to 166, 168, 217, 218, 403, 409, 417 to 420, 465 to 468, 471 to 477A of the Penal Code and as attempts, abutments, and conspiracies in relation thereto or connected therewith when committed by any public servant as such or by any person acting jointly with or abetting or attempting to abet or acting in conspiracy with any public servant as such are offences punishable under the Prevention of Corruption Act, 1947 exclusively triable by the Special Judge appointed under Act XL of 1958. The Schedule appended to CrPC Schedule II column 5 and 8 as

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3. Substitution by A.O., 1961 Art. 2 and Sch., for "Resident" (with effect from the23rd March, 1956).
4. Subs, *ibid.*, for "subsidiary" (with effect from the 23rd March, 1956).
5. The word "Taka" was substituted for the word "Rupees" by Act VIII of 1973 (with effect from the 26th March, 1971).
6. The original words "Britissh Government" have seccessively been amended by A.O., 1961 (w.e.f. 23-3-56) and Act VIII of 1973 (w.e.f. 26-3.71) to read as above.

regards those sections aforesaid are not applicable. The Criminal Law Amendment Act of 1958 was enforced to provide for more speedy trial and more effective punishment of certain offences as mentioned in the Schedule of the said Act. It supplements the provisions of the Prevention of Corruption Act, 1947. According to the provisions of Act XL of 1958 and Act II of 1947, the procedure for trial is under chapter XX, CrPC when an accused appears or is brought before the Special Judge the substance of accusation shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted. A conviction without taking of any evidence and purporting to be based on a plea of guilt cannot be sustained (*PLD 1960 Dhaka 213*). When the accused was not given an opportunity to explain admission, his conviction was set aside (*PLD 1952 FC 1*). If the Court does not find the accused guilty he must record an order of acquittal. No order of discharge can be passed. All the offences triable under Act XL of 1958 and Act II of 1947 are non-bailable. The jurisdiction of the Magistrate to grant bail extends till the Special Judge takes cognizance of the case. The Special Judge has no jurisdiction to call upon the accused to furnish security for the appearance before the Magistrate (*PLD 1965 Kar 362*). With the general degeneration of public morals nowadays, the procedure relating to the trial of offences under Act XL of 1958 and act II of 1947 have been materially changed. The subject of bribery and corruption is very side. So the law relating to the offences of bribery and corruption should be made more stringent and punishment awardable should be much heavier. The words "bribe" and "gratification" are not defined in the Code. The explanation to section 161 of the Penal Code extends the sense of the word "gratification" which was not restricted to pecuniary gain only, or to gratification estimable in money. The word is used in its wider sense connoting anything which affords satisfaction, gratification or pleasure to the taste, appetite of the mind, the satisfaction of one's desire whether of mind or of the body being gratified. Thus, the granting of a certain distinction for himself or to someone in whom the object is interested or carnal intercourse with someone, would equally be bribery. Money is a great source of affording pleasure, since it implies power over thighs, which give pleasure. Thus, bribery or illegal gratification is benefit or reward given to incline one to act contrary to the rules of honesty or integrity, and to influence one in his behaviour in office. In a word, the main requirement under this section is the receipt of illegal gratification by a public servant as a motive or reward for the abuse of official position by the receiving of the bribe by himself showing favour or by getting the favour done by some other public servant at his instance (*AIR 1956 (SC) 476*).

(2) No reliable evidence—to support the prosecution case—Conviction can still be based on circumstantial evidence—Conviction cannot be upheld as there is no direct evidence—No evidence to prove the demand—No circumstantial evidence so compelling in nature to reach no other conclusion than the guilt of the accused. Accused entitled to acquittal. Separate punishment is legal under section 161, Penal Code and under section 5(2) of Prevention of Corruption Act as the offence under those two sections are distinct and different. *10 BCR 56.*

(3) Bribe was taken from police constable for expediting the passing of arrear bill and prosecution case established beyond reasonable doubt on the contention that non-examination of some other persons who were present in the room where the bribe money was said to have been demanded and accepted the conviction could not be sustained. Held—the mere fact that some other persons were present in the room where the occurrence took place does not vitiate the conviction as it does not appear as to which other persons who have not been examined actually saw the occurrence. *1 BSCD 341.*

(4) Illegal gratification—prosecution failed to prove taking of bribe by the accused—Magistrate developing illicit connection and found in compromising position with a woman who was a party in criminal cases pending before him. The Act of taking money as bribe and the attempt to take illegal

gratification in kind are two distinct offences having no nexus between them. No separate charge for the latter framed. As regards the first set of facts Court below found the accused not guilty. As regards the second set of facts of the conduct of Magistrate, no such narration in the FIR. That in return for either the satisfaction of his sexual lust by the informant's wife of enjoyment of her company, the accused will show favour to them in cases pending in his Court—No second trial or retrial presumption can be rebutted from the evidence and circumstances of the case. In the absence of any arrangement or understanding or any inducement given by the accused (Magistrate) that he would show favour in the cases pending in his Court in return for either the satisfaction of his sexual lust by Harunnessa or the enjoyment of his company. By no stretch of imagination can it be said that the attempt of the accused to have illicit act on the informant's wife was in return for showing favour to them in the cases pending in the Court of the accused (Magistrate). The conduct of the accused in developing unusual intimacy with Delwar Hossain (informant) and his visit to his house to outrage the modesty of his wife was not made the subject matter of offence under section 161 of the Penal Code. The act of taking money as bribe and the attempt to take illegal gratification in kind are two distinct offences having no nexus between them. No useful purpose would be served by sending the case back for the retrial simply on account of the fact that the accused respondent was found in a compromising position with a woman who was party in two criminal cases pending before the Magistrate. The presumption from this fact can be rebutted from the evidence and circumstances of the case. *1 BSCD 241.*

(5) The mere fact of recovery of tainted money from the possession of the accused does not prove charge of bribery under section 161, Penal Code. Before it can be said that the money was offered as a motive or reward for any of the purposes mentioned in section 161, Penal Code. A connection must be established between the performance of the official act and the demand or payment of money. It is improper on the part of the prosecution to remove the original statement of the defence witness recorded under section 161 of the Code and replace it with one which is said to be a copy of the original one. *22 DLR 195.*

(6) Investigation about the offence of receipt of bribe money does not commence when the demand for bribe was made. Statement by an accused person in a trap case under Anti-Corruption Act to a Magistrate or a police officer is admissible in evidence and not being one in the course of investigation is not as such hit by sections 164 or 364, CrPC. The question before the Supreme court which fell for decision were when does investigation commence in a case under Anti-Corruption law— Whether the statement made by an accused person to a Magistrate conducting the trap after the raid and recorded by him without observing the formalities of section 164, CrPC is admissible in evidence— Held: If the accused person makes a statement in presence of a police officer or a Magistrate before the case is registered in presence of a police officer or a Magistrate before the case is registered and investigation commences they will be competent witnesses to the commission of the offence and the statement made by the accused in their presence will notwithstanding the provisions of section 164, CrPC be admissible in evidence. Statement of the Government servant recorded at the time of recovery of the bribe money from him by a Magistrate will not attract the provisions of section 164, CrPC. The trap evidence was invoked in the sub-continent for a very long time and no one challenged its legality. There is a well-known adage that a Judge must wear all the laws of the country on the sleeve of his robe. *21 DLR(SC) 182.*

(7) It is not essential to prove demand of illegal gratification. Conscious acceptance is to be proved. There is no authority for the proposition that making demand for illegal gratification is an essential ingredient of the offence under section 161 of the Penal Code. Conscious acceptance of any

such gratification makes a public servant liable to punishment under section 161 of the Code. It is the duty of the prosecution to prove that there was conscious acceptance of the money by the accused. It has not been held that in the case of Anwar Ali Mia vs. State the proof of demand of illegal gratification is a condition precedent to the conviction under the said section. It cannot be said that there can be no conviction under section 161 where demand of illegal gratification has not been proved. *20 DLR 587.*

(8) Discovery of currency not form the person of the accused does not necessarily prove that it was given as a bribe. What happened in this case as this: The accused who was a Head Master of a school as said to have demanded a certain amount of money for admission of a student in his school. The complainant agreed to pay Rs. 5 and before he actually paid the amount informed the Anti-Corruption Department and after that paid the accused a five-rupee currency note with its number recorded by the Anti-corruption officer beforehand. The accused put the money in his pocket and soon after that the Anti-Corruption Officers approached him and on search found the note in his pocket. Held: In these circumstances the offence under section 161, Penal Code cannot be said to have been proved against the accused. What has been proved is that a five-rupee currency note, the number of which was entered in a separate paper, was fond in the upper chest pocket of the shirt of the accused and the District Anti-Corruption officer and other officers of the trap party placed the accused under arrest. This fact does not and cannot lead to the conclusion that the five rupee currency note was given by Dayem Chowdhury to the accused as illegal gratification. *20 DLR 407.*

(9) Offence is committed when demand for bribe is made. The offence under section 161, Penal Code or for that matter that of criminal misconduct under the Prevention of Corruption Act, 1947 is committed the moment a demand for bribe is made by a public servant. In a trap case confession of the accused before a Magistrate supervising the trap is a judicial confession and such confession must be recorded under sections 164 and 364 failure of which renders it inadmissible. "Investigation" when deemed to begin agreement to receive bribe, and actual receipt of the bribe are two offences—Investigation begins at different moments. Trap—Statement of accused made before Magistrate conducting trap operations. Where and when not admissible at trial. *20 DLR(WP) 48.*

(10) Bribe for past favour equally an offence, offence is complete if the bribe-giver is led to believe that the act would go against him if he does not give bribe. The bribe or illegal gratification may well be a bribe even if it is paid as a reward for favour shown in the past. Whether the act to be done in consideration of a reward amounts to a favour or not or an official act or not is not very relevant, if the person giving the bribe is led to believe that the act would go against him if he did not give the bribe. *13 DLR 270.*

(11) Offences under section 161 of the Penal Code and under section 5 of the Prevention of Corruption Act, 1947 are distinct and dissimilar offences. More than three offences cannot be combined in one trial, either under section 234 or 235 or 239 of the Code of Criminal Procedure. *12 DLR 100.*

(12) Under section 161 of the Penal Code and the corresponding section of the Prevention of Corruption Act, 1947, attempts to obtain any gratification is as much an offence under those sections as actual acceptance or receipt of a bribe. Where the accused attempted to receive bribe and in order to get it he put pressure on the complainant and his attempt would have succeeded but for certain circumstances. Held: The offence of attempt under section 161, Penal Code was complete. *(Ref. 10 DLR 43 WP Karachi). 11 DLR (SC) 103.*

(13) Impression of the bribe-giver that the officer is in position to show official favour is the real test in a charge under section 161. On a charge under section 161, Penal code the real point is not whether the particular public servant was at the particular time in a position to render the official's service sought but whether the accused person was under the impression that he was in a position to show favour in the exercise of his official functions. *9 DLR 67.*

(14) Trivial amount alleged was paid as gratification—Court may decline to presume it as such. It was contended on behalf of the prosecution that, since the accused admitted the acceptance of Rs 6 though denied it was on account of illegal gratification, it was immaterial whether the prosecution had succeeded in establishing that it was paid by way of illegal gratification or not. Held: where the amount of the alleged gratification was only Rs. 3 the amount was such a trivial one that it was hardly to have been accepted by the accused as illegal gratification. *8 DLR 562.*

(15) Conviction both under section 161, Penal Code and under section 5(2) of Act II of 1947 valid but sentence can be awarded only under either of the two. Under section 26 of the General Clauses Act, the accused could have been charged under either or both of the enactments but could not be punished more than once for the same offence. *(Ref. 7 DLR 302). 8 DLR (SC) 145.*

(16) Real point to see in regard to a charge under sections 161/116 is not the guilty intention or mens rea of the public officer, but the mens rea of the bribe-giver. In regard to a charge under section 161 read with section 116 of the Penal Code the real point to see is not whether the public servant was in a position to render the official services sought but whether the accused person was under the impression that the public servant was in a position to show favour in the exercise of his official function. That is the material test. It is mens rea of the man who offers the bribe rather than the mens rea of the person who takes the bribe that is material. It is true that it has been held that the bribe must be taken by the bribe-taker in order to do something within the exercise of his official functions, but that is a necessary ingredient in cases which come under section 116 alone. *4 DLR 543.*

(17) There is no authority for the proposition that making demand for illegal gratification is an essential ingredient of the offence under section 161, Penal Code. In order to prove this offence it is the duty of the prosecution to prove that there was conscious acceptance of the bribery money by the accused. *AKM Mukhlesur Rahman Vs. State 45 DLR 626.*

(18) When factum of recovery has not been proved by independent and disinterested witnesses, it would be unsafe to find the guilt of the accused under section 161, Penal Code. *AKM Muklesur Rahman Vs. State 45 DLR 626.*

(19) The act for which the illegal gratification is to be paid or received as already over before the commission of the alleged offence and in such circumstances it will be most unsafe to hold a person guilty. *AKM Msukhlesur Rahan Vs. State 45 DLR 626.*

(20) Bribe was taken from police constable for expediting the passing of a arrear bill—prosecution case established beyond reasonable doubt—on the contention that non-examination of some other person who were present in the room where the bribe money was said to have demanded and accepted the conviction could not be sustained. Held: the mere fact that some other persons were present in the room where the occurrence took place does not vitiate the conviction as it does not appear as to which other persons who have not been examined actually saw the occurrence. *1 BSCD 241.*

(21) In the absence of any arrangement or understanding or any inducement given by the accused (Magistrate) that he would show favour in the cases pending in his court in return for either the

satisfaction of his sexual lust by Harun Nessa or the enjoyment of his company by no stretch of imagination can it be said that the attempt of the accused to have illicit act on the informant's wife was in return for shown favour to them in the cases pending in the Court of accused (Magistrate). The conduct of the accused in developing unusual intimacy with Delwar Hossain (informant) and his visit to his house to outrage the modesty of his wife was not made the subject matter of offence under sec. 161 of the Penal Code. The act of taking money as bribe and the attempt to take illegal gratification in kind are two distinct offences having no nexus between them—No useful purpose would be served by sending the case back for retrial simply on account of the fact that the accused respondent was found in a compromising position with a woman who was a party in two criminal cases pending before the Magistrate. The presumption from this fact can be rebutted from the evidence and circumstances of the case. *I BSCD 241.*

(22) Before an offence is held to fall under this section the following requirements have to be satisfied:

(i) the accused at the time of the offence was, or expected to be, a public servant;

(ii) that he accepted or obtained or agreed to accept, or attempted to obtain from some person a gratification;

(iii) that such gratification was not a legal remuneration due to him; and

(iv) that he accepted the gratification in question as a motive or reward for—

(a) doing or forbearing to do an official act; or

(b) showing or forbearing to show favour or disfavour to someone, in the exercise of his official functions; or

(c) rendering or attempting to render any service or disservice to someone, with the Government or Parliament or the Legislature of any State or with any public servant. *AIR 1969 SC 12.*

(23). This section deals with three categories of cases:-

(i) Acceptances of gratification other than legal remuneration as a motive or reward for doing or forbearing to do any official act;

(ii) Acceptance of gratification other than legal remuneration for showing or forbearing to show, in the exercise of his official functions, favour or disfavour;

(iii) Acceptances of gratification other than legal remuneration for rendering or attempting to render any service or disservice to any person with the Government or Parliament or with any Legislature or local authority, Corporation or Government Company or with any public servant, as such. *1949 AllLJ 326; 26 CriLJ 1367.*

(24) The Prevention of Corruption Act may be said to be an aggravated form of the offences under this section and S. 165, and clauses (a) and (b) apply to cases of habitual bribe-taking by public servants. *AIR 1957 SC 458.*

(25). If a man obtains a pecuniary advantage by the abuse of his position he will be guilty under the Prevention of Corruption Act Ss. 161, 162 and 163 refer to a motive or reward for doing or for forbearing to do something, showing favour or disfavour to any person or for inducing such conduct by the exercise of personal influence. It is not necessary for an offence under Cl. (d) to prove all this. It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour. *AIR 1956 SC 476.*

(26) Case under Prevention of Corruption Act—Marked currency notes recovered from pocket of shirt which accused was wearing—Accused must show how he came into possession of notes. *AIR 1973 SC 910.*

(27) The Prevention of Corruption Act and S.161 of the Code. *AIR 1970 SC 356.*

2. Public Servant.—(1) This section will apply to a public servant who is on leave, as he cannot be said to have ceased to be a public servant. Such leave counts as duty and so long as a person is on duty he must be deemed to be a public servant. *AIR 1948 Mad 63.*

(2) Under S. 137 of the Railways Act (1890) a servant of the Railways is a public servant for the purposes of offences under Chap. 9 of this Code and this section occurs in Chapter 9. *AIR 1959 SC 847.*

(3) Minister is a public servant and the necessary consequence is that the sanction under Prevention of Corruption Act. Sanction is a must for his persecution. *ILR (1983) Bom 2098.*

(4) M.L.A. was not and is not a "public servant" within S. 21. *AIR 1984 SC 684.*

(5) Servant of Road Transport Corporation not a public servant within the meaning of S.21, P.C. *AIR 1964 SC 492.*

(6) The definition of "public servant" governs all provisions of Prevention of Corruption Act. *AIR 1979 SC 358.*

(7) Assistant Civil Engineer employed by Cooperative Society is not an officer of the society within the Cooperative Societies Act, but a mere employee. He is therefore, not a public servant u/s. 161 read with S. 21, P.C. *1981 CriLJ 1718.*

(8) Where a Civil Court purported to act under its inherent powers, and appointed a Commissioner on the application of defendant for seizing the account books of the plaintiff, it was held that the Commissioner so appointed was not a public servant and an offer of a bribe to him did not fail under S. 165A of the Code. *AIR 1961 SC 218.*

(9) A Minister is an "officer subordinate to the President" through whom the President exercises his executive powers. *AIR 1945 PC 156.*

3. Accepts or obtains or agrees to accept or attempts to obtain".—(1) The words "obtains or attempts to obtain" include threat and extortion. *AIR 1956 SC 476.*

(2) To ask for a bribe is an attempt to obtain one and a bribe may be asked for as effectively in implicit as in explicit terms. *AIR 1958 Madh Pra 157.*

(3) Since an allurement was given by the Food Inspector that he would not take sample of milk vendor which is a part of his official duty if the latter made to him monthly payment, the Food Inspector will come within the clutches of the offence under S. 161. *1980 All CriR 430.*

(4) It is not essential that the payment of illegal gratification should be made into the hands of the public servant in order to attract the operation of this section. It may be made into the hands of a person designated by him. *1979 Cri LR(SC) 122.*

(5) Where B was alleged to have obtained illegal gratification from N through R and R was held not to have asked N for any gratification on behalf of B, the case against B under S. 161 must necessary fail. *AIR 1972 SC 1502.*

4. "Or for any other person".—(1) This section requires proof that a public servant has obtained as a motive or reward or official conduct, an illegal gratification for himself or for another person. That other person may or may not be an official and therefore may be wholly unconnected with the official

conduct. But the conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. This is clear from the phrase "in the exercise of his official functions". *(1907)5 CriLJ 309.*

5. Gratification other than legal remuneration.—(1) The second explanation added to this section states that the word 'gratification' is not restricted to pecuniary gratification or gratification estimable in money. The word is not defined in this Code and must be held to have been used in its primary sense of anything which gives satisfaction to the recipient. *AIR 1959 Bom 543.*

(2) The expression 'legal remuneration' is not restricted to remuneration which a public servant can lawfully demand, but includes all remunerations which he is permitted by the Government, which he serves, to accept. *AIR 1966 Guj 293.*

6. "As a motive or reward".—(1) The phrase 'as a motive or reward for' means 'on the understanding that the bribe is given in consideration of' some official act or conduct on the part of the public servant. *AIR 1977 SC 666.*

(2) In law, the incapacity of the Government servant to show any favour or render any service in connection with his official duties does not necessarily take the case out of the purview of this section. Nevertheless, it is an important factor bearing on the question as to whether the accused had taken the gratification as a motive or reward for doing or forbearing to do any official act for showing any favour or disfavour in exercise of his official functions. *AIR 1977 SC 666.*

(3) In order to establish an offence under this section, it is necessary to prove that the public servant accepted or obtained or agreed to accept or attempted to obtain illegal gratification as a motive or reward for doing or for forbearing to do an official act or for showing any favour or disfavour to any person or for rendering any service or disservice to any person with a public servant as such. *AIR 1969 SC 176.*

(4) The question that requires consideration is, with what motive, or as reward for what act, was the sum paid as illegal gratification by the complainant and accepted by the accused. *AIR 1954 SC 637.*

(5) The Prevention of Corruption Act introduces an exception to the general rule as to burden of proof in criminal cases and shifts the onus on to the accused who has to prove that it was not as a motive or reward that the gratification was obtained. *AIR 1964 SC 575.*

(6) If it is shown that the accused has received the stated amount and that the said amount is not legal remuneration, then the condition prescribed by the Act is satisfied. *AIR 1963 SC 1292.*

(7) The presumption under the said Act differs from the presumption under Section 114 of the Evidence Act. Whereas under the Evidence Act, Section 114, it is open to the court to draw or not to draw a presumption as to the existence of a fact from the proof of another fact and it is not obligatory upon the Court to draw such presumption, under the Prevention of Corruption Act, where illegal gratification is proved to have been received by an accused, the Court is bound to draw the presumption that the accused received the gratification as a motive or reward such as is mentioned in this section, and the Court has no choice in the matter. *AIR 1964 SC 575.*

(8) The words "unless the contrary is proved" occurring in the Prevention of Corruption Act make it clear that the presumption has to be rebutted by proof and not by bare explanation which may be merely plausible. *AIR 1968 SC 1292.*

(9) Amount of bribe found in the bag belonging to the accused—Presumption of knowledge on part of the accused about the amount being kept for illegal gratification arises—Presumption is

however, refutable—On facts held, that the accused had successfully rebutted the same. *(1982)2 Bom CR 98.*

(10) This section is not confined to payments made for services to be retendered later by the public servant. It applies also to cases where services have been already rendered. The payment whether paid before or after the doing of the official act, would constitute bribe. *1977 CriLJ 700.*

(11) Where the accused demanded money as gratification for getting a favourable order passed on the review petition of the applicant and received it he would be guilty of an offence under the Prevention of Corruption Act and also under S. 161. P.C. notwithstanding the fact that the gratification was paid subsequent to the passing of the order on review application when the applicant had no knowledge of it. *1982 CriLJ 272.*

7. **Official act.**—(1) The gist of an offence under this section is the taking by a public servant of gratification other than legal remuneration for doing an official act. *1979 CriLJ 1460.*

(2) A public servant accepting or obtaining illegal gratification need not actually have the power or be in a position to perform the act or to show favour or disfavour. *AIR 1977 SC 666.*

(3) From the last explanation to this section, it is clear that it is not necessary, in order to constitute an offence under this section, that the act for doing which the illegal gratification is given should actually be performed. It is sufficient if a representation is made that it has been done or that it will be performed a public servant who obtains a bribe by making such representation will be guilty of an offence under this section, even if he had or has no intention to perform and has not performed or does not actually perform that act. *AIR 1947 FC 9.*

(4) This section does not provide that the official act must be an act, which it is obligatory upon the public servant to do. It is enough if the act is done or intended to be done in his official capacity as distinguished from his purely private capacity, it is not necessary that the public servant should be obliged to do the act. But the act or omission for which gratification is obtained, must be in connection with the official functions of the public servant. *AIR 1967 Bom 1.*

(5) The gratification obtained may be "speed money", that is it may be money accepted for doing an official act more quickly. *AIR 1974 SC 989.*

(6) To give a contract or rates higher than the prevailing rates will result in extra payment by Government but it does not per se constitute offence under Section 161 unless it is shown that the public servant has received any gratification as a motive or reward for showing favour to the accused firm. *1984 CriLJ 545.*

(7) "Official act" within the meaning of the section includes both bona fide and mala fide acts. Bribe taker receiving money by holding out threat of mala fide act, comes within the mischief of section 161. Where bribe obtained through threats—Bribe giver an "abettor" in spite of the fact that bribe was paid under threats. Section 165B provides only special exemption in favour of such abettor absolving him of liability. *16 DLR (SC) 484.*

(8) Bribe offered to a public servant constitutes the offence irrespective of the question whether he himself is in a position to do the official act or not. The "functus officio" doctrine no longer seems to be accepted doctrine. The fact that the public servant is functus officio when money is offered to him as bribe, would not by itself be sufficient to negative the offence under section 161 of the Penal Code, the gist of the offence being that extra legal gratification is obtained as a motive or reward for doing official acts. The nature of the act must, of course, be official and not attributable purely to the private capacity

of the bribe-taker. Section 161 of the Penal Code is not limited to official acts only but applies even if a public servant is requested to render any service with another public servant and that it is not necessary that the public servant must in fact, be in a position to do the official act. To constitute an offence under section 161 of the Penal Code, it is sufficient that there is an offer of bribes to a public servant in the belief that he has an authority or power in the exercise of his official function to show the offeree desired favour although the public servant has in reality no such power. *13 DLR 219.*

8. "With any public servant, as such".—(1) This section is not confined to cases in which the gratification is obtained for doing as official act. It also applies to a public servant who accepts any gratification other than legal remuneration as a motive or reward for rendering or attempting to render any service to any one with another public servant as such. *AIR 1959 SC 847.*

(2) The words 'as such' appearing in this section connote that the service rendered must be connected with the discharge of the official duties of the public servant. *AIR 1967 All 321.*

(3) The words "public servant as such" occurring in the latter part of the section is a category distinct from the "institutional" categories mentioned in this part of the section. Hence where the charge is that the accused had taken (or asked for) the bribe for using his good offices with the "Food Corporation", it is not necessary to specify the "particular officer" of the Corporation who was to do the job in question. Hence the charge or complaint cannot fail on the ground that such official was not "specified". *ILR (1978) 1 Punj 239.*

(4) Vaccinator accepting illegal gratification for being given to Sanitary and Food Inspector is guilty of offences under this section as well as under the Prevention of Corruption Act. *1981 AllLJ 1153.*

9. Capacity and intention to do the act not necessary.—(1) When a public servant is charged under this section, it is not necessary for the Court to consider whether the accused had the capacity to do this act or intended to do the act. *1973 CriLJ 703.*

(2) Mere incapacity of the Government servant to show any favour or to render any service cannot by itself be a ground for acquittal. *1981 AllLJ 1166.*

(3) Accused incapable of conferring any benefit upon the person concerned as contemplated by S. 161.—Court will not be justified in raising an inference from mere fact of acceptance of money by accused. 1982 *CriLR (Mah) 312.*

10. Abetment of offence under this section.—(1) If the intention or object with which gratification other than legal remuneration is offered to a public servant, is to induce him to perform an official act or show favour in the exercise of his official functions or render any service with any public servant, an offence punishable under this section read with S. 116 ante would be complete even if the official act, function or service is not done even if the statement of offer is not accompanied. *AIR 1959 All 707.*

(2) If the act abetted is committed in consequence of the abetment the offence would fall under this section read with S. 109 ante. *AIR 1960 SC 409.*

(3) A person who is coerced by threat of pecuniary loss or harm cannot be said to be an accomplice of the bribe-taker. *AIR 1971 Tripura 26.*

(4) If the money is being paid by accused even to a public servant for doing or forbearing to do an official act which he himself has no power to do and he does not accept the money, the offence cannot be made out under Section 161 read with S. 116 .P.C. *1980 All Cri R 252.*

11. Cognizance of and investigation into cases.—(1) An offence under this section was non-cognizable. *AIR 1928 Lah 840.*

(2) The fact that the power to investigate or arrest without warrant has been circumscribed by a condition cannot lead to the conclusion that such offence is "non-cognizable". *AIR 1962 Bom 263.*

(3) The object of the restriction is to safeguard public servants from harassment at the hands of subordinate police officers. The Magistrate in giving permission has to be satisfied on the material placed before him that the superior officer is unable to conduct the investigation owing to administrative inconvenience or analogous reasons and, therefore, an officer of a lower rank should be allowed to make the investigation. *1968 CriLJ 256.*

(4) Where a Deputy Superintendent of Police entrusts the investigation of an offence to an Inspector of Police, the investigation would be illegal and if the fact is brought to the notice of the Court before taking cognizance of the case, it is the duty of the Court to rectify the matter by directing a fresh investigation. *AIR 1967 Pat 416.*

(5) A permission to investigate covers the entire investigation and enables the officer concerned not only to lay a trap but also to hold further investigation. *AIR 1968 SC 1292(1295): 1966 CriLJ 1484.*

(6) When in the detailed report by the Investigating officer there, was no mention that the legal formalities were duly observed when bribe amount was recovered from the accused, then an inference can be drawn that such formalities were not observed. *1981 CriL 1691.*

(7) The officers in anti-corruption department must seriously try to secure independent and respectable witnesses so that evidence with regards to the raid inspires confidence. Further it is desirable to mark the currency notes used in the trap with phenolphthalein powder so that the acceptance of the same by the accused can be proved by chemical tests rather than by oral evidence. *AIR 1976 SC 91.*

(8) Where the accused was arrested while taking bribe but the arresting officer did not try to secure the presence of independent witnesses at the time of the arrest, it was held that the conviction of the accused under Section 161 was illegal. *1981 All LJ 1203.*

(9) It is necessary for the investigating agency to preserve the solution used for the experiment as regards detection of Phenolphthalein powder on the person of the accused or on his clothes or on anything he has touched. Omission to do so can be used to raise an inference against the prosecution depending on facts and circumstances of each case. *AIR 1980 Guj 1.*

12. Sanction to prosecute.—(1) Before the Prevention of Corruption Act it was held that no sanction under Section 197 of the Criminal P.C. (5 of 1898) was necessary for a prosecution for an offence under this section, the reason being that a public servant in taking a bribe cannot be said to be acting or purporting to act in the discharge of his official duty. *AIR 1952 Orissa 220.*

(2) Act II of 1947 provides that no Court shall take cognizance of an offence punishable under this section or under the Act, alleged to have been committed by a public servant except with the previous sanction of the Government concerned or the authority competent to remove the public servant from office. Where such sanction is not obtained, the Court is not entitled to take cognizance of the offence and the trial without such sanction would be invalid. *AIR 1962 SC 1573.*

(3) Accused holding more than one public offices—Prosecution for misusing or abusing one office—Sanction of authority competent to remove accused from office allegedly misused or abused along is necessary and not of all competent authorities. *AIR 1984 SC 684.*

(4) Offences under this section and the Prevention of Corruption Act being cognizable, sanction for prosecution under S. 196A. Criminal P.C. (5 of 1898) is not necessary. *AIR 1973 SC 2204.*

(5) If there is a proper sanction, immaterial mistakes in the order will not affect its validity. *AIR 1954 SC 637.*

(6) Where the accused was charged under S. 120B and Ss. 161, 162, 163 and sanction was obtained only in respect of the offence under Section 161 but not under Sections 162 and 163. It was held that the conviction udder Ss. 120B and 161 can still be maintained. *AIR 1970 Delhi 102.*

(7) Where the order giving requisite sanction to prosecute an accused under the Prevention of Corruption Act was made by the deputy Secretary on behalf of the Government in exercise of the power conferred on him under the rules delegating such power to him, the order cannot be questioned. *AIR 1961 SC 1762.*

(8) As to who can give sanction under Section 197 of the Criminal P.C. *1970 AllWR (HC) 57.*

(9) No sanction—Trial is vitiated—Sanitary Inspectors appointed as Food Inspectors—Municipal Commissioner or Municipal Health Officer can sanction prosecution. *(1969) 2 MadLJ 379.*

(10) Where sanctioning authority admitted that he was only an officiating Class I officer whereas all other persons having the same official designation were all confirmed officers, it was held doubtful if the sanctioning authority was really competent to sanction the prosecution. *1981 CriLJ 1691.*

(11) For trial under section 161, Penal Code—Accused convicted under the Prevention of Corruption Act—Sanction, held not defective—Section 161, Penal Code not impliedly repealed by the Prevention of Corruption Act—General Clauses Act (X of 1897) section 26. Sanction for prosecution of the accused who was a public servant was granted under section 161 of the Penal Code but in trial the accused was charged and convicted, not under section 161 of the Penal Code but under section 5 of the Prevention of Corruption Act. It was therefore contended that there being no sanction for prosecution under Prevention of Corruption Act, the trial was without jurisdiction. Held: section 161 of the Penal Code applies to two kinds of persons, firstly, to those who are public servants and secondly, to those who are expecting to become public servants: while the Prevention of Corruption Act applies if the person taking illegal gratification is public servant and not merely a person who is expecting to be. This means that if a public servant is guilty of an offence mentioned in section 161 of the Penal Code, he is at the same time guilty of an offence mentioned in the Prevention of Corruption Act. Therefore, non-mention of the Prevention of Corruption Act in the sanction could not prevent the accused being convicted under the Prevention of Corruption Act, 1947. Even if the sanctioning Authority when granting the sanction had merely mentioned the facts without specifying the provision of law, which was applicable to those facts, the sanction would not have suffered from any fatal defect. There is no valid reason why mentioning section 161 of Penal Code in the sanction prevented the conviction of the accused under section 5 of the Prevention of Corruption Act, 1947 when the ingredients of the two offences were identical, Section 26 of the General Clauses Act (X of 1897) militates against the rule of implied repeal. Section 161, Penal Code has not been impliedly repealed by section 5 of the Prevention of Corruption Act. *6 DLR (WP Lah)68.*

(12) Sanction valid when it is endorsed by the competent sanctioning authority. *21 DLR (SC)342.*

(13) According to the provision of section 6(5) of Act XL of 1958, previous sanction of the Government shall be required for the prosecution of a public servant and shall be accorded by the Government in the Public Division vide Notification No. SRO 298 Law/87 dated 19-12-87 (sanction

for prosecution) Rules 1987. Where the sanctioning authority is himself the complainant a separate order of sanction is not necessary for prosecuting the accused. *1968 P CrLJ 316.*

(14) Sanction to prosecute a Government servant before a charge-sheet is submitted is a precondition. Sanction can be obtained after submission of charge-sheet but before the trial commences. *32 DLR(SC)100.*

(15) No sanction for prosecution necessary if the public servant concerned ceased to be a public servant when the Court takes cognizance of the offence. Criminal trial—The contention relating to the competency of the police officer who investigated the case against the petitioner was not raised either before the trial Court or before the High Court and since this contention touches upon a question of fact namely, whether the IO had obtained permission from a Magistrate of the first class to investigate it is liable to be rejected as the factual position is not known. *27 DLR (SC) 35.*

13. Evidence and proof.—(1) What constitutes bribery is a question of law whether on the evidence the act alleged to constitute the crime has been committed is a question of fact. *1977 CriLJ 925.*

(2) Criminal trial—Corroboration—Bribe-giver's evidence—Not on the same footing as that of an accomplice. Necessity of proving the case beyond reasonable doubt—bribe giver believing that official act would go against him if he does not pay—offence established. The rule of the Court which requires corroboration of the evidence of an accomplice as against such accused, if it applies to all, applies with very little force to a case in which the accused is charged with extorting a bribe from other persons. The objections which usually arise to the evidence of an accomplice do not really apply where the alleged accomplice, that is the person who pays the bribe, is not a willing participant in the offence, but is really a victim of that offence. In cases of this kind, a slight corroboration may be sufficient to induce the Court to rely upon his evidence. A charge under section 161 of the Penal Code is one which is easily and may often be lightly made but is in the very nature of things difficult to establish, as direct evidence must in most cases be meager and of a tainted nature. These considerations cannot however be suffered to relieve the prosecution of any part of the burden which rests upon it to establish the charge beyound reasonable doubt. If after every thing that can legitimately be considered has been given its due weight room still exists for taking the view that however strong the suspicion raised against the accused, every reasonable possibility of innocence has not been excluded, he is entitled to an acquittal. It is sufficient to constitute an offence under section 161, Penal Code if the person giving the bribe is led to believe that the official act would go against him if he did not give the bribe. *7 DLR 457.*

(3) Evidence regarding the offence (bribe taking) rests on the testimony of the bribe giver alone—Evidence to be scanned carefully—Factors which court must assess to draw inference of guilt. Where a case mainly rests on the bribe giver's evidence it should be scanned with much caution and the Court must be satisfied that he is a witness of truth specially when no other person was present at the time when he paid the alleged illegal gratification. The value of such testimony would, therefore, depend on diverse factors such as the nature of his evidence, to what extent and in what manner he is interested, the probability and improbability of his story and how he has fared in the cross-examination, etc. In other words, the Court must consider whether facts and circumstances render it probable that his story is true and it is reasonably safe to act upon it. Bribe giver under compulsion—Criminal intent not attributable—hence bribe—giver not an abettor. Where the bribe-giver is not a willing party to the giving of the bribe he had not the necessary criminal intent to be treated as an abettor or accomplice, in other words, he cannot be regarded as a particeps criminis in respect of the cime. *15 DLR (SC)7.*

(4) If the accused immediately after his confrontation gives an explanation which appears reasonable and not inconsistent with the defence case then he is entitled to benefit of doubt. Courts should be very cautious and scrutinising in examining prosecution case under sections 161 and 165A, Penal Code for it is very easy to implicate a person in such a case on false allegation. Allegation of offence punishable under sections 161 and 165A are to be scrutinised with reference to an official act. In the absence of an official act conviction under section 161 and 165A cannot be sustained. Burden of proving guilty intention lies upon the prosecution. Expression "burden of proof" used in section 105, Evidence Act explained. Principle in criminal cases is that onus of proving everything essential to the establishment of the charge against the accused lies upon the prosecution and that onus never changes and it is well known that this principle follows from the cardinal proposition that the accused is presumed to be innocent until his guilt is established by the prosecution beyond any shadow of doubt. *24 DLR 230.*

(2) It is somewhat difficult to establish a charge under this section, as direct evidence, in most cases, will be meager and of a tainted nature. But this cannot be allowed to relieve the prosecution of any part of the burden which rests upon it to establish the charge beyond reasonable doubt. If after everything that can legitimately be considered has been given due weight, room exists for taking the view that possibility of innocence has not been excluded, however strong the suspicion may be the accused is entitled to acquital. *AIR 1979 SC 1537.*

(3) Where in prosecution of the accused (Asst. Jailor) for accepting bribe from his ex-warden in order to reinstate him the explanation offered by the accused to the effect that he had not received the money as bribe but had received the same as repayment of the amount borrowed by the ex-warden from him, stood sufficiently prohabilised from the evidence on record the special judge was not justified in rejecting the explanation. *(1984) 1 Crimes 300(MP).*

(4) No presumption that acceptance of gratification was made as motive or reward will arise if the prosecution fails to prove the acceptance or if the valuables may have been planted or foisted on the accused by deception or trick. *AIR 1970 Delhi 95.*

(5) Where the prosecution failed to prove the demand and payment of the bribe to the accused, the entire prosecution story would be unacceptable. *1981 CriLJ 142.*

(6) Where the acceptance of bribe by accused and its recovery was proved by direct and circumstantial evidence by the presence of the accused at the house of the complainant at the appointed time and his arrest there and the recovery of painted currency note form the ground, the accused guilty of offence under S. 161. *1984 CriLJ NOC 104 (BD).*

(7) Where demand and the acceptance of the bribe was proved and currency notes given were recovered form accused, death of the complainant prior to the commencement of the trial will not affect the case. *AIR 1982 SC 1511.*

(8) Concurrent finding of trial court and High Court regarding the guilt of the accused for an offence under S. 161. P.C. arrived at on due appreciation of the evidence adduced in the case. Supreme Court refused to interfere. *AIR 1974 SC 1828.*

(9) Conviction for bribery on uncorroborated testimony of a witness when can be had, stated. *(1971) 2 SC Cri R 42.*

(10) Conviction of accused under S. 161 on uncorroborated statement of the complainant when circumstantial and documentary evidence supported the defence version, set aside. *AIR 1970 SC 450.*

(11) Prevention of Corruption Act raises a presumption that accused accepted money as a motive or reward such as is mentioned in S. 161. The presumption is to be rebutted by proof and not merely by a plausible explanation. *1974 PunLJ (Cri) 114.*

(12) A person who gives a bribe is an accomplice of the person who receives it and according to well-settled principles it is unsafe to base a conviction on his testimony without independent corroboration. *AIR 1979 SC 1191.*

(13) Where a person has given Rs. 90/- to the accused to get his work done and on his demanding further amount of Rs. 150/- agreed to pay Rs. 50/- more and was in fact paid when a trap was laid, held in the circumstances that his solitary testimony could be relied on and his conduct corroborated his testimony. *1980 All Cri R. 302.*

(14) Where, on information that a bribe has been demanded or solicited, a trap is laid to catch the public servant making the demand, the witnesses participating in the trap are not accomplices, since they have not the necessary criminal intention. But they are partisan or interested witnesses and their evidence must be tested in the usual way which may vary from case to case. *AIR 1973 SC 498.*

(15) Evidence of the person regarding demand of bribe before the trap was laid is such that independent corporation is not necessary. *1983 CriLJ 1338.*

(16) Where a public servant did not demand a bribe but was only suspected to be in the habit of taking bribes and a trap was laid to see whether he would accept the bribe, it was held that the trap was an illegal one, that the persons taking part in the trap would be accomplices and that their evidence would have to be corroborated. *AIR 1956 SC 643.*

(17) Panch Witnesses who are taken by the police along with them during a trap are not per se interested witnesses; they are independent witnesses and their evidence requires no corroboration before acceptance. *AIR 1954 SC 322.*

(18) To sustain conviction against an accused under Section 161 and the Prevention of Corruption Act it is not sufficient for the prosecution to prove the trap incident alone but the prosecution should prove all the vital parts of the persecution story on which the trap incident depends. *1981 CriLJ NOC 63.*

(19) Statements of prosecution witnesses contradictory to their earlier statements—No evidence as to any scientific test having been applied to prove accuser's having handled the currency notes—infirmities in prosecution evidence—Accused held entitled to acquittal. *AIR 1977 SC 674.*

(20) Vital part of prosecution case disbelieved by High Court—Order or conviction passed by trial Court held could not be affirmed. *AIR 1976 SC 1489.*

(21) Accused a police officer—Prosecution witnesses proved to be primps and facing trial under Suppression of Immoral Traffic In Women and Girls Act—It could not be said that prosecution witnesses had no motive to falsely implicate the accused. *AIR 1976 SC 294.*

(22) Where a trap is laid for a public servant, it is desirable that the marked currency notes, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the Court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. *AIR 1976 SC 91*

(23) The previous statements of the panchas which are to be found in the pre-trap and post-trap panchanamas in a corruption case do not fall within the phrase "statement made to the police officer" as contemplated by S. 162. Cr. P.C. Therefore such panchanamas cannot come within the ban of that section. *1975 CriLJ 517.*

(24) Where the evidence about the recovery of the currency notes which was the bribe amount was discrepant accused held was entitled to the benefit of doubt. *1983 Raj LW 369(374).*

(25) Raiding party though present making no allegation as the passing of the bribe amount to accused—Accused must be given benefit of doubt. *1981 CriLJ 691.*

14. Trap witnesses.—(1) Illegal gratification—Trap Case—Independent corroboration of trap witnesses—Magistrate accompanying a trap party, whether an independent witness—Appellant was nabbed when he accepted marked notes as bribe. Because of the tough requirement of proof beyond reasonable doubt the laying of trap is the only method for detecting crimes like bribery which are committed in covert manner—Such a method is not prohibited—For laying a trap the Investigating Officer cannot be said to be thereby instigating commission of the offence. Principles of accomplice evidence cannot be extended to the evidence of trap witnesses, because the latter cannot be termed as accomplice. As to corroboration of trap witnesses no hard and fast rule can be given. There may be cases where the Court will look for independent corroboration. Equally there may be cases where the Court may accept evidence of trap witnesses. No evidence to show that the witnesses were inimical or friendly towards the accused-Appellant or that they had any illmotive to implicate him falsely. No interference is called for. *43 DLR (AD) 1.*

(2) Trap case—Evidence of witnesses in trap case—utmost care needed to ensure dependability and trustworthiness of such witnesses in respect of their deposition. Presence of independent witnesses warrants truth and reliability of the case and shields the police against charge of over zealousness in their conduct of the case. Demand of bribe may circumstantially corroborate if the prosecution can prove beyond reasonable doubt that the marked notes were given to the accused as bribe and that these were recovered from the accused immediately after the bribe was given and that independent witnesses observed the same. Although this part of the prosecution story (namely, giving of the bribe money to the accused and its receipt by the accused as also its recovery from him) which is obviously the most vital part, has been stated and corroborated mutually by the police witnesses and the decoy witness, the law requires, as matter of prudence and caution, that this part of the story should be corroborated in material particulars by disinterested and independent witnesses, the reason being that the members of a police trap party and the decoy witness, however public spirited and well intentioned they may be, are expected to be united in at least one common desire, namely, the desire to see that the trap is not an exercise in futility and that it does not end in a fiasco. In other words, even if they are not inimically disposed towards the accused, they do not want to see their precious effort to be wasted, they will as a team, stick to their story of acceptance of bribe and recovery of marked notes. Evidence of such witnesses of the trap party is, therefore, tainted in nature. Even if it is not possible sometime to have any independent person to witness the demand and the acceptance of the bribe, at least there must be unimpeachable disinterested evidence regarding recovery of the bribe money from the possession of the accused immediately after the occurrence. It has, therefore, become the practice with the officers of Anti-Corruption Department and the police to take a few disinterested persons along with them to witness the acceptance of bribe and recovery of bribe money in a trap case. Indeed: if the presence of disinterested independent witnesses is not made an essential requirement of such ventures every public servant exposes himself to an uncorroborated trap case set up solely by the police officials with the help of decoy witnesses. The existence of independent witnesses is also a protection to the police officials and the decoy witnesses themselves, as these witnesses protect them from the convenient allegation of acting mala fide or with vengeance, vindictiveness and over zealousness. Appeal allowed *(Ref. 35 DLR 257) 37 DLR 278.*

(3) Laying trap is not prohibited in investigation. *1969 Mad LW (Cri) 90.*

(4) In a proper case the Court may look for independent corroboration before convicting the accused persons. *AIR 1973 SC 498.*

(5) Where in a trap case the Judge magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence this would show how much the Judge was prejudiced against the prosecution. *AIR 1984 SC 63.*

(6) Non-official witness having associated in post with investigation officer—Cannot be deemed to be an independent witness. *1981 CriLJ 1691.*

(7) Evidence of police officers and other trap witnesses if found to be trustworthy conviction under S. 161 can be based on it. *1981 (UP) CriLR 262(All).*

(8) Accused can be convicted merely on the evidence of the police officer who arranged the raid if his testimony is found to be reliable and without any infirmity. *1981 AllLJ 1166.*

15. Punishment.—(1) A corrupt public servant is a menace to society. Corruption in the case of public servants will impede the proper functioning of a Government and therefore, where an offence under this section is proved against him a deterrent punishment must be meted out to him. *1958 RajLW 596.*

(2) The question of sentence must in each case depended upon a variety of considerations and is a matter primarily in the discretion of the Court which passes a sentence. *1979 Cri LR (SC) 182.*

(3) Where a public servant is charged under this section and also under the Prevention of Corruption Act, separate sentences under the two sections are illegal, since there is only one act which constitutes an offence under two enactments. *1979 UJ(SC) 276.*

(4) An offence under of the Prevention of Corruption Act is an aggravated form of an offence under this section and, therefore, when the charge under the same mentions several instances of bribe-taking and only one of them is proved, the conviction of the accused under this section is legal. *AIR 1957 SC 458.*

(5) In the case of a trial under this section the Supreme Court would not ordinarily interfere with the quantum of punishment given by the courts below, since corruption by a public servant is a serious matter and the Court would not look upon it with leniency. *AIR 1960 SC 961.*

(6) Where the accused had undergone mental agony and harassment for a long period of 11 years of trial and during these periods, the accused though 42 years and belonging to the weaker section of the society was studying for law degree for becoming a lawyer, there could be special reasons for awarding lesser sentence (3 months) than the minimum of one year. The minimum sentence of one year if awarded would disrupt his studies and destroy his future career would be another special reason for awarding the lesser sentence. *1982 CriLJ 2044.*

16. Practice.—Evidence—Prove: (1) That the accused at the time of the offence was or expected to be a public servant.

(2) That he accepted, or obtained, or agreed to accept, or attempted to obtain from some person a gratification.

(3) That such gratification was not a legal remuneration due to him.

(4) That he so accepted, etc. such gratification, as a motive or reward, for (a) doing or forbearing to do an official act, or (b) showing, or forbearing to show favour or disfavour to some one in the exercise

of his official functions or (c) rendering or attempting to render, any service or disservice to some one, with the Government or Legislature, or with any public servant.

17. Procedure.—(1) Cognizable—Summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

(2) A violation of the mandatory provisions of the Prevention of Corruption Act is not a mere irregularity but an illegality which will vitiate the trial. *AIR 1955 NUC (All) 3590.*

(3) It is not obligatory on the part of the Court trying a case under this section to inform the accused that he can appear as a witness for himself. *AIR 1954 All 204.*

(4) Complaint against public servants charging them for taking illegal gratification, forgery and cheating—Cognizance by magistrate is barred under the Criminal Law Amendment Act. *1981 CriLJ 635.*

(5) When two special judges are appointed for the same area a trial by any one of them cannot be set aside if no objection was raised about jurisdiction and where no prejudice was caused to the accused. *1983 CriLJ 858.*

(6) A police constable charged under Section 161 for taking bribe can be tried jointly with his fellow clerk charged under S. 218 for making false entries in the general station diary to conceal his offence as the two charges are interconnected. *1982 All LJ 681.*

(7) Where the prosecution had failed to prove the charges against two of the main accused out of five accused persons, who were alleged to be the germane of the offence then the prosecution against rest of the accused must fail in view of acquittal of the two main accused persons. *1984 Bihar LJ 116 (Pat).*

(8) Removing a person from service on being convicted under S. 161 will be without jurisdiction when an appeal from the conviction was pending *1982 WLN (UC) 1415 (Raj).*

18. Charge.—(1) If a public servant attempts to obtain a bribe and succeeds in obtaining it, technically, he commits two offences. But for meeting out justice it is unnecessary to charge him with the offence of having made an attempt to obtain a bribe, since the offence is merged into the bigger offence of obtaining the gratification. *AIR 1956 Bom 287.*

(2) Where the charge against the accused under that part of this section which refers to accepting of gratification other than legal remuneration for rendering service or disservice with any public servants, the charge should specify the other public servant who is to be approached for rendering service or disservice. *AIR 1964 SC 492.*

(3) The non-specifying of the public servant in the charge would not vitiate the trial; it would only amount to a defect in the charge which can be cured under S. 465 of the Criminal P.C. unless such error or omission has occasioned failure of justice. *AIR 1964 SC 492.*

(4) Where besides the omission to indicate the other public servant in the charge, there is nothing in the complaint, in the charge sheet submitted by the police and in the evidence to show who was the other public servant with whom service or disservice would be rendered by the accused, one of the main ingredients of the offence under this section must be taken as not proved and the accused will be entitled to an acquittal. *AIR 1959 SC 847.*

(5) Where in a complaint allegations of taking illegal gratification, forgery and cheating are made against a public servant but Section 161 is not specifically mentioned, it was held that S. 161 is still applicable as the essential allegations of fact for applying Section 161 were made out. *1981 CriLJ 635.*

(6) The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, being a public servant in the department, directly accepted from (state the name of the giver (or received) form another), namely a gratification other than legal remuneration as a motive or reward forbearing to do official act to show favour (or disfavour) and thereby you have committed an offence punishable under section 161 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

19. Appeal and Revision.—An appeal from the judgment of a Special Judge shall lie to the High Court having appellate jurisdiction in the territorial limits in which the offence is tried by the Special Judge and the same Court shall also have powers of revision. Notwithstanding the provision of section 417 and 417A, CrPC in any case tried by a Special Judge who has passed an order of acquittal the Government may direct the public prosecutor to present an appeal to such Court as aforesaid. The aforesaid Court shall have authority to transfer any case form the Court of a Special Judge to the Court of another Special Judge. No prosecution under corruption case against any person either generally or in respect of any one or more of the offences for which he is being tried shall be withdrawn except under the orders in writing of the Government.

Section 162

162. Taking gratification, in order, by corrupt or illegal means, to influence public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person [1][with the Government or Legislature], or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) Section 162 refers to a motive or reward for doing or forbearing to do something showing favour or disfavour to any person, or for inducing such conduct by exercise or personal influence. A conviction under this section cannot be sustained without a finding that the money was accepted or obtained by the accused as a motive or reward for tampering with a public officer. This section deals with the offence of a private individual taking a bribe to influence a public servant by corrupt and illegal means.

(2) An aggravated form of the offences under this section and S. 161 is enacted in the Prevention of Corruption Act (11 of 1947). *AIR 1957 SC 458.*

(3) The two offences under Ss. 161 and 162 on the one hand and the Prevention of Corruption Act on the other co-exist and the one will not be considered as overlapping the other. A course of conduct can be proved when a person is arraigned under the Act but such a course is impossible to be let in evidence when an offence under Ss. 161 and 162 is being enquired into or tried. *AIR 1957 SC 458.*

(4) The word "obtains" does not necessarily mean getting the bribe by threat or coercion. It will include the acceptance of a voluntary offer. *AIR 1956 SC 476.*

(5) The fact that a trap was laid for the detection of bribery is not a ground for passing a lenient sentence. *AIR 1956 SC 476 (479): 1956 CriLJ 837.*

(6) Where a charge was for offences under Ss. 120B, 161, 162 and 163, but sanction was obtained only in respect of offences under Ss. 120B and 161 but not in respect of offences under Ss. 120B and 162 and 163 it has been held that a conviction under Sections 120B and 161 can still be maintained. *AIR 1970 Delhi 102.*

(7) Where the gravamen of the offence of which the accused is charged is S. 420, Penal Code and the accused stands acquitted due to compromise of offence under Section 420 no case can then be made under S. 162 with which he was charged under S. 420. *1979 Raj LW 99 (102).*

(8) Cognizance of offences under Ss.162, 163 and 164 and conspiracies to commit them—Can only be taken by Special Judge under S. 7 of Criminal Law Amendment Act of 1952—Metropolitan Magistrate has no jurisdiction to take cognizance thereof. *1980 ChandLR (Cri) (Delhi) 119.*

(9) Commission of offences under Ss. 162, 420—Necessary facts to be proved—Demand of gratification, payment of the same to accused and recovery of same are relevant and must be proved. *1980 Raj Cri C 28.*

(10) Taking gratification—It is necessary in order to substantiate an offence under section 162 to show that the money that was accepted was intended for the purpose of being paid by way of gratification as a motive or reward for inducing by corrupt or illegal means a public servant but it is not necessary that the gratification must have been intended to be paid to the person who accepted the money. It is sufficient if the person accepting the money knows that the object for which the money is to be used is for the purpose of paying it by way of a gratification as a motive or reward for inducing a public servant. *Osimuddin Sarker Vs. State (1961) 13 DLR 197 : (1961) PLD (Dac.) 798.*

2. Practice.—Evidence—Prove: (1) That the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone for himself or for someone else, a gratification. (2) That he accepted, etc., the same as a motive or reward to induce, by corrupt or illegal means, a public servant (a) to do or forbear to do an official act or (b) to show, in the exercise of his official functions favour or disfavour to some person ; or (c) to render, or attempt to render, any service or disservice to some person, with the Government etc. or with any public servant as such.

3. Procedure.—Cognizable—Summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

4. Charge.—The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, accepted (or obtained or agreed to accept or attempted to obtain) from—for yourself or for any other person a gratification namely, from—as a motive or reward for inducing by corrupt or illegal means—a public servant, to wit,—to do an official act to wit—or to show favour or disfavour to any person—with the legislative (or executive) Government of Bangladesh and thereby committed an offence under section 162 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

5. Sanction.—Sanction under section 6(5) of Act XL of 1958 is necessary for prosecution by Public Division of the President's Secretarial vide Notification No SRO 298-Law/87 dated 19-12-87.

Section 163

163. Taking gratification, for exercise of personal influence with public servant.—Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, [1][with the Government or Legislature], or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Cases and Materials

1. Scope.—(1) A punishment of the accused, a police constable, departmentally does not absolve him from liability to prosecution and punishment under this section. *AIR 1915 Lah 350.*

(2) Cognizance of offence under Ss. 162, 163 and 164, P.C. and conspiracies to commit them—Metropolitan Magistrate has no jurisdiction to take cognizance thereof. *1980 ChandLR (Cri) (Delhi) 119.*

(3) Section 124 of the Government of India Act, 1935 created an offence of misdemeanor and provided for a punishment, therefore it is not possible to infer therefrom an implied repeal of S. 163, P.C. The ingredients of offence under S. 224 of 1915 Act are different from those of S. 163, P.C. *1981 CriLJ 1754.*

(4) Charge under Sections 120B, 161, 162 and 163—Sanction only in respect of offences under Sections 120B and 161 and not in respect of offences under Section 120B and Section 162 and 163—Conviction for offences under Sections 120B and 160 can still be maintained. *AIR 1970 Delhi 102.*

2. Practice.—Evidence—Prove: (1) That the accused accepted or obtained or agreed to accept or attempted to obtain a gratification.

(2) That the motive or reward for accepting the same for inducing by the exercise of personal influence on any public servant to do or forbear to do an official act.

3. Procedure.—Cognizable—Summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

4. Charge.—The charge should run as follows:

I (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, accepted or obtained or agreed to accept or attempted to obtain a gratification from—as a motive or reward for inducing by the exercise of personal

influence—a public servant to do or forbear to do an official act namely—or to show some favour or disfavour to any person namely—or to render or attempt to render any service or disfavour to any person—in the Legislative or executive Government, etc. and thereby committed an offerce punishable under section 163 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction—Under section 6(5) of Act XL of 1958 is necessary for prosecution.

Section 164

164. Punishment for abetment by public servant of offences defined in section 162 or 163.—Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, 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 is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Cases and Materials

1. Scope.—(1) Cognizance under Ss. 162, 163 and 164, P.C. of offences and conspiracies to commit them—Can only be taken by Special Judge—Metropolitan Magistrate has no jurisdiction to take cognizance thereof. *1980 ChandLR (Cri) Delhi) 119.*

(2) It is implicit in the offences under Sections 161, 164 and 165, P.C. and the Prevention of Corruption Act that the public servant has misused or abused the powers of office held by him as public servant. *AIR 1984 SC 684.*

2. Practice.—Evidence—Prove: (1) That the accused was a public servant.

(2) That as such he abetted an offence punishable under section 162 or this section. Establish abetment under section 107.

(3) That an offence under section 162 or this section was committed.

3. Procedure.—Cognizable—summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

4. Charge.—The charge should run as follows:

I (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being a public servant in the—Department, abetted the commission of the offence punishable under section 162 (or section 163) by—and thereby committed an offence punishable under section 164 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction under section 6(5) of Act XL of 1958 is necessary for prosecution.

Section 165

165. Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.—Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with [7][imprisonment of either description for a term which may extend to three years], or with fine, or with both.

Illustrations

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty [8][taka] a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred [8][taka] a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Cases and Materials : Synopsis

1. Scope of the section.—(1) One of the elements to be proved to constitute an offence under this section is that the acceptance was without consideration or with consideration which the accused knew to be inadequate. It cannot be said that it must first be proved that the acceptance of the valuable thing was a gratification other than legal remuneration before the presumption under Corruption Act can be

7. Subs, by the Criminal Law Amdt. Act, 1953 (XXXVII of 1953), s. 2 for "simple imprisonment for a term which may extend to two years".

8. Subs, by Act VIII of 1973, s. 3 and 2nd Sch., for "rupees".

drawn so as to throw the burden on the accused. The rule of the Court which requires corroboration of the evidence of an accomplice as against each accused if it applies at all applies with very little force to a case in which the accused is charged with extorting a bribe from other persons. In cases of this kind where payment of bribe has not been voluntary, very slight corroboration would be sufficient to make the evidence of such persons admissible against the receiver of the bribe (49 CrLJ 529). A Criminal Court is legally competent to record a conviction under sections 120B/165 when the charge is in respect of an offence under section 102B read with section 161 (*AIR 1947 FC 9).*

(2) This section deals with the offence of taking bribes by public servants. Where a public servant habitually takes bribes he may be dealt with under the Prevention of Corruption Act. Individual acts of taking bribe will continue to be governed by this section. *AIR 1957 SC 458.*

(3) The section has been so worded as to cover cases of corruption which do not come within Ss. 161, 162 or 163. *AIR 1963 SC 550.*

(4) It is implicit in the offences under Sections 161, 164 and 165, P.C. and the Prevention of Corruption Act that the public servant has misused or abused the powers of office held by him as public servant. *AIR 1984 SC. 684.*

2. Burden of proof and evidence.—(1) The presumption under the Prevention of Corruption Act arises only on proof that the accused public servant accepted or obtained or agreed to accept or obtain a valuable thing and the extent of the presumption is that such receipt or obtaining of the valuable thing was without consideration or for an antiquated consideration. It still is on the prosecution to prove the other ingredients of the section, namely the fact that a thing was received by the public servant and that the other ingredients are satisfied. *AIR 1960 SC 548.*

(2) The presumption raised by the Prevention of Corruption Act, is a presumption of law which a Court is bound to draw where once it is proved that the public servant accused received or obtained a valuable thing in the circumstances mentioned in this section. *AIR 1958 SC 61.*

(3) Suspicion, however strong, is not enough to convict an accused in absence of satisfactory evidence. *AIR 1979 SC 1537.*

(4) When important witnesses were not examined, the case is one with grave infirmities and cannot end in conviction. *1979 Cri LR (SC) 1.*

(5) Hasty action in passing of the bills of a contractor and opening of a new account in the bank for withdrawal of money which were for different causes and capable of different interpretations was held not a corroborating evidence of taking bribe by the officer passing the bills. *1984 CriLJ 878 (Pat).*

(6) Trap laid for discovery of crime—Proof required in offences falling under sections 161 and 165 of the Penal Code. Presumption under section 4 of Act II of 1947—In a case of this nature the prosecution is required to prove their case strictly according to the principle laid down in the Evidence Act in spite of the provision of section 4 of the Prevention of Corruption Act, II of 1947. The prosecution would be liable to prove the motive of reward under section 161 of the Penal Code, or absence or inadequacy of consideration under section 165 of the Penal Code because such motive of reward or such absence or inadequacy of consideration is a part of the very offence under section 161 or 165 of the Penal Code respectively. But now by reason of section 4, Prevention of Corruption Act 1947, that presumption will be made against the accused the moment the prosecution proves that the accused accepted or agreed to accept or obtain or attempted to obtain any gratification or valuable thing. Proof that the accused agreed to accept bribe is always on the prosecution. *27 DLR 268.*

3. "Whom he knows, etc.".—(1) One of the essential ingredients of the offence under this section is that the person from whom the accused accepted etc., the valuable thing was known to the accused to have been, or to be, or to be likely to be concerned in a proceeding or business transacted or about to be transacted by himself or which had a connection with the official functions of himself or of a public servant to whom he was subordinate or from a person known to the accused to be interested in or related to the person so concerned. *AIR 1947 FC 9.*

4. "From a person concerned, etc.".—(1) The words "a person concerned, etc." must mean a third party. A subordinate of an officer cannot be considered as a person concerned in any business transaction of the officer. *AIR 1968 Mad 117 (135) : 1968 CriLJ 493 (DB).*

5. "Valuable thing".—(1) The word "gratification" used in S. 161 and the words "valuable thing" in this section are not mutually exclusive in their connotations and may apply to both sections. *AIR 1959 Bom 543.*

6. "Or of any public servant to whom he is subordinate".—(1) The word "subordinate" has been used without any qualification, and therefore the accused need not be a subordinate in respect of those very functions with which the business or transaction referred to in the section is concerned. *AIR 1963 SC 550.*

(2) Where an appeal against the rejection of an application for export licence was pending before the Joint Chief Controller of Imports and Exports and a gratification in respect of that matter was acceded by an Assistant Controller of Imports who was only an administrative subordinate of that officer it was held that he was guilty under this section even if he had no function to discharge in connection with the appeal before the Joint Chief Controller of Imports and Exports. *AIR 1963 SC 550.*

7. Practice.—Evidence—Prove: (1) That the accused is a public servant.

(2) That he has accepted or obtained, or has agreed to accept, or has attempted to obtain, for himself or for someone else, a valuable thing.

(3) That he gave no consideration for it or gave a consideration which he knew to be inadequate.

(4) That the person from whom the accused accepted, etc. the same, was known to the accused to have been, or was or was likely to be, concerned in a proceeding or business transacted or about to be transacted by himself or which had a connection with the official functions of himself, or of a public servant to whom the accused was subordinate or from a person known to the accused to be interested in, or related to the person so concerned.

8. Procedure.—(1) An offence under this section being cognizable, the question of sanction for prosecution under Section 196A, Criminal P. C. (5 of 1898) does not arise. *AIR 1973 SC 2204.*

(2) A police officer who is a complainant cannot investigate into the matter. *(1984) 1 Recent CriRep 437 (P & H).*

(3) Cognizable—Summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

9. Charge.—(1) Where a public servant received gratification partly on one day and partly on another day and was charged under Ss. 161 and 165 it was held that the offence was a continuous one and that a separate conviction under Section 165 could not be maintained. *(1901) 5 CalWN 332 (DB).*

(2) Where in a charge under Sections 161 and 120B a case was proved under Sec. 165 and the accused was not prejudiced by the non-framing of a charge under Section 165 it was held that he could be convicted under S. 165. *AIR 1947 Cal 162.*

(3)Sanction to prosecute under Ss. 161 and 165—Facts on which proposed prosecution is based must be put before sanctioning authority—Condition satisfied—Sanction held was valid. *(1957) 29 CutLT 31 (DB).*

(4) The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being a public servant in the—Department, accepted (or obtained etc.) for yourself (or for a valuable thing viz,—without consideration) (or for consideration which you knew to be inadequate) from—whom you knew to have been concerned in a proceeding (or business transacted by you) viz,—(whom you knew to be interested in, or related to, the person so concerned) and thereby committed an offence punishable under section 165 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

10. Sanction.—Sanction under section 6(5) of Act XL of 1958 is necessary for prosecution.

Section 165A

[9]**[165A. Punishment for abetment of offences defined in sections 161 and 165.**—Whoever abets any offence punishable under section 161 or section 165 shall, whether the offence abetted is or is not committed in consequence of the abetment, be punished with the punishment provided for the offence.]

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Whoever abets".*
3. *Mens rea.*
4. *The bribe must be to a public servant.*
5. *Acquittal of principal offender—Effect.*
6. *Offence is cognizable.*
7. *Sanction to prosecute.*
8. *Who may try offence under this section.*
9. *Abetment of offence under this section.*
10. *Charge.*
11. *Procedure.*
12. *Accused is a competent witness on his own behalf.*
13. *Practice.*
14. *Proof.*
15. *Sentence.*

1. Scope of the section.—(1) Illustration (a) to section 116, Penal Code makes it clear that the offer of the bribe would amount to an abetment under section 116, Penal Code and would necessarily constitute an offence under section 165A. In a trial for the offence of offering a bribe to a public servant the relevant question is the state of mind of the accused when he offers a bribe, it has nothing to do with the question whether the public servant is or is not in a position to do or not to do the act, for the doing whereof the amount is offered to him.

(2) Courts should be very cautious and scrutinising in examining prosecution case under sections 161 and 165A, Penal Code for it is very easy to implicate a person in such a case on false allegation. Allegations of offence punishable under sections 161 and 165A are to be scrutinised with reference to an official act. In the absence of an official act conviction under section 161 and 165A cannot be sustained. *24 DLR 230.*

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9. Section 165A was inserted by the Criminal Law Amdt. Act, 1953 (XXXVII of 1953).

(3) Bribe giving does not cease to be an offence merely because some sort of inducement to pay can be said to have proceeded from the police to whom the offer was made. Cases of this nature require careful examination of fact to arrive at a proper conclusion. The appellant Saeed Ahmed was convicted for paying a sum of money to two police officers GH and C in order to make a favourable report in respect of an enquiry which was being conducted against him. A trap was laid to witness the passing of money from the appellant to the police officer which was accordingly witnessed and the amount was recovered from the appellant. The defence was that payment was made to ward off an intended arrest of the appellant which the appellant apprehended from the attitude of the two police officers and this attitude was purposely adopted by the police officers in order to create a fear in the mind of the appellant and so, the appellant pleaded, the payment was a sort of extortion exercised by the police and as such, it was not a case of pure bribe giving. Held: The case is clearly of the "agent provocateur" type in which the police officers were themselves the agents. Their evidence would not be accepted at its face value, but required for more careful scrutiny. *Held:* further Saeed Ahmed acted throughout on his responsibility. If there was inducement, it was by Saeed Ahmed to the police officer to "be kind" and take the money. Things were arranged so by the police officers that Saeed Ahmed thought he could make the payment without being observed. That does not amount to inducement, and the change in the law made in 1962 is without effect on the case. But there can be no doubt that the final action of the accused was influenced by the equivocal attitude displayed by the police officer C when he told Saeed Ahmed that he was free to pay the bribe to the police officer GH. If the latter would accept it his proper duty was to want Saeed to do no such things, and Saeed being aware of this, could not but have felt that although both GH and C had individually refused to accept the bribe from him, he was now bound to pay the promised amount if he valued his safety. The situation was one of his own making through his having come forward with the offer, but a word in the opposite sense from C would have left him free to pursue the matter or not as he chose. As a result of what C said, he was no longer entirely free and that is a factor which should be given weight in relation to the punishment he deserves. It has been necessary to re-examine the entire evidence and circumstances at considerable length in this judgment before coming to conclusions owing to the very exceptional nature of the case. The Special Judge's acceptance of the story given by two PWs is based on a failure to appreciate that the conduct of the police officers was designed to be an invitation to Saeed Ahmed to commit a crime, and consequently had the "appearance" of complicity in that crime. *16 DLR (SC) 484.*

(4) This section was introduced in the Code by Act 46 of 1952. Before such introduction cases of abetment of offences under Ss. 161 and 165 were held governed by Ss. 109 and 116 read with Ss. 161 and 165. *AIR 1948 Nag 245.*

(5) Section 165A has made the abetment of offences under Sections 161 and 165, a substantive offence and is an 'express provision of law' within the meaning of Ss. 109 and 116. *AIR 1956 SC 8.*

(6) A prosecution for an abetment of offences under Ss. 161 and 165 can be made only under this section and not under Ss. 161 and 165 read with Section 109 or with Section 116 as the case may be. *AIR 1956 Manipur 9.*

(7) There is no such offence as Ss. 161/109 or Sections 161/116 existing after the introduction of this section. *AIR 1956 SC 8.*

(8) The offence in law of Ss. 161/109 is precisely the same as that of S. 165A at least so far as the abetment of an offence actually committed is concerned.....the punishment both under Ss. 161/109 and S. 165A is the same. In fact, if S. 165A is to be regarded as a freshly created offence it did nothing

more than provide expressly what was already provided by the Code by the two other sections. The change was in respect of offences not committed that is to say S. 161 read with S. 116. *AIR 1960 SC 409.*

2. "Whoever abets".—(1) Even the mere fact that the accused asked the public servant to take something from him and make an order in his favour was held sufficient to constitute abetment even though no money was placed before the public servant. *AIR 1979 SC 1191.*

(2) Offering bribe—Offence is made out when public servant is offered bribe for acting in favour of bribe giver. It is not material whether that servant was in a position to do favour or not. *1982 CriLJ (NOC) 113.*

3. Mens rea.—(1) In a trial for the offence of offering a bribe to a public servant the relevant question is the state of mind of the accused when he offered the bribe. It has nothing to do with the question whether the public servant to whom the bribe was offered was or was not in a position to do or not to do the act for which the bribe was offered. *AIR 1967 Orissa 31.*

4. The bribe must be to a public servant.—(1) A commissioner appointed without jurisdiction by a Civil Court to seize certain account books of the plaintiff is not a 'public servant' and an offer of a bribe to him would not be within this section. *AIR 1961 SC 218.*

5. Acquittal of principal offender—Effect.—(1) Where the abetment is by instigation or conspiracy, the acquittal of the principal offender does not necessarily result in the acquittal of the abettor, but in cases of abetment by aid i.e., by facilitating the commission of the offence, where the principal offender is acquitted of the offence on the ground that he did not commit the offence no question of aiding the commission of the offence would arise and there can be no conviction for abetment of the offence. *AIR 1959 SC 673.*

6. Offence is cognizable.—(1) Where cognizance of an offence under Section 165A Penal Code, is taken and the trial has proceeded to termination, the invalidity of the investigation, by reason of failure to obtain permission to investigate it under the Prevention of Corruption Act, will not vitiate the result unless miscarriage of justice has been caused thereby. *AIR 1958 Manipur 17.*

(2) An offence under this section is cognizable and there is no question of its being cognizable if investigated by a Deputy Superintendent of Police and non-cognizance when investigated by an Inspector of Police. *AIR 1973 SC 2204.*

7. Sanction to prosecute.—(1) Where cognizance of the offence under Section 165A has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation cannot vitiate the result unless it has caused miscarriage of justice. *1973 CriLJ 806 (Raj).*

(2) Where the charge against the accused is under section 165A no previous sanction for prosecution is necessary.

8. Who may try offence under this section.—(1) A Special Judge to whom a case under Sections 161/116 had been distributed, took cognizance of the case after the enactment of Section 165A, and convicted the accused under S. 165A, which offence he was not authorised to try. It was held that the Court had no jurisdiction to try the case and the conviction was bad. *AIR 1953 SC 8.*

(2) Offence exclusively triable by Special Judge—Magistrate is not deprived of his power to take cognizance of an offence, under S. 190, Cr. P.C.—Power of Magistrate to take cognizance of an offence, under S. 190, Cr. P. C. has not been taken away by Cr. Law Amendment Act. *AIR 1967 Pat 416.*

9. Abetment of offence under this section.—(1) In view of Explanation 4 to S. 108 there can be an abetment of the offence under this section which is itself an abetment of an offence under Sections 161 and 165. *AIR 1954 Punj 228.*

10. Charge.—(1) Where A was charged for an offence of abetment under this section and the High Court in appeal changed the conviction to one under S. 161/116 on the ground that Section 165A had not come into existence at the time of the offence, and maintained the sentence as given by trial Court, it was held that the error in the charge did not prejudice the accused in the trial and that the High Court's order was neither without jurisdiction nor illegal on that ground. *AIR 1960 SC 409.*

(2) The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, abetted who was a public servant in the commission of an offence under section 161 or section 165 of the Penal Code and thereby committed an offence punishable under section 165A of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

11. Procedure.—(1) The offence contemplated by Sec. 165A, P.C. is by its very nature a serious one and every care must be taken that the same is properly and thoroughly investigated. *1976 CriLJ 1281 (Bom).*

(2) The Sub-Inspector of Police is not authorised under the Prevention of Corruption Act to investigate an offence punishable under S. 165A without the order of a Magistrate of the First Class as the case may be or make any arrest therefor without a warrant. *1982 MadLW (Cri) 112.*

(3) Cognizable—Summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

12. Accused is a competent witness on his own behalf.—(1) By virtue of the Prevention of Corruption Act, the accused in a trial for an offence under this section is a competent witness on his own behalf. *AIR 1957 SC 458.*

(2) The Court is not bound to inform the accused that he is competent witness on his own behalf and the failure to do so will not render the conviction bad. *AIR 1954 All 204.*

13. Practice.—Evidence—Prove; (1) That the accused abetted the offence.

(2) That the offence abetted was under section 161 or 165 of the Penal Code.

14. Proof.—(1) It is not necessary for the prosecution to prove the reasons which impelled the accused to pay to bribe. *AIR 1961 Tripura 8.*

(2) Trap and decoy witnesses are interested witnesses, their evidence should be received with caution and the probability of the truth of the defence explanation cannot be ruled out in every case. *(1967) 33 CutLT 649.*

(3) Trap and decoy witnesses cannot be regarded as accomplices and a conviction based on their uncorroborated evidence will not necessarily be illegal. *AIR 1955 NUC (Him Pra) 1295.*

(4) Conviction of Sanitary and Food Inspector under Ss. 161, 165A—Accepting of illegal gratification in lieu of not taking sample of any edible article sold by hotel owner alleged—Hotel owner being an accomplice his testimony held could not be relied on without corroboration. *1981 AllLJ 1153.*

(5) Where important persons who played a vital role in a case were not produced or examined in Court there would be no justification for conviction. *1979 CriLR (SC) 1.*

(6) Benefit of doubt—Entire Prosecution Case resting solely on testimony of police witnesses—Reasonable doubt as to accused's guilt—Accused acquitted. *AIR 1976 SC 985.*

(7) Hostile witness—Cross-examination under Section 154—Value of his evidence—Prosecution under S. 165, Penal Code—Conviction upon such evidence not barred. *AIR 1976 SC 202.*

(8) The fact that two or more persons conspired together to do an unlawful act may be collected from collateral circumstances when offences are committed under Ss. 165A and 120B. The direct evidence will be seldom forthcoming and it is therefore necessary to look at the circumstances to see whether a conspiracy actually existed which is largely inferential. *1980 CriLJ NOC 140.*

15. Sentence.—(1) Offence of offering bribe must, in general, be severely punished. *AIR 1954 All 223.*

(2) It is the gravity of the offence and not smallness or largeness of the amount offerred that must guide the Court in awarding sentence. *AIR 1954 Trav-Co 492.*

(3) Fact that bribe was offered to avoid harassment is no consideration for further reduction of sentence of imprisonment below six months. *AIR 1973 SC 2751.*

(4) Attempt to corrupt responsible public servant—Sentence of 6 months' imprisonment and a fine of Rs. 1,000 held was not severe. *AIR 1960 SC 756.*

(5) Public servant indulging in anti-social acts should be dealt with deterrence—Prosecution for offence pending since 1971—Accused lost his job—**Held** that ends of justice would be met if instead of imposing substantive term of imprisonment accused is sentenced to fine. *1980 CriLJ NOC 140 (All).*

Section 165B

[10]**[165B. Certain abettors excepted.**—A person shall be deemed not to abet an offence punishable under section 161 or section 165 if he is induced, compelled, coerced, or intimidated to offer or give any such gratification as is referred to in section 161 for any of the purposes mentioned therein, or any valuable thing without consideration, or for an inadequate consideration, to any such public servant as is referred to in section 165.]

Cases

1. Scope.—(1) Bribe-giver's offer of money to some extent influenced by the equivocal attitude of the police—Police action condemned. *Saeed Ahmed Vs. State (1964) 16 DLR (SC) 484.*

(2) Offence of bribe-giving committed before enactment of section 165B exempting bribe-giving under inducement or threats from operations of section 165A—Will not be affected by provision of section 165B. "Deemed" in section 165B does not mean that Court is thereby directed to "convict" or "not convict". Substantive and procedural matters—Whether an act is or is not an offence is a matter of substantive law. *Saeed Ahmed Vs. State (1964) 16 DLR (SC) 484.*

(3) Bribe giver's offer of money to some extent influenced by the equivocal attitude of police—police action condemned. Where bribe obtained through threats—Bribe giver and "abetto —In spite of the fact that bribe was paid under threats—Section 165B provides only a special exemption in favour of such abettor absolving him of liability. Offence of "misconduct" by public servants—offence may be abetted by a bribe-giver. Offence of bribe giving committed before enactment of section 165B exempting bribe giving under inducement or threats from operation of section 165A will be affected by

10. Section 165B was inserted by the Pakistan Penal Code (Amdt.) Ordiance. 1962 (LIX of 1962).

provisions of section 165B. "Deemed" in section 165B does not mean that Court is thereby directed to "convict or not convict"—Substantive and procedural matters—whether an act is or is not an offence is a matter of substantive law. *16 DLR (SC) 484.*

Section 166

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.

Cases and Materials

1. Scope.—(1) There must be an express direction of law to satisfy the requirements of section 166: a disobedience of an order is not sufficient even through that order may be one given under a provision of law. The accused ought to be informed by a charge and otherwise of the particular direction of the law as to the way in which he is to conduct himself as a public servant; which he is alleged to have disobeyed. An offence under this section does not fall under section 195, CrPC, as such, Sessions Judge is not competent to file a complaint. *PLD 1963 (Kar) 624.*

(2) The essential ingredients to be proved for a conviction under this section are:

(a) that the accused is a public servant;

(b) that there are directions of law as to the way in which he should conduct himself as such public servant;

(c) that he disobeyed such directions ;

(d) that he so disobeyed them intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person. *1979 MPLJ 682.*

(3) An advocate is not a public servant and he cannot commit an offence under Section 136, P.C. *1982 UP Cri R 296.*

(4) The disobedience may be by an act or an omission to do an act. *AIR 1962 Bom 198.*

(5) A witness cannot take a circuitous route in returning home and is not protected by S. 135. Civil Procedure Code if he takes a circuitous route and the officer of the Court arresting him while he was returning by a circuitous route commits no offence under S. 166. *AIR 1924 All 676.*

(6) In cases such as those under this section and under S. 342 the complaint should be made as early as possible. A delay in such cases may be almost fatal to the prosecution. *AIR 1952 Vind Pra 57.*

(7) Section 197 of the Criminal Procedure Code will apply to complaints against public servants under this section, for disobedience (by acts or omission) of any direction of the law as to the way in

which they should conduct themselves as such public servants, and a prosecution without such sanction is not sustainable. *AIR 1962 Bom 198.*

(8) Complaint under Ss. 166 and 167, P.C. without obtaining sanction—Magistrate examining complainant and his witness—Sanction obtained—Magistrate ordering production of witness on adjourned date under S. 204, Cr. P.C. without complying with S. 200, Cr. P.C. again—Held: non-compliance with S. 200, Cr. P.C. again was not an illegality and the Magistrate could proceed further. *(1983) 1 Crimes 866 (Delhi).*

(9) Neither Rule 7 of the Administrative Tribunal Rules read with Order XXI, Rule 32 of the Code of Civil Procedure nor the power of the Administrative Appellate Tribunal to punish for contempt is sufficient or effective to get the orders of the Administrative Tribunal Executed within a reasonable time and hence the processes for the execution of the orders of the Administrative Tribunal are not sufficient so as to hold that these writ petitions are not maintainable. The respondents have committed an offence punishable under section 166 of the Penal Code. Accordingly, the petitioners individually are directed to file an application to the Administrative Tribunal for making a complaint under section 166 of the Penal Code against the officer or officers who failed to implement the Tribunal's order or orders in question and forwarding the same to a Magistrate having jurisdiction to try the offence. *Abdul Maleque Miah (Md) and seven others Vs. Secretarty, Ministry of Establishment & others (Spl. Original) 5 BLC 695.*

2. Practice.—*Evidence*—Prove: (1) That the accused was a public servant.

(2) The he conducted himself in the particular manner charged.

(3) That such conduct was in the exercise of his public duties as such servant.

(4) That such conduct was in disobedience to a direction of law.

(5) That when the accused disobeyed such direction of law, he did so knowingly.

(6) That when the accused was guilty of such disobedience, he thereby intended or knew that he was likely thereby to cause an injury.

3. Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

4. Charge.—The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, did (or omitted to do as the case may be), such conduct being contrary to the provisions of Act—section—, and known by you to be prejudicial to—and thereby committed an offence punishable under section 166 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—(1) No Court can take cognizance of an offence under this section without the previous sanction as contemplated under Act XL of 1958.

(2) In the absence of previous sanction by the appropriate Government, the accused could not be prosecuted for an offence under this section. *Anwar Md. Vs. Rashiduzzaman (1959) 11 DLR (WP) 77.*

Section 167

167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant and being, as such public servant, charged

with the preparation or translation of any document, frames or translates that document 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.

Case and Materials : Synopsis

1. Scope of the section.—This section is analogous to section 218 of the Penal Code. The distinction between Ss. 167 and 193 is that while S. 167 relates to an incorrect preparation of a public record, section 193 would apply when the record relates to a judicial proceeding. *AIR 1945 Mad 9.*

(2) Without proving that the accused was entrusted with the preparation of the document—conviction not legal. In order to sustain a conviction under section 167, the prosecution must at least show that it was the general or, at any rate, the special duty of the accused to prepare or translate the document with reference to which the offence under the section is alleged to have been committed. Unless the prosecution led some evidence to show that the accused was entrusted with the preparation of the document his conviction under section 167 is not legally maintainable. *10 DLR 354.*

(3) This section is aimed against a public servant in charge of the preparation or translation of documents who frames or translates such documents incorrectly intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person. Where a public servant is charged with such preparation or translation, he is so charged in public interest. *AIR 1926 All 719.*

(4) In order that an accused may be convicted under this section the following essentials must be established:—

(i) that he was a public servant,

(ii) that he was charged with the preparation or translation of a document,

(iii) that he framed or translated it incorrectly,

(iv) that his intention in so doing was to cause or that he knew that, his doing so was likely to cause injury to any person. *1980 BiharLJ 493.*

2. This section and S. 193.—(1) While this section applies to publicd servants, S. 193 applies to all persons. A public servant charged with the preparation of a document fabricating that document may come within both the sections. Thus an Amin making a false return on an execution process in the course of judicial proceedings may be guilty under both sections. *AIR 1945 Mad 9.*

3. This section and Ss. 466 and 467.—(1) Offences under this section and S. 466 are not of the same kind. *1882 10 Cal LR 421 (DB).*

(2) An offence under S. 467/471 may include an offence under this section where the ingredients necessary under this section are also satisfied. *AIR 1926 Oudh 615.*

4. Intention or knowledge.—(1) For a conviction under this section it must be proved that the accused had, in doing the act of framing or translating the document incorrectly, a clear intention to harm, or had knowledge that his act was likely to harm some person. *AIR 1966 J & K 96.*

(2) An act intended or known to be likely to cause injury to the Government will be covered by this section. *(1971) 2 SC Cri R 318.*

(3) An intention to cause injury can be proved by evidence of the subsequent conduct of the author. *AIR 1973 SC 1338.*

5. "Preparation" and "frame".—(1) The two words 'preparation' and 'frame' obviously cannot mean the same thing. It is a cardinal rule of interpretation of statutes that where two distinct words are used in the same section, they do not mean identically the same thing. *AIR 1929 All 33.*

(2) The following are illustrations of the framing of documents by public servants for purposes of this section:—

(a) Making of a false report. *AIR 1930 Lah 92.*

(b) Making a false entry by the station house officer in his diary. *(1911) 12 CriLJ 502 (Mad).*

(c) Investigating Police Officer incorrectly entering statements of witnesses examined by him under S. 161. Criminal P.C. *(1897-1901) 1 Upp Bur Rul 29.*

(d) Insertion by a Patwari of a new page in a revenue record falsely showing certain persons as sharers. *AIR 1965 Raj 9.*

(e) Preparation of false electoral roll. *AIR 1941 Pat 539.*

(3) Where a public servant's duty is only to maintain a correct record but is not entrusted with preparation or making entries in the record, he cannot be held liable for preparing a false record. *1982 All Cri R 264.*

6. Preparing false copies.—(1) Preparation of a false copy will be "framing" of an incorrect document within the meaning of this section. *AIR 1926 All 719.*

(2) Where coal was despatched contrary to rules but under written instruction of superior officer and the accused dispatcher prepared forwarding notes and railway receipts it was held that the accused could not be attributed a criminal design in his mind. He was therefore held not guilty under Section 167, P.C. *1984 BiharLJ 116 (Pat).*

7. "Charged with the preparation or translation of any document".—(1) The words "charged with the preparation or translation of any document" in this section shows that there must be legal duty imposed on the public servant to prepare the document. Where there is no such duty the signing by the public servant of a document prepared by another is not an offence under this section. *(1969) 71 Bom LR 669.*

(2) The section should be construed liberally. When a Head Clerk, in addition to his ordinary duty, is specially appointed to prepare the Electoral Rolls, he is a public servant charged with the preparation of Electoral Rolls. *AIR 1941 Pat 539.*

(3) The section is attracted when a public servant is charged with a duty of preparation of a document and he frames an incorrect document. Reasons recorded by the Minister for giving the directions to the Oil Corporation could not be classified as preparation of an incorrect document. *23 Delhi LT 499.*

8. Practice.—*Evidence*—Prove: (1) That the accused was a public servant.

(2) That he had the charge of the preparation or translation of the document.

(3) That he had such charge in his capacity of a public servant.

(4) That he framed or translated it in an incorrect manner.

(5) That he knew that he was incorrectly framing or translating the same.

(6) That he did as above, with intent or with knowledge that it was likely that he would thereby cause injury.

9. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

10. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being a public servant to wit—and being, as such public servant charged with the preparation (or translation) of the document relating to—, framed (or translated) that document in a manner which you knew to be incorrect, intending thereby to cause injury to—and that you thereby committed an offence punishable under section 167 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

11. Sanction.—Sanction of Government is necessary under section 197, CrPC before prosecution is launched.

12. Sentence.—(1) An official, however humble, who deliberately tampers with official records and issue false copies, whatever his motive, deserves severe punishment, not merely for his own conduct, but as a deterrent to others who may be tempted to follow his example. *AIR 1926 All 719.*

Section 168

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.

Cases and Materials

1. Scope.—(1) This section shows that the Legislature wants to punish those who have divided loyalty in official work on the part of the Government servants and to restrict their time and devotion to the official duties, barring them from other occupations as long as they remain in Government service.

(2) The object of prohibiting public servants from engaging themselves in trade is to put a check on every kind of jobbery and every fraudulent and improper use of office by public servants. *(1911) 12 CriLJ 281 (Nag).*

(3) The section requires three elements to constitute the offence under this section:

(i) that the offender is a public servant,

(ii) that as such he is legally bound not to engage in trade, and

(iii) that he engaged in trade. *(1974) 15 GujLR 293.*

(4) The word is one of very general application and must always be considered with the context with which it is used and in its wide sense the word is used "to cover every kind of trade, business, profession or occupation". *AIR 1951 Bom 233.*

(5) Clerk of Circle Board renting his house to the Board falls within the section. *AIR 1939 Rang 69.*

(6) Engagement of accused, a Government employee, as Railway Service Apprentice—Does not amount to engaging in 'trade' within the contemplation of S. 168. *AIR 1980 SC 1167(1168).*

(7) No sanction under S. 197, Cr. P.C. is necessary for taking cognizance of offence under S. 168. *AIR 1932 Nag 133.*

(8) Prosecution under S. 168, P.C., read with. District Boards Act need not be started on a complaint of the Board or of some person authorised by the Board. *AIR 1933 All 543.*

(9) Where the case is one of gross abuse of an official position by a public servant extending over a fairly long time, a deterrent punishment is called for. *AIR 1951 Bom 233.*

2. Practice.—*Evidence*—Prove: (1) That the accused was a public servant.

(2) That he, as such, was legally bound not to engage in trade.

(3) That he had engaged in trade.

3. Procedure.—Cognizable—Summons—Not bailable—Not compoundable—Triable exclusively by the Special Judge.

4. Charge.—The charge should run as follows:

I, (name and office of the Special Judge) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being a public servant, to wit—, and being as such public servant, legally bound not to eugage in trade, did engage in trade, and thereby committed an offence punishable under section 168 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction for prosecution of public servant is necessary.

Section 169

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.

Cases and Materials

1. Scope.—(1) A public servant who purchases, or bids for property in contravention of provisions which prohibit him from doing so will be guilty of an offence under this section. *AIR 1925 Oudh 565.*

(2) When it is alleged that the public servant purchased property in the name of another person, it is for the prosecution to prove the said act. *AIR 1938 All 513.*

(3) A member of a District Board appointed to sell impounded cattle is a public servant within the meaning of this section. *AIR 1926 Oudh 565.*

2. Practice.—*Evidence*—Prove: (1) That the accused was a public servant.

(2) That he as such was legally bound not to purchase or bid for the property in question.

(3) That he did purchase or bid for that property either in his own name or in the name of another or jointly or in shares with others.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day of—, at—, being a public servant, employed in department and being legally bound as such public servant, not to purchase (or bid for) certain property, viz—purchased (or bid for that property) in your name or in the name of—or jointly or in shares with—and thereby committed an offence punishable under section 169 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Sanction—under section 197, CrPC is necessary before a prosecution is launched under this section.

Section 170

170. Personating a public servant.—Whoever pretends to hold any particular office as a public servant, 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 act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Pretends to hold any particular office".*
3. *"Public servant".*
4. *"Knowing".*
5. *"Under colour of such office".*
6. *"Does an act".*
7. *Several acts each constituting an offence done by the person personating another—Whether distinct offences.*
8. *Joint trial for offences under Ss. 170 and 175.*
9. *Charge for offence under this section and also other offences—Sentence.*
10. *Practice.*
11. *Procedure.*
12. *Charge.*

1. Scope of the section.—(1) The second part of section 170 of the Penal Code relates to false personation and not fraudulent personation. Any act done or attempted to be done under the false personation is enough. *12 DLR 823.*

(2) It is necessary that the accused should have, in the assumed character, done or attempted to do an act under colour of such office. *AIR 1967 Cal 602.*

(3) In a charge for an offence under this section, the prosecution must prove—

(i) that the accused pretended to hold a particular office or falsely personated any other person holding such office ;

(ii) that when he pretended to hold a particular office, he did so knowing that he did not hold such office, or that where he personated any other person such personation was false ; and

(iii) that in such assumed character he did or attempted to do an act under colour of such office. *AIR 1967 Cal 602.*

(4) The offence under S. 416 is of a general character, and applies to a person who pretends to be someone else. This section lays a specific offence dealing with persons who pretend to hold the office of a public servant or who falsely personate a public servant. *AIR 1958 Madh Pra 230.*

2. "Pretends to hold any particular office".—(1) It is true that in order to prove the case within the four corners of S. 170, it is not necessary for the prosecution to prove that the office which the offender pretended to hold existed or not. Nevertheless the law requires that to punish a person under Section 170 the office which the offender is said to have pretended to hold was a specific office. *1980 (UP) Cri LR 190.*

(2) The words "any particular office" mean "any specified office". *AIR 1953 All 549 (549).*

3. "Public servant".—(1) A petition-writer is not a public servant and a personation of a petition writer is not within this section. *(1897-1901) 1 Upp Pur Rul 265.*

4. "Knowing".—(1) Although ignorance of law does not excuse a person who does an act which is an offence irrespective of any guilty knowledge, yet where to constitute an offence it must be shown that the accused had a particular knowledge, the offence is not committed by one who acts without that knowledge and it is immaterial whether the absence of knowledge proceeded from ignorance of law or ignorance of fact. *(1976) 1 Weir 74 (DB).*

(2) This is one of those sections of the Penal Code in which a dishonest intention has not been made an essential element of an offence. *AIR 1951 All 481.*

5. "Under colour of such office".—(1) The words "under colour of such office" are not limited to such act as might legally be done by a real holder of such office. *(1904) 1 CriLJ 913 (All).*

(2) The phrase 'under colour of office' "points to acts which could not have been done without assuming the official authority or responsibility and would not connote acts of a ministerial or mechanical character which might be done without requiring the justification of office in the person doing them". *(1907) 5 CriLJ 211 (Bom).*

(3) The act done under the assumed office must have a relation to the duties pertaining to duties that office. *AIR 1967 Cal 602.*

(4) Where a person pretended to be a C.I.D. officer and obtained the services of certain persons who were bound to render it to such officers, it was held that the accused acted under the colour of his office. *AIR 1941 Nag 321.*

6. "Does an act".—(1) A promise is not 'act'. A promise by a person pretending to be a C.I.D. officer that he will appoint a person as a constable is not an 'act'. *AIR 1943 Pat 378.*

7. Several acts each constituting an offence done by the person personating another—Whether distinct offences.—(1) It cannot be said that in doing the various acts successively, the person personating is successively, committing distinct offences. *AIR 1951 All 481.*

8. Joint trial for offences under Ss. 170 and 175.—(1) A joint trial for offences under Ss. 170 and 175 is illegal and is contrary to the provisions of Ss. 232 and 235 of the Cr. P.C. (5 of 1898). *AIR 1933 Mad 434.*

9. Charge for offence under this section and also other offences—Sentence.—(1) Where an accused person is convicted under S. 171 of wearing a garb of a police constable and under S. 170 of

personating, by means of such garb, a police constable and, in such assumed character of ordering a person to be kept in custody it was held that a single sentence only ought to be passed on him. *1895 Rat Un Cr C 405 (DB).*

10. Practice.—*Evidence*—Prove: (1) That the accused personated some public servant or that he pretended to hold the office of a public servant.

(2) That he was not a public servant or that he did not hold such office.

(3) That he acted falsely in such personation or that he knew that he did not hold such office.

(4) That he when assuming such character did or attempted to do something under colour of such office.

11. Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

12. Charge—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—,at—, pretended to hold the office of—as a public servant (or falsely personalted—holding such office) and in such assumed character did (or attempted to do) under colour of such office and thereby committed an offence punishable under section 170 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 171

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 [8][taka], or with both.

Cases and Materials

1. Scope.—(1) Merely wearing the garb of a particular class of public servants or carrying a token used by such class of public servants is enough to constitute the offence if it is done with the intent of being taken to be such public servant. *(1835) 7 C and P 784.*

(2) In order to constitute an offence under this section, the accused must wear the garb resembling that worn by the class of public servants whom he wants to imitate. Merely carrying that garb under his arm is not enough. Thus, where the accused is found carrying a police jacket under his arm, he cannot be convicted under this section, though he may have done so with the intent that he should be taken to be a Police Constable. *(1904) 1 CriLJ 554 (UppBur).*

(3) Where (1) the accused wears the garb of a certain class of public servants with the intent that he should be taken to be such public servant and (2) also does something under colour of his assumed office, the first part of his offence will by itself fall under this section, but both the parts will together constitute the offence defined in S. 170. Hence, S. 71 (Paragraph 3) will apply to such a case and the

accused cannot be sentenced to a more severe punishment than can be imposed under S. 170, the offence under which is the graver of the two offences. *1888 Rat Un Cri C 405.*

(4) Where the accused impersonates a public servant by wearing his garb, etc., and commits extortion, he will be liable to punishment both for false personation and also for extortion (S. 383). *1887 AllWN 274.*

2. Practice.—*Evidence*—Prove: (1) That the accused wore the garb or carried the token in question.

(2) That such garb or token resembles that of a public servant.

(3) That the accused did not belong to the class of public servants who use such garb or token.

(4) That he did as in (1) with the intention, or with knowledge that it was likely that it might be believed he was such public servant.

3. Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate—Summary trial.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, not belonging to class of public servants wore the garb of such a class of public servants namely—(or carried token—namely which is used by—class of public servants) with the intention that it may be believed (or with the knowledge that it is likely to be believed) that you belong to that class of public servants and thereby committed an offence punishable under section 171 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

[1][CHAPTER IXA
Of Offences relating to Elections

Chapter introduction.—*This chapter was introduced in the Code by the Elections Offences and Inquiries Act (XXXIX of 1920) to give effect to the recommendations of the Joint Select Committee appointed to report on the Government of India Act, 1919. In their Report they observed: "The Committee are themselves firmly convinced that a complete and stringent Corrupt Practices Act should be brought into operation before the first election for the Legislative Councils. There is no such Act at present in existence.....". Act XXXIX of 1920 was, therefore, enacted to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act. This Act was repealed by the National and Provincial Assemblies (Elections) Act, 1964 Act No. VII of 1964). Again, the latter was repealed by the National and Provincial Assemblies (Elections) Ordinance, 1970 (Ordinance No. XIII of 1970). Finally, this Ordinance has now been repealed by the Representation of the People Order, 1972 (P.O. No. 155 of 1972). We may see, in this connection, the Representation of the People Order, and the rules made thereunder. Any person may fall within the offences of bribery, undue influence, personation at election within the provisions in this chapter or for false statement or illegal payments in connection with any election or failure to keep election accounts. AIR 1975 SC 2219.*

Section 171A

171A. "Candidate"—"Electoral right" defined.—For the purposes of this Chapter,—

(a) "candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(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 an election.

Cases

1. Scope.—(1) Chapter IX-A containing Ss. 171-A to 171-I was inserted into the Code by Act 39 of 1920 and deals with offences relating to elections. Apart from these provisions, which are of a general

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1. Chapter IXA was inserted by the Elections Offences and Inquiries Act, 1920 (XXXIX of 1920), s. 2.

nature there may be provisions in special Acts, like Municipalities Acts, etc., which may contain provisions as to offences committed in connection with elections under those Acts. *AIR 1929 Mad 910 (2) (912).*

(2) The definition of 'candidate' is wide enough to include even a person holding himself out as a prospective candidate when the election is in contemplation subject to the condition that he is subsequently nominated as a candidate. A candidate who has withdrawn his candidature would be included within the definition of 'candidate'. *AIR 1964 Punj 209 (DB).*

(3) When a question arises whether a person has become a candidate at a given point of time, what has to be seen is whether he had clearly and unambiguously declared his intention to stand as a candidate so that it could be said of him that he held himself out as a prospective candidate. *AIR 1955 SC 775.*

(4) Mere forming of an intention to stand for election is not sufficient unless that intention is communicated to the outside world by declaration or conduct. *AIR 1955 SC 775.*

(5) The determining factor is the decision of the candidate, not acts of other persons or bodies adopting him as their candidate. *AIR 1955 SC 775.*

(6) The right of a Government servant to nominate or second a candidate for election is not taken away by the Representation of the People Act. *AIR 1954 SC 202.*

(7) The right to nominate a candidate is not an 'electoral right' within the meaning of this section. *AIR 1970 SC 2097.*

(8) The term 'election' is very wide and may be taken to embrace the whole procedure whereby an elected member is returned whether or not it is necessary to take a poll. *AIR 1952 SC 64.*

(9) The stage of rejection or acceptance of a nomination paper is included in the term 'election'. *AIR 1952 SC 64.*

(10) If there is an election petition the stages till the decision of the election tribunal may also be included in the term 'election'. *AIR 1952 Bom 277 (DB).*

(11) The right to vote or stand as a candidate for election is not a common law right nor a fundamental right under the Constitution but is a creature of a statute and subject to the limitations imposed by it. *AIR 1952 SC 64.*

Section 171B

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.

Cases and Materials

1. Scope.—(1) Section 171B defines the offences 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 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 purpose. This section may be read along with section 161 of the Penal Code for the purpose of explanation of gratification. Charitable gifts at the time of election may, in conceivable cases, amount to corrupt practice or bribery, provided motive behind the charity was corrupt. Charitable gifts may be merely a spacious and subtle form of bribery but bonafide charity has always been allowed. If a candidate for election gives a promise of obtaining personal advantage to voters, he commits the corrupt practice of bribery. The accusation of bribery is in the nature of a criminal charge, and the same kind of evidence is required to prove such a charge in proceedings arising out of an election petition as is necessary in a criminal prosecution.

(2) Before the amendment of Section 123 by Act LVIII of 1958 which inserted clause (B) in sub-section (1) of Section 123, an acceptance of a gift made to a candidate with the intention of inducing him to drop out of the election contest did not amount to bribery. *AIR 1958 SC 857.*

(3) Where a candidate dissuades the rival candidate from standing at the election and offers him money for withdrawal of candidature, his conduct comes within this section. *AIR 1938 Cal 274.*

(4) The offence of bribery under S. 171-B, being a criminal offence, clear and unequivocal proof is required and the Court must be satisfied beyond all reasonable doubt that the offence is proved. *AIR 1967 AndhPra 155.*

(5) The Court must seek for independent corroboration, on material points, of the evidence of an accomplice and should not rely on the sole testimony of an accomplice. *AIR 1968 Punj 416.*

(6) Where the validity of an election is challenged on the ground of "corrupt practice" in the form of "bribery" the Court is not at liberty to weigh the importance of an act of bribery nor can it allow any excuse, whatever the circumstances may be and even a single act of bribery by or with the knowledge and consent of the candidate or his agents, however insignificant that may be, is sufficient to invalidate the election. *AIR 1961 MadhPra 127 (DB).*

(7) Where a person gives some land to a voter by an unregistered deed of sale, for refraining from voting, the deed, though unregistered is admissible in evidence for the collateral purpose of considering whether offence of "bribery" was committed. *AIR 1957 AndhPra 845.*

(8) Whether a gift or promise of such a gift made for a public purpose does or does not amount to bribery depends upon the facts and the circumstances of each case. *AIR 1968 Punj 416.*

(9) For finding out whether a particular promise or act amounts to gratification, two tests have to be satisfied: first, that the gratification must be something which is calculated to satisfy a person's aim

object or desire and secondly, such gratification must be of some value though it need not be something estimable in terms of money. *AIR 1968 Punj 416.*

(10) It is not necessary that the gratification offered should be of value only to the person to whom it is offered and not to anybody else. *AIR 1968 Punj 416.*

(11) Whether the object in giving gratification was achieved or not is immaterial. The motive of the briber and not the effect on the bribed is the test. *AIR 1942 Rang 52.*

(12) Where the object of the candidate distributing sweets to school-children was at the most, to make himself popular in his constituency, it was held that it could not amount to bribery. *AIR 1961 All 356 (DB).*

(13) Promise during election period of gun licences to people who vote for a certain candidate does not amount to bribery—Bargaining for votes, what amounts to. *AIR 1976 SC 27 (Pr 12).*

(14) A person who gives gratification to a voter for refraining from voting at an election commits the offence of "bribery" under this section. *AIR 1957 AndhPra 845.*

(15) Where a candidate dissuades the rival candidate from standing and offers money to him for withdrawing his candidature his conduct comes within the definition of "bribery". *AIR 1938 Cal 274.*

Section 171C

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.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Undue influence—What constitutes.*
3. *Sub-section (2)*
4. *Sub-section (3)*

1. Scope of the section.— (1) A friendly advice or an influence arising from gratitude or esteem is not undue influence unless thereby the functioning of a free mind is destroyed *(AIR 1959 Orissa 188).* In order to constitute undue influence, a threat must be serious and deliberately uttered with the intention of carrying it into effect. A religious leader has a right to exercise his influence in favour of a particular candidate by voting for him and by canvassing votes of others for him.

(2) The postponement of the date for election affecting the right of a candidate to fight the election amounts to an "interference" with the election process. *ILR (1970) 20 Raj 382.*

2. Undue influence—What constitutes.—(1) What is material under the law is not the actual effect produced but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. *AIR 1959 SC 855.*

(2) Decisions of the English Courts, based on the words of the English statute, which are not strictly in pari materia with the words of the Indian Statute, cannot, therefore, be used as precedents in this country. *AIR 1959 SC 855.*

(3) The words "undue influence" are used in contradistinction to proper influence which may be secured through affection bestowed or from kindness displayed. *AIR 1961 Punj 383.*

(4) The expression "undue influence" as defined in Representation of the People Act has the same meaning as it has in S. 171-C of Penal Code. *AIR 1982 NOC 70 (Gauhati).*

(5) A friendly advice or an influence arising from gratitude or esteem is not undue influence unless thereby the functioning of a free mind is destroyed. *AIR 1961 Punj 383 (386) (DB).*

(6) An influence which exists from attachment or respect or which results from arguments or appeals to the reasons and judgment is not "undue". *AIR 1961 Punj 383 (386) (DB).*

(7) Though the definition of "undue influence" contained in S. 171C is wide in terms it cannot take in mere canvassing in favour of a candidate at an election. *AIR 1968 SC 904.*

(8) Inducements to vote by wrongly imputing statements to leaders cannot be said to amount to interference with the free exercise of the right of voting. *AIR 1959 All 264.*

(9) Whether a statement is a statement of fact or mere expression of an opinion depends on the facts of each case and has to be judged with reference to the circumstances in which it is made and if in writing the context in which it appears. *AIR 1967 SC 808.*

(10) Where a candidate seated in an easy-chair was remarking, as the voters were proceeding, that gosha women need not vote and that the better thing for them would be to remain at home and that his own wife remained at home, it was held that he was not guilty under S. 171-C. *AIR 1934 Mad 27.*

(11) Where the District Election Officer issued a circular that gosha lady-voters would have to unveil themselves in the polling booths if their identity was challenged by the candidates or their agents and in accordance with that circular, a candidate insisted on each purda voter unveiling herself in accordance with the circular, it was held that the candidate was not guilty of any offence under Section 171C. *AIR 1934 Mad 27.*

(12) Where the complainant, a candidate for election was prevented from coming out of his house and going to the voters by his rival candidate and the latter's supporters were picketing the formers house, it was held that the accused, the rival candidate was not guilty of an offence under this section. *AIR 1926 Lah 297.*

(13) If a political party is criticised on the ground that it has a communal outlook, that its policy is to suppress the members of another community and that people should not vote for communal organisations because the essential policy of that organisation is to further the ends of a particular community at the cost of the members of the other community, the appeal in such a case also would be to the members of a community but it would not be on the ground of religion or community but on the ground of the wrong policy of the particular organisation and hence it will not be an offence under this section. *AIR 1959 All 264.*

(14) It is doubtful whether a mere assertion that the voters would be kafirs if they vote for a non-Muslim candidate would amount to the exercise of undue influence. *AIR 1959 All 264.*

(15) A religious leader merely using his great influence in favour of a particular candidate by voting for him and by canvassing votes of others for him will not be guilty of the offence under this section. *AIR 1959 SC 855.*

(16) It is doubtful whether an agreement between different candidates to secure votes for one another on the ground of caste or religion, will amount to an offence under this section. *AIR 1959 All 264.*

(17) There can be undue influence even as the elector goes through the mental process of weighing the merits and demerits of candidates and makes his choice and that the distribution of a pamphlet by post or otherwise, imputing immorality etc. to a candidate would constitute undue influence within this section. *AIR 1970 SC 2097.*

3. Sub-section (2).—(1) The definition of "undue influence" in sub-section (1) is wide in its terms. Sub-section (2) is merely illustrative and cannot cut down the generality of the provisions in Section 171-C (1). *AIR 1968 SC 904.*

(2) A religious leader has a right to exercise his influence in favour of any particular candidate by voting for him and by canvassing votes of others for him but where a religious leader practically leaves no free choice to the electors, not only by issuing in writing a hukam or farman, but also by his speeches, to the effect that they must vote for a particular candidate implying that disobedience of his mandate would carry divine displeasure or spiritual censure, his conduct will come within sub-sec. (2) (b). *AIR 1959 SC 855.*

(3) A representation by a candidate that he was a representative of Lord Jagannath and that persons not voting for him would be sinning against God and also be committing sacrilege against dharma, would constitute an offence under this section. *AIR 1964 Orissa 1.*

(4) The words "without prejudice to the generality of the provisions of sub-s. (1)" are not intended to cut down the generality of the meaning of the preceding provision. *AIR 1970 SC 2097.*

4. Sub-section (3).—(1) The criticism of the policy of a political party on the ground that it has a communal outlook does not amount to "interference" . *AIR 1959 All 264.*

(2) The allegations that the house of a Maulavi was searched by the Congress Government and that Urdu "our mother tongue" was being suppressed do not amount to appeal to the members of the Muslim community alone. The latter allegation is only a criticism as to the language policy and hence, not punishable under this section. *AIR 1959 All 264.*

(3) Telling people not to vote and making false representations to them that voting would lead to increase of taxes and to confiscation of voters' properties is not an offence under S. 171-C. *AIR 1922 Mad 337.*

(4) A Minister has a right to ask the public to support the candidates belonging to the Minister's party and therefore such canvassing does not amount to undue influence. *AIR 1968 SC 904.*

(5) Canvassing for votes is not a part of the "electoral right", as defined in S. 171A (b) and hence, interference with such canvassing is not an offence under this section. *AIR 1926 Lah 297.*

Section 171D

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 of personation at an election.

Cases : Synopsis

1. *Scope of the section.*
2. *Mens rea.*
3. *"Applies for a voting paper".*
4. *Personation at election.*
5. *Double voting.*
6. *Abetment.*
7. *"Procures or attempts to procure the voting by any person".*
8. *Burden of proof.*

1. Scope of the section.—(1) The essence of the offence of personation is the offender pretending to be other than what he really is. *AIR 1956 Andhra 65.*

(2) The mere fact that in a Bar Council Election, A, a voter, hands over his voting paper along with his declaration form to B, a candidate at such election, and the latter marks the voting paper, there is no personation of A by B so as to attract the applicability of this section. *AIR 1956 Andhra 65.*

2. Mens rea.—(1) Mens rea is a constituent part of the offence under the section and the accused cannot be convicted unless he is proved to have had a guilty mind. *AIR 1959 Orissa 97.*

(2) The intention of the accused is to be judged from the circumstances of the case and in the light of the common sense. *AIR 1956 MadhB 241.*

(3) When a person goes to a polling station and applies for a voting paper under a false name corrupt motive is implied in this very act. *AIR 1965 Guj 83.*

(4) The circumstances that it was the first election on the basis of adult franchise and that the percentage of literacy in the country in which the election was held was low cannot be altogether ignored in deciding the question whether the accused had a guilty mind. *AIR 1956 MadhB 241.*

3. "Applies for a voting paper".—(1) When the accused is charged with personation at an election the first element to be proved is that he had applied for a voting paper at the election in question. When a person goes for voting, his name and the fact that he has not already voted are checked by the first Polling Officer. The person must be held to have applied for a voting paper at this stage though the actual issue of ballot paper is done by the third Polling Officer. *AIR 1965 Guj 83.*

4. Personation at election.—(1) The section is wide enough to cover the case of a man who knowing that he has no vote and that another person bearing the same name as himself has a vote applies for a voting paper in the name of that person. *AIR 1937 Sind 21.*

(2) In a municipal electoral roll, Mohammad Din son of Faqir Mohammad was recorded as a person entitled to vote. The accused Mohammad Din whose father's name was admittedly Abdullah asked for a voting paper in the name of Mohammad Din son of a Faqir Mohammad and when questioned, asserted more than once that his father's name was Faqir Mohammad. It was held that the accused was guilty of personation. *AIR 1929 Lah 52.*

(3) Where a voter at a Bar Council election hands over to a candidate his voting paper along with his declaration form, permitting the candidate to mark the votes as he thinks fit, and the candidate makes marks on the voting paper, the candidate does not commit the offence of personation. *AIR 1956 Andhra 65.*

5. Double voting.—(1) The section inter alia provides that if a person having voted once at an election applies at the same election for a voting paper in his own name he commits the offence of personation at an election. Thus double voting is an offence under the section. *AIR 1924 Mad 487.*

6. Abetment.—(1) If a voter is not present at the polling station and the candidate recklessly identifies the voter without ascertaining his identity he is guilty of abetment of personation at election. *AIR 1928 All 150.*

7. "Procures or attempts to procure the voting by any person".—(1) One H induced one F to personate B, but when F took the voting paper of B to the presiding officer the thing was detected and F could not vote as B. H was prosecuted and convicted for inducing F to personate B. It was contended that as F was not successful in voting as B there was no offence of personation and hence, H could not be convicted. It was held that the offence of personation was complete though F could not vote as B and hence, the conviction was proper. *122 ER 628.*

8. Burden of proof.—(1) The section mentions various elements which separately go to constitute the offence of personation at an election. Before a person can be convicted of the offence the prosecution must prove the facts which bring the accused within the particular provisions of the section. *AIR 1937 Sind 21.*

Section 171E

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.

Cases and Materials

1. Scope.—(1) A case, where one accused is charged with having received a bribe and the other with having abetted in election. *AIR 1922 Mad 62.*

2. Practice.—*Evidence*—Prove: Where the accused is the giver of the bribe:

(1) That he gave gratification to a particular person.

(2) That he did so with the object of (a) inducing him or any other person to exercise any electoral right or (b) rewarding any person for having exercised any such right.

Prove: Where the accused is the acceptor of the bribe:

(1) That he accepted either for himself or for any other person a gratification.

(2) That he did so as a reward.

(a) for exercising any electoral right, or

(b) for inducing or attempting to induce any other person to exercise any such right.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day of—, at—, gave a gratification to wit to AB with the object of inducing him or CD to exercise any electoral right (or rewarding any person for having exercised any such right) and thereby committed an offence punishable under section 171E of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

or

That you accepted for yourself (or for AB—) a gratification, to wit—as a reward for exercising your or his election right or (for inducing or attempting to induce CD to exercise his electoral right).

5. Sanction.—Previous sanction is necessary for prosecution under section 196 CrPC. *23 CrLJ 148.*

Section 171F

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.

Cases and Materials

1. Scope.—(1) Section 171C defines undue influence and S. 171D defines personation at elections. This section prescribes the punishment for those offences. *AIR 1959 Orissa 97.*

(2) The offender is liable to be punished under this section with imprisonment of either description for a term which may extend to one year or with fine or with both. But it has been held that the offence of personation at elections is a most serious one and ordinarily should be punished with rigorous imprisonment and not with fine only. *AIR 1928 All 150.*

(3) The fact that the accused who has abetted the offence of personation is a man of some education and position and member of the Legislative Council cannot be urged in his favour as an argument for the infliction of a lessor sentence. These considerations rather cut the other way and the offence must be treated as one of special gravity in such a case. *AIR 1928 All 150.*

(4) The offence of false preparation of signature sheet at an election being specifically provided for by S. 171-D read with this Section, it is not open to the Court to try the offender under S. 465. *AIR 1925 All 230.*

2. Practice.—*Evidence*—Prove: (1) That the accused voluntarily interfered or attempted to interfere with free exercise of any election right; or

(2) That the accused threatened any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind; or

(3) That the accused induced or attempted 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.

In the case of personation at an election, prove:

(1) That the accused at an election applied for a voting paper or voted in the name of any other person whether living or dead or in a fictitious name; or

(2) That the accused having voted once at an election applied at the same election for a voting paper in his own name; or

(3) That the accused abetted, procured or attempted to procure the voting by any person in any one of the above ways.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, voluntarily interfered (or attempted to interfere) with the free exercise of an electorate right to wit—threatened AB a candidate (or voter in whom CD a candidate or voter, is interested with injury to wit—or induced or attempted to induce a candidate or voter) at an election to wit—to believe that he or any person in whom he is interested to wit—will become an object of divine displeasure (or spiritual censure) and thereby committed an offence punishable under section 171F of the Penal Code and within my cognizance. Or

That you, on or about the—day of—, at—, at the election to wit applied for a voting paper (or voted) in the name of any other person namely,—who is living or dead (or in a fictitious name having voted once at the said election applied at the same election for a voting paper in your name) or (abetted or procured or attempted to procure the voting as aforesaid in para 1 of section 171D) and thereby committed an offence punishable under section 171F of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Sanction.—Previous sanction is necessary for prosecution under section 196, CrPC.

Section 171G

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.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Statement of fact.*
3. *"In relation to the personal character or conduct of any candidate".*
4. *Section 171-G and S. 499.*
5. *This section and S. 171C.*
6. *Practice.*
7. *Procedure.*
8. *Charge.*
9. *Sanction.*

1. Scope of the section.—(1) Under this section the points required to be proved are:

(a) that an election was impending;

(b) that the accused made or published a statement;

(c) that it purported to be a statement of fact;

(d) that it referred to the personal conduct or character of a candidate;

(e) that the accused made or published it with intent to prejudice the election of the candidate; and

(f) that it was false to his knowledge or belief or he had no reasonable ground for believing it to be true. *AIR 1958 Mad 240.*

(2) A case may be covered both by this section and S. 171-C. It is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under S. 171-C or this section. *AIR 1970 SC 2097.*

2. Statement of fact.—(1) A statement of fact is one of the falsity of which prima facie proof is possible. *AIR 1958 Mad 240.*

(2) A distinction must be made between criticism and allegation of fact. *AIR 1958 Mad 240.*

(3) Where during an election the accused published a document in which there were only one or two statements which could properly be described as statements of fact but the bulk was taken up with general imputations of misconduct unaccompanied by any charges of particular acts of misconduct, it was held that the accused could not be held guilty under this section. *AIR 1932 Mad 511.*

(4) Where the important statements in question were that because the candidate committed fraud in respect of money in the fund office he was removed by the department and that the candidate had removed from the list of voters names of those who did not vote for him in the previous election, it was held that the first of the above statements might be construed as a statement of fact but the other statement was only a general imputation of misconduct unaccompanied by any charge of particular acts not amounting to a statement of fact within the meaning of this section. *AIR 1936 Mad 316.*

(5) Publication by one of the candidates against the other of a statement that the latter was a leper, knowing it to be untrue with the mala fide intention of injuring his reputation and humiliating him before the public was held not to amount to an offence under this section. *AIR 1940 Mad 230.*

3. "In relation to the personal character or conduct of any candidate".—(1) The offence defined in this section is the making of a false statement in relation to the personal character or conduct of a candidate at the election. It does not apply to defamatory statements made about persons who are not candidates. *AIR 1936 Mad 316.*

4. Section 171-G and S. 499.—(1) Although offences under this section and under S. 499 have elements in common they have also elements which differ. It cannot be said that this section is a species of the more general offence of defamation or that it is carved out of S. 499. Thus, prosecution under this section is not obligatory when the offence is also under S. 500. *AIR 1958 Mad 240.*

(2) Offences under S. 171-G and S. 499 are separate and distinct. The main distinction is that under S. 171-G allegations must be false whereas under S. 499 even if the allegations are true, a complaint for defamation will lie unless the accused comes under any of the exceptions. In such a case the Court can proceed with the prosecution under S. 500 without any sanction. *AIR 1970 Mad 509.*

5. This section and S. 171C.—(1) It is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under S. 171C or S. 171G. If the allegation, though false and relating to a candidate's personal character or conduct made with the intent to affect the result of an election does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere, it would be the graver offence under S. 171F read with S. 171C. *AIR 1970 SC 2097.*

6. Practice.—*Evidence*—Prove: (1) That the accused made or published any statement in relation to the personal character or conduct of a candidate.

(2) That such statement was false and the accused either knew or believed it to be false or did not believe it to be true.

(3) That the accused made or published such statement with intent to affect the result of an election.

7. Procedure.—(1) No prosecution could be initiated for an offence under this section without the complaint of the Government as provided in Section 196 of the Cr. P.C. *AIR 1958 Mad 240.*

(2) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

8. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, with intent to affect the result of the election to wit—made (or published) a statement in relation to the personal character (or conduct) of a candidate, to wit—which statement is false and which you knew to be false (or which you did not believe to be true) and thereby committed an offence punishable under section 171G of the Penal Code.

And I hereby direct that you be tried on the said charge.

9. Sanction.—Previous sanction is necessary for prosecution under section 196 CrPC.

Section 171H

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 [2][taka]:

Provided that if any person having incurred any such expenses not exceeding the amount of ten [2][taka] 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.

Materials

1. Practice.—*Evidence*—Prove: (1) That the accused incurred or authorised expenses on account of the holding of any public meeting or upon any advertisement, circular or publication or in any other way.

(2) That he did so for the purpose of promoting or procuring the election of a candidate.

(3) That he incurred or authorised the said expenses without the general or special authority in writing of the candidate.

2. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you without the general (or special) authority in writing of—incurred (or authorised) expenses on account of the holding of a public meeting at—(or upon any advertisement, circular or publication.

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2. Subs. by Act VIII of 1973, s. 3 & 2nd Sch. (w.e.f. 26th March, 1971) for "rupees"

Exhibit—or in any other way whatsoever) for the purpose of promoting (or procuring) the election of—and thereby committed an offence punishable under section 171H of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

4. Sanction.—Previous sanction is necessary for prosecution under section 196, CrPC.

Section 171I

171I. 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 [2][taka].

Materials

1. Practice.—*Evidence*—Prove: (1) That the accused was required by any law for the time being in force or any rule having the force of law to keep account of expenses incurred at or in connection with an election.

(2) That he failed to keep such accounts.

2. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you being required by law for the time being in force to wit—(or by any rule having the force of law to wit—) to keep accounts of expenses incurred at (or in connection with) the election to wit—failed to keep such accounts and thereby committed an offence punishable under section 171I of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the charge.

4. Sanction.—Sanction is necessary for prosecution under section 196, CrPC.

CHAPTER X
Of Contempts of the Lawful Authority of Public Servants

Chapter introduction.—*One great division of the people, subject to the penal provisions of the Code, is between the public and the public servants. As a necessary part of the administrative machinery of a country, the latter possesses certain exceptional rights and privileges. As persons possessing often great power they are necessarily subject to special penalties against its abuse. As such, the last chapter dealt with the delinquencies ; this chapter relates to their rights against the public. This chapter which consists of 19 sections denounces all disobedience to the lawful authority of public servants. As such, it codifies the various pre-existing regulations on the subject and it lays down in one place all contempts whether they relate to the lawful authority of the Courts of Justice, or of Officers of the Revenue, or of the Police.*

These three classes of public servants do not necessarily require the same protective provisions, but, as the authors remarked, in view of the combination of the three functions frequently in the same person in this country and "while the division of labour between the different departments of the public service is so imperfect it would be idle to make nice distinction between those departments in the Penal Code".

The chapter deals with contempt in its various forms, but its underlying principles are that, in order to subject a person to the penal visitation of its provisions, the order must be legal and its disobedience intentional. These two elements are common to all offences described in this chapter. There are others which form the special prerequisites of one or more of them, but these will have to be considered under the section to which they relate.

Of course, the penalties provided in this chapter do not exclude the imposition of other penalties, if the circumstances of the case so warrant. Indeed, the offences here described are really those acts done in contempt of the lawful authority of public servants which, but for the special provision here made, would not be otherwise punishable. They do not, of course, affect other coercive powers possessed by public servants to compel obedience to their orders, whether by arrest or proclamation, attachment or sale of property or otherwise.

In Chapter X, Secs. 172 to 190 of the Penal Code 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 Sec. 12 of the Penal Code. But, the sections given in Chapter X of the Penal Code relate to particular kinds of contempts of the lawful authority of public servants. and, none of these cover the kind of acts which were committed by the appellants with the object of stifling a prosecution.

Section 172

172. Absconding to avoid service of summons or other proceeding.—Whoever absconds in order to avoid being served with a summons, notice or order 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 [1][taka], or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document 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 [1][taka], or with both.

Cases and Materials

1. Scope.—(1) The essential of this section is that a summons, notice or order had been issued and that the accused knew or had reason to believe that it had been issued. Moreover, the summons, notice or order must be lawful which can be legally served on the accused. Warrant of arrest is not a summons, notice or order and the order is addressed to the officer and not to the person whose presence is required. Therefore, an absconder from a warrant cannot be convicted under section 172 (30 CrLJ 203).

(2) This section makes absconding of a person in order to evade being served with a summons, notice or order an offence. The object of the section is to punish an offender for the contempt, which his conduct indicates, of the authority whose process he disregards. *(1882) ILR 4 Mad 393.*

(3) Where a Police Officer arrested the complainant and his witnesses with the object of stifling prosecution for an offence, it was held that the police officer was guilty of contempt of Court, under the said Act, the case being one not falling under any of the Ss. 172 to 190 of the Code. *AIR 1972 SC 905.*

(4) The word 'abscond' means to hide oneself. The term is not to be understood as necessarily implying that a person leaves the place where he is. If a person conceals himself he is said to abscond even if he does not change his place. Nor does the term apply only to commencement of the concealment. If a person having concealed himself before a process is issued continues to do so after it is issued he absconds. *(1882) ILR 4 Mad 393.*

(5) The expression "in order to avoid being served" implies that the absconder knows or at least has reason to believe that the process has been issued. If the accused has no knowledge of the fact that the process has been issued, he cannot he held guilty under this section. *(1882) ILR 4 Mad 393.*

(6) The burden lies on the prosecution to prove knowledge of the fact that the process had been issued and not on the accused to disprove it. *(1882) ILR 4 Mad 393 (398) (DB).*

(7) This section does not apply to non-appearance of a person served with a summons or notice. To such a case S. 174 applies. *AIR 1953 All 200.*

(8) A refusal to accept a summons or notice is not an offence under this section. *(1924) 1 Oudh WN 159.*

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1. Substituted by Act VII of 1973, S. 3 and 2nd Sch. for 'rupees' (w. e. f. 26-3-1971).

(9) The provisions of this section do not cover the absconding of a person for the purpose of evading execution of a warrant of arrest. *AIR 1928 All 232.*

(10) An accused evading a warrant of arrest, however, would be committing a contempt of Court and can be punished by the High Court under the Contempt of Courts Act. *AIR 1940 All 386.*

(11) Where the Magistrate passed an order "Let an order be issued under S. 552, Criminal P.C., 5 of 1898, to the Police to produce the woman before me in Court on Monday next (19th August 1935) together with the police report. Inform parties also", it was held that the order was not one which could be considered to be intended to be served and which the party could be said to have evaded by absconding. *AIR 1936 All 354.*

2. Practice.—Evidence—Prove: (1) That the process in question was summons, notice or order.

(2) That the same was issued by a public servant.

(3) That such public servant was legally competent as such to issue it.

(4) That such process was issued in order to be served on the accused.

(5) That the accused absconded in order to avoid being served with such process.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate, Summary trial.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—at—absconded in order to avoid being served with a summons (or notice or order) proceeding from (name of public servant and state his office) and thereby committed an offence punishable under section 172 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required (section 195, CrPC).

Section 173

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 [1][taka], or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document 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 [1][taka], or with both.

Cases and Materials

1. Scope.—(1) A refusal to accept a summons, notice or order or to sign a receipt for it does not amount to intentionally preventing service within the meaning of this section, as a tender itself is a sufficient service. *AIR 1926 All 304.*

(2) In the case of service by tender, the tender must be a real tender of a document which is understood by the person to be served and he must have voluntarily waived actual delivery and indicated in some way that a tender was sufficient. *AIR 1928 All 118.*

(3) Preventing personal service must be, in each case, a question of fact. *AIR 1928 All 118.*

(4) A man who gets away from the serving officer with the obvious intention of not allowing him to hold any communication with him at all and shuts himself in his house is intentionally preventing service either by tender or by delivery. *AIR 1928 All 118.*

(5) Where the accused persons when they were offered appointment certificates (appointment as special constables) belts and batons, refused to receive them and refused to serve as special constables it was held that such refusal was not an offence under this section. *(1906) 3 Cri LJ 169 (Cal).*

2. Practice.—Evidence—Prove: (1) That the process in question was a summons, notice or order or a direction for a proclamation.

(2) That the same was issued or made by a public servant legally competent to issue such process; or that such public servant was legally competent to direct such proclamation to be made, the same being lawful, and under his authority.

(3) That such summons, notice or order, was issued to be served either upon the accused, or upon someone else ; or that such summons, notice or order, had been, or was to be lawfully affixed to some place, or that such proclamation was about to be made.

(4) That the accused prevented such service of the summons, notice or order, or that he prevented the affixing thereof.

(5) That the accused did as above intentionally.

For the second clause of the section, prove further—

(6) That the process or proclamation required the attendance of the accused (either in person or by agent) or the production of a document.

(7) That such process or proclamation was to attend or to produce the document in a Court of Justice.

2. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

3. Complaint.—Complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 174

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 [1][taka], 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 [1][taka], or with both.

Illustrations

(a) A, being legally bound to appear before the [2][Supreme Court of Bangladesh] 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 Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

Cases and Materials : Synopsis

1. Scope of the section.—(1) Non-attendance is punishable when order passed is legal and issued legally. Under section 174 of the Penal Code non-attendance in obedience to an order from public servant is punishable only when the said order was a legal order and was issued by a public servant legally competent to issue the same.

(2) This section may be read with section 485A, CrPC. The offence contemplated by section 174 is an intentional omission to attend at a place or time at which the accused is bound to attend. Summons should be very clear and specific as to the title of the Court, the place at which day, and the time of the day when the attendance of the party summoned is required. An offence under this section cannot be tried by a Magistrate in whose Court the accused has failed to appear. The prohibition is absolute and the consent or otherwise of the accused is immaterial *(35 Cr LJ 1166).*

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2. The words within square brackets were substituted for the words "High Court of East Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973, 2nd Sch. (w. e. f. the 26th march, 1971).

(3) This section prescribes punishment for any person who being legally bound to attend at a certain place and time in obedience to a summons, notice, order or proclamation issued by a legally competent public servant intentionally omits to attend at the place or time. *AIR 1926 All 474.*

2. "Legally bound to attend.....in obedience to a summons" etc.—(1) In order to sustain a conviction under this section it must be shown that the person was legally bound to attend in obedience to a summons etc. For this it is necessary to prove that the person had notice to appear at a certain time and place and the summons was brought to his knowledge. *AIR 1955 NUC (Him Pra) 4301.*

(2) Before there can be a conviction under this section there must be service on the accused according to law and under a legal summons. *AIR 1920 All 304.*

(3) Where in a proceeding under S. 107, Criminal P.C., the Magistrate passed an order addressed to the Sub-Inspector of Police requiring him to inform the party of the alteration of the date originally fixed for hearing it was held that the accused committed no offence by not appearing on the altered date. *(1890) All WN 1.*

(4) In order to make a person punishable under this section it must also be shown that his personal appearance was necessary or required. *(1920) 2 Lah LJ 539.*

(5) Where a Gram Panchayat issued a notice to the accused directing him to show cause why action should not be taken against him for breach of rules framed under Panchavat Act for some construction, it was held that the notice did not in any way require the attendance of the accused before the Gram Panchayat. *1962 MPLJ (Notes) 331 (DB).*

(6) In a land acquisition case the District Judge issued notice to the party to appear on the date fixed in person, warning him that if he did not so appear the case would be heard ex parte. The accused appeared by a pleader. It was held that the matter before the Court was one in which personal attendance was not usually enforced without special reason. The party was really in the position of a party to a suit and liable at the most to suffer the consequences of non-attendance by a party. *(1911) 12 Cri LJ 432 (All).*

(7) There can be no legal obligation to obey an order unless the same is issued by a competent authority. *1887 Pun Re (Cr) No. 14 (DB).*

3. Appearance by agent.—(1) Where in a summons case, the Magistrate issued summons for the attendance of the accused on the day fixed for trial and appearance was made on behalf of the accused by his mukhtar who requested the Magistrate under Section 205, Criminal P.C., to dispense with the personal attendance of the accused, it was held that the Magistrate should have told the mukhtar that he required the personal attendance of the accused on some fixed day or otherwise he would issue warrant of arrest. That the accused did not personally attend should not have been regarded as an offence under this section. *(1900) 5 Cal WN 131.*

4. "At a certain place and time".—(1) It is essential in order to sustain a conviction under this section that the accused person should have been left in no doubt both as to the place and time at which his attendance is required. *AIR 1948 All 137.*

(2) A summons which requires a person to attend at a particular police station on a particular date "between the hours of 3 and 5 in the afternoon" or "at such time as may be convenient between the hours of 8 and 12 in the morning" would be such a summons as would render the person to whom it is addressed liable to prosecution if he fails to obey it. *AIR 1948 All 137.*

(3) A subpoena issued to a person which does not require him to attend at a certain place but calls on him to attend either at a named than a or wherever the inspecting officer might happen to be is not a legal subpoena failure to comply with which can be punished under this section. *AIR 1926 All 474.*

5. "Summons, notice, order or proclamation".—(1) The words "summons, notice, order or proclamation" used in this section are different forms of directions for compliance and they do not partake of the character of directions as such if they are not addressed to the persons whose attendance is required but are addressed to a third person to produce them. *AIR 1954 Kutch 25.*

(2) The word 'citation' as used in Section 147 of the Land Revenue Act has not the full force of a summons. It is rather in the nature of an invitation to appear than an order to attend. *AIR 1930 All 265.*

(3) A proclamation under Section 82, Criminal P.C. issued on 13 June 1950 and ordering the accused to appear "within 30 days from today" and published on 29th June 1950 is legally defective and the accused disobeying such defective proclamation cannot be prosecuted under this section. *AIR 1955 Punj 18.*

6. "Proceeding from any public servant".—(1) The summons, notice, order or proclamation, must proceed from a public servant. A receiver appointed under Section 56 of the Land Registration Act (Bengal Act VII of 1876) is not a public servant. *(1901) 6 Cal WN 141 (DB).*

7. "Legally competent.....to issue the same".—(1) In order to sustain a conviction under this section it must be shown that the summons issued was by a public servant legally competent, as such public servant, to issue the same. *AIR 1914 All 519.*

(2) As S. 160, Criminal P.C., does not authorise the investigating police officer to require the attendance of a person who is not 'being within the limits of his own police station of any adjoining police station' failure of such person to attend in such a case would not amount to an offence under this section. *1975 Cri LJ 620.*

(3) An order given to a subordinate police officer to produce a person before the S. I. of Police investigating a criminal case is not an order contemplated by S. 160, Cr. P.C., and the failure of the person to attend before the Sub-Inspector cannot be punished under this section. *AIR 1954 Kutch 25.*

(4) Section 160, Criminal P.C., cannot be invoked or any investigation or inquiry by the police in respect of a proceeding under S. 145 of that Code. In the absence of such powers the person required to attend can ignore the summons and cannot be prosecuted under this section. *AIR 1968 Mad 225.*

(5) Where a person was accused under the Prevention of Adulteration Act but the summons was not applied for within 30 days from the date upon which the order of consent referred to in S. 12 was made or given, it was held that he could not be prosecuted under this section for disobeying the summons. *AIR 1929 All 157.*

(6) The Collector cannot take any proceeding or make any investigation in connection with a partition case until the expiry of the period of appeal against a partition proceeding. Therefore, until the expiry of the period of appeal there is no suit or other business before the Collector within the meaning of S. 193 of the Land Revenue Act for the investigation of which the attendance of a person is necessary and the Collector is not legally competent under S. 193 of the Act to issue a summons to the person. *AIR 1916 All 96.*

(7) Where in an application for an action to be taken under S. 107, Criminal P.C., the Sub-Divisional Magistrate directed the Tahsildar to make inquiry into the matter and the latter issued a summons to the accused to appear on a form provided for cases under S. 193 of the Land Revenue Act

it was held that there was no summons issued according to law against the accused and his conviction under this section was illegal. *AIR 1920 All 304.*

(8) Where a Tahsildar issued summons to some persons to explain as to why they refused to serve as coollies, it was held that the Tahsildar had no authority to issue such summons. *(1904) 1 CriLJ 497.*

(9) As to illustrations of cases where it was held that the authority was not competent. *1975 Cri LJ 620.*

8. "Intentionally omits to attend".—(1) In order to sustain conviction under this section it must be shown that the accused intentionally omitted to attend in pursuance of a summons issued by a public servant. *AIR 1914 All 519.*

(2) Question whether omission to attend was intentional is one of fact. *AIR 1954 Kutch 25.*

(3) If the summons, etc., is served on the accused at a time when there is no sufficient margin left for him to appear before the authority at the required time there cannot be intentional omission to attend. *AIR 1928 All 680.*

(4) If a person is prevented from attending Court on a particular day or at the particular time fixed on account of illness which incapacitates him from leaving his place or on account of his being summoned to attend at another place by another authority whom he cannot disobey his non-attendance cannot be said to be intentional. *(1960) 26 CutLT 571.*

(5) Station master summoned to give evidence—Not attending court on stipulated date being detained under express order of his superior and also due to non-availability of reliever—Station master promptly informing Court on the date of hearing the reason of his non-attendance held there was no wilful disobedience of the summons. *AIR 1923 Lah 163.*

(6) Where the accused, who was a barrister, and who was summoned to appear on a certain date to answer a charge under the Motor Vehicles Act, did not appear but another barrister appeared on his behalf and stated that as the accused was appearing as counsel in a case before the High Court he could not attend and prayed for an adjournment and it appeared that the summons was served on the accused at 5 P.M. just on a day previous to that on which he was required to appear and there was no time to make other arrangement, it was held that the accused had no intention to disobey the summons. *AIR 1924 Rang 35.*

(7) A solicitor was served with a notice by a Commissioner to attend before him to give evidence and to produce a letter written by him to his client. The solicitor being under a mistaken notion that his attendance was required only for the production of the letter and not for evidence for other purposes wrote a letter to the commissioner saying that he could not produce the letter the same being a privileged one. It was held that as the solicitor was not unwilling to appear but was under a mistake that his presence was required only for the production of the document his prosecution under his section was not justified. *AIR 1918 Cal 240.*

(8) Where the accused instead of appearing as required by the summons, makes his attendance subject to queries to the public servant concerned it must be held that the omission is intentional. *AIR 1954 Kutch 25.*

9. "Departs from the place.....before the time".—(1) Where a party is required to attend a Court the summons, besides clearly and specifically mentioning the title of the Court, the place where and the day and the time of the day when the attendance is required, should also state that the party is

not to leave the Court without leave and if the case is adjourned, he should not leave without ascertaining the date of the adjournment. *(1883) ILR 5 All 7.*

(2) Where a person is summoned to answer a criminal charge at a certain time on a certain day in the Court of the Magistrate he is bound to wait for a reasonable time in the Court after such time. He staying only for 2 or 3 minutes after the time mentioned is no compliance with the order of the Magistrate. *(1886) ILR 10 Bom 93.*

10. Punishment.—(1) Where the summons etc. is for attendance before a public servant other than a Court of Justice, the award of 20 day's imprisonment in default of payment of fine is illegal in view of S. 65. *(1870-71) 6 MadHCR 44.*

11. Practice.—Evidence—Prove: (1) That the obligation to attend was in obedience to a summons, etc.

(2) That such summons, etc. was issued by a public servant legally competent, as such, to issue the same.

(3) That the accused became thereby legally bound to attend, in person or by agent at a certain place and time.

(4) That he omitted to attend at such place or time or that he departed from the place before the time at which it was lawful for him to depart.

(5) That he did as above intentionally.

To bring the case within the second clause it must be further proved:

(6) That the summons or notice was to attend in person or by agent in a Court of Justice.

12. Procedure.—(1) Where a simple notice was sent to the accused charged under S. 174 and when he came and asked to be excused the Magistrate sentenced him to Rs. 5, it was held that the procedure was illegal. *AIR 1961 J&K 54.*

(2) Before convicting a person under S. 174 the Court must hold an enquiry to see whether an offence under the section was really committed. The accused should be given an opportunity of explaining his absence. *(1908) 7 Cri LJ 226.*

(3) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

13. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is necessary under section 195, CrPC.

Section 175

175. Omission to produce document to public servant by person legally bound to produce it.—Whoever, being legally bound to produce or deliver up any document to 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 [1][taka], or with both;

or, if the document 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 [1][taka], or with both.

Illustration

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Cases and Materials

1. Scope.—(1) To sustain a conviction under section 175, it must be shown that the person required to produce a document was in possession of it. It is necessary that the accused should be legally bound to produce the document in question. Where there is no such duty cast on the accused he cannot be convicted under section 175. Thus, if a party to a suit fails to comply with an order for production or inspection of documents he can be dealt with only under CPC and is not punishable under section 175 Penal Code *(11 CrLJ 386)*. The prosecution must prove that the accused was in possession of the document required to be produced when it is doubtful which of the two accused had the document. They cannot be convicted. When any such offence as is described in this section is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to a fine not exceeding two hundred taka and in default of payment to simple imprisonment for a term which may extend to one month unless such fine be sooner paid (section 480, CrPC).

(2) Document required to be filed on 27-4-1986 have been filed long after that date by which time cognizance of the alleged offence has been taken on 28-8-86 Held: Prima facie offence has already been committed by the petitioner. *42 DLR 151.*

(3) Court directed a complaint to be lodged—Section 175 not applicable till the complaint was filed. The dictum that section 175 of the Penal Code has no application in the case of person who is on his trial as an accused is not applicable when an order for filing a complaint was passed but actually till then no complaint had been made. The accused could not be convicted under section 175 for his omission to produce the document *(12 CWN 1016). 13 DLR 146.*

(4) The section applies to any person who is legally bound to produce a document. Thus, it applies to a witness who has been summoned to produce a document in connection with a suit. *(1888) ILR 12 Bom 63 (64) (DB).*

(5) In order to convict an accused under this section it must be proved that the document was in his possession, and that he could have produced it if he had tried to do so. *AIR 1918 Pat 590*.

(6) Even in the absence of any such summons or order, specifically requiring the production or delivery of any document, the offence under this section may be committed provided there is, in the circumstances of case, a legal obligation to produce or deliver the document to a public servant. *1968 CriLJ 417 (Mad).*

(7) The production of a document in Court under compulsion of a summons to produce it is not the "use" of such document within the meaning of S. 471. Hence, where a person produces in Court a forged document under such compulsion, it cannot be held that he "uses" such document within the meaning of S. 471 and so, cannot be convicted under that section of the offence of using as genuine a forged document. *(1912) 13 CriLJ 46 (47) (DB) (Mad).*

(8) Offence under Railway Property (Unlawful Possession) Act—Enquiry—Persons summoned to produce documents and to give statement—Filing of false documents or disobeying of summons on their part—They are liable to be prosecuted u/ss. 174, 175, 179, 180, 193. *1983 CriLJ 1432 (AP).*

(9) Proceeding under Cooperative Societies Act—Disobedience of order of inquiry officer—Sub-Inspector of Police treating complaint against accused (President of Society) under S. 175, P.C. as F.I.R. and seeking permission to investigate offence under S. 155, Cr.P.C.—Accused filing objection thereon—Magistrate entertaining it acts without jurisdiction. *1983 CriLJ (NOC) 94 (Mad).*

2. Practice.—Evidence—Prove: (1) That it was a public servant or a Court of Justice against whom the offence was committed.

(2) That the accused was legally bound to produce or deliver up the document in question to such public servant or Court of Justice.

(3) That the accused omitted to produce or deliver up the document.

(4) That the accused did so intentionally.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXXV of the CrPC or if not committed in a Court triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate, is required under section 195, CrPC. A Magistrate before whom an offence under this section is committed is precluded from trying the accused under this section.

Section 176

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 [1][taka], 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 [1][taka], or with both ;

[3][or of the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (Act of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand [1][taka], or with both].

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Legally bound to give any notice or to furnish information".*
3. *Public servant.*
4. *"Intentionally omits".*
5. *Practice.*
6. *Procedure.*
7. *Charge.*
8. *Complaint.*

3. Added by the Criminal Law Amendment Act, 1939 (Act XXII of 1939).

1. Scope of the section.—(1) Before a person can be punished under this section the prosecution must prove that (a) the accused person was legally bound to give any notice or furnish certain information to a public servant, and (b) he intentionally omitted to do so. *AIR 1954 HimPra 67.*

(2) Section 44, CrPC, casts a duty on every person and section 45, CrPC imposes a duty on some specified person to give information regarding certain specified offence to the authority. This section applies to person upon whom an obligation is imposed by law to furnish information to a public servant and the penalty which is provided is intended to apply to parties who commit an intentional breach of this obligation.

2. "Legally bound to give any notice or to furnish information".—(1) The word "offence" in S. 43 will only include an offence under the Code and not an offence under a special or local law. Hence, where the omission to give certain information is only punishable under a special or local law, such omission will not be an "offence" within the meaning of S. 43 and hence will not be "illegal" within the meaning of that section. *AIR 1945 PC 147.*

(2) Before a person can be punished under this section the prosecution must prove that the accused was legally bound to give any notice or furnish information on a subject to a public servant. *AIR 1954 HimPra 67.*

(3) The accused were charged under S. 302 and S. 201 of the Penal Code and were also charged under S. 176 of P.C. for having intentionally omitted to give information of murder subsequently alleged to have been committed by them. It was held that the alleged offenders themselves could not be under any legal obligation to give information of their own offence. *ILR (1976) 2 Cal 1334.*

(4) The making of a statement to the investigator in an examination on oath under S. 33 (4) of the Insurance Act, 1938, does not amount to the "furnishing of information" within the meaning of this section and hence, the failure to state a certain fact to the Investigator in such examination is not an offence under this section. *AIR 1962 SC 1821.*

(5) Under S. 40, Criminal P. C., certain persons are required to communicate forthwith to the nearest Magistrate or to the Officer in charge of the nearest police station in respect of matters mentioned in Cls. (a) to (f) of subsec. (1) of the section and the failure to comply with the provisions of the section is punishable under this section. *AIR 1958 All 660.*

(6) Section 176 of the Penal Code does not compel a person to make a statement to the person making an investigation under S. 33 (3) of the Insurance Act, that he misappropriated the money of the insurance company. *AIR 1962 SC 1821.*

(7) Section 8(1) of the Explosives Act imposes an obligation on the occupier of a place to give notice of the accident to the Chief Inspector of Explosives and to the Officer in charge of the nearest police station. It has been held that the 'occupier' may include an owner if he is in actual possession of a factory, but where a manager is appointed and put in charge of the factory, the owner cannot be regarded as being in occupation. *(1935) 18 Nag LJ 235.*

(8) Under S. 46 of the Land Revenue Act (3 of 1901) a person is bound to give correct information about the rents which he was realising from the tenants on the requisition of the Quanungo or Patwari or any officer engaged in compiling the official register. As the Zamindar is not bound to give the information without being asked his failure to furnish information that he had collected more than the recorded rent from the tenants or had raised the rent to the Quanungo or Patwari does not amount to an offence under this section. *AIR 1927 All 111.*

(9) Under Section 234 of the Land Revenue Act, the person who actually receives the rent from the tenants, whether Zamindar himself or his agent, and who is called upon by the Patwari to furnish him with particulars for the preparation of the siyaha is legally bound to furnish the information and if he refuses to do so, he will be guilty of an offence under this section. *AIR 1941 Oudh 525.*

(10) Accused who held a licence to sell millmade cloth at his shop and was bound, under the conditions of his licence, to disclose places where he had stocked cloth, other than those stated in the licence, omitted to mention, in the list which he was asked to submit, such places. It was held that he was guilty under this section. *AIR 1952 Tripura 18.*

(11) Under Ss. 3 and 4 of the Mussalman Wakf Act the Muttawali is required to furnish certain particulars relating to the Wakf property and failure to furnish the information is an offence under S. 10 of the Act. But it is not an offence under this section. *AIR 1945 PC 147.*

3. Public servant.—(1) The failure of a person examined by the Chartered Accountant who has been appointed as an investigator under S. 33(3) of the Insurance Act (1938) to furnish any information required by the Investigator cannot be an offence under this section as the Chartered Accountant is not a public servant. *AIR 1962 SC 1821.*

4. "Intentionally omits".—(1) Before a person can be punished under this section the prosecution must prove that the person legally bound to give any notice or furnish any information to a public servant has intentionally omitted to do so. *AIR 1954 Him Pra 67.*

(2) Where there is no evidence that the person legally bound to give information had knowledge about the matter and intentionally omitted to give the information, he cannot be held guilty under this section. *1961 BLJR 35.*

(3) Where the public servant is already in possession of the information required a person cannot be convicted of an intentional omission under this section because he fails to perform an entirely superfluous act in furnishing him with the information over again. *AIR 1933 Lah 515.*

(4) Where the statement of the mother of the accused to the police under S. 164, Cr.P.C. was that her son at 10 P.M. on the day of occurrence went to his bed room and bolted the door from inside and early next morning he came out and ran away, that she saw her daughter-in-law lying dead in the bed room, it was held that there was nothing in her statement that she was aware or even suspicious about the commission of the offence of murder of her daughter-in-law or to show that she was guilty of an offence under S. 176, P.C. *1984 CriLJ 753.*

5. Practice.—Evidence—Prove: (1) That the accused knew of the circumstances or had information in question.

(2) That he was legally bound to give notice thereof, or to furnish such information.

(3) That such notice should have been given or such information furnished to a public servant.

(4) That he omitted to give such notice or furnish such information as required by law.

(5) That he omitted to do so intentionally.

For the second clause of the section, prove further—

(6) That such notice or information had reference to the commission of the offence, or was required to prevent the commission of an offence, or in order to apprehend an offender.

6. Procedure.—(1) Offence under Ss. 176, 109, Penal Code requires sanction which is not necessary for a prosecution for an offence under S. 189. If the accused in the lower Court is not called

upon to answer a charge of an offence under Sections 179, 109, Penal Code the appellate Court is not justified in appeal to alter the conviction to one under those sections. *AIR 1923 Lah 260.*

(2) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

7. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about—at—being legally bound to give notice or to furnish information on to a public servant intentionally omitted to give such notice or to furnish such information which you were legally bound to give or furnish as to commission (or prevention) of an offence (or apprehension of the offender) and thereby committed an offence punishable under section 176 of the Penal Code.

And I hereby direct that you be tried on the said charge.

8. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 177

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 [1][taka], 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, willfully 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 [4][any law for the time being in force], to give early and punctual information of the above fact to the office of the nearest police station, willfully misinforms the police office 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 latter part of this section.

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4. The words within square brackets were substituted for the words, figures and commas "clause 5, secetion VII. Regulation III, 1821, of the Bengal Code", *ibid.*

[5][*Explanation.*—In section 176 and in this section the word "offence" includes any act committed at any place out of [6][Bangladesh], which, if committed in [6][Bangladesh], 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.]

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Legally bound to furnish information".*
3. *Furnishing false information.*
4. *"Offence"—Meaning of.*
5. *Punishment.*
6. *Practice.*
7. *Procedure.*
8. *Charge.*
9. *Complaint.*

1. Scope of the section.—There are two parts in this section (i) Information on any subject, (ii) Information (a) about an offence committed, (b) for preventing an offence not yet committed, and (c) for arresting an offender.

(2) This section lays down two ingredients for its applicability. In the first place a person must be legally bound to furnish information on a particular subject to a public servant and secondly he must furnish information on that subject as true, which he knows or has reason to believe to be false. *AIR 1950 Ajmer 19.*

(3) Statements made by a person in course of examination by Chartered Accountant appointed under S. 33 of the Insurance Act, 1938, to investigate into the affairs of Insurance Company do not amount to "information" which such person is "legally bound" to furnish within the meaning of S. 176. *AIR 1962 SC 1821.*

2. "Legally bound to furnish information".—(1) The expression "legally bound" has to be construed with reference to the definition in S. 43 of the Code. *AIR 1934 Bom 202.*

(2) The expression "any subject" occurring in this section refers to matters about which a person is legally bound to give information under some law. *AIR 1936 All 788.*

(3) Section 21, Registration Act, only lays down that a non-testamentary document relating to immovable property should contain a description of the property in sufficient detail. It does not impose any obligation on the executant ; and the executant cannot be held legally bound to furnish information within the meaning of this section. *AIR 1950 Ajmer 19.*

(4) When a person who had not been served with a notice under Sec. 22(2) of the Income-tax Act (1922) filed a false return voluntarily, he could not be convicted under this section because he could not be said to have been legally bound to furnish the information. *AIR 1934 Lah 626.*

(5) Where it was alleged that the accused induced the Revenue Surveyor to enter his name in the revenue papers in the place of his father, reporting falsely that the father had died, it was held that the facts alleged did not amount to an offence under this section as the father being still alive, there was no information which the accused was legally bound to give. *AIR 1914 LowBur 30(30): 15 CriLJ 603.*

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5. Explanation was inserted by the Indian Criminal Law Amendment Act, 1894 (Act III of 1894) s. 5.
6. The word "Bangladesh" was substiuted for the word "Pakistan" by Act. VIII of 1973 (w.e.f. 26 March 1971).

(6) Under the rules framed under S. 7 of the Police Act (1861) a police recruit is legally bound to enlist under his own name and if he gives a false name he is liable to be punished under this section. *(1874) Oudh SC No. 11 p. 11.*

(7) The accused who was a resident of Farukhabad district and who applied for recruitment to the police force stated in his application that he was not a resident of that district as there was a rule prohibiting recruitment of residents to the police force of that district. It was held that the accused who had made the prevaricatory statement in order to facilitate his recruitment had not committed an offence contemplated by this section. *(1884) 6 All 97.*

3. Furnishing false information.—(1) Where the untrue statement in a verification made under S. 52 of Income-tax Act, 1922 was deliberately false or not believed to be true it was an offence under this section ; and subsequent rectification would not make it any the less an offence though it might be considered as an extenuating circumstance in awarding sentence. *(1937) 20 NagLJ 214.*

(2) Even if it be taken that under S. 21 of the Registration Act the executant of a non-testamentary document is legally bound to furnish true information regarding the property, where the description of the property given by an executant is according to the entry in revenue records, the wrong description cannot be said to be given with the knowledge or belief that it is false and no offence under this section is committed. *AIR 1950 Ajmer 19(2).*

(3) Where the object of submitting a wrong return under Road Cess and Public Works Act was to create evidence for success in a civil suit filed by the person subsequently to establish that the statements in the return were true it cannot be said that he knew or had reason to believe the statements in the return to be false. *(1910) 11 CriLJ 11 (DB) (Cal).*

(4) Where the accused deliberately kept out of the income-tax return certain assessable income he was held guilty under this section. *AIR 1933 Rang 292.*

(5) A minor cannot be accused of any fraud if his parents who admitted him into the school disclosed some age which could help the minor in pursuing his studies. *(1982) 1 CivLJ 539.*

4. "Offence"—Meaning of.—(1) The words "preventing the commission of an offence" in the second paragraph mean preventing the commission of some particular offence and not preventing the commission of offences generally. *(1908) 8 CriLJ 425.*

5. Punishment.—(1) Where a person made an untrue statement in a verification under Income-tax Act and committed an offence under this section it was held that the subsequent rectification of the statement did not make it any the less an offence but would be considered as an extenuating circumstance in awarding sentence. *AIR 1929 All 919.*

(2) Where the accused, a lawyer, deliberately kept out of the income-tax return certain assessable income and instead of being ready and willing to put matters right persisted in maintaining the false defence and it appeared that if he had included this income also in his return the income-tax which he would have to pay would have been raised by Rs. 3,000 it was held that a mere fine of Rs. 1,000 was quite insufficient and the High Court awarded an additional sentence of one month's simple imprisonment. *AIR 1933 Rang 292.*

6. Practice.—Evidence—Prove: (1) That the accused was legally bound to furnish the information in question to a public servant.

(2) That he did furnish certain information in pursuance of such obligation.

(3) That the information so furnished was false.

(4) That he furnished it as true although he knew, or had reason to believe it, to be false.

7. Procedure.—Not cognizance—Summons—Bailable—Not compoundable—Triable by any Magistrate.

8. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being legally bound to furnish information on any subject, to wit furnished information which you—, knew (or had reason to believe) to be false (and the information which you were bound to give was in respect of commission (or prevention) of an offence (or apprehension of an offender) and thereby committed an offence punishable under section 177 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

9. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 178

178. Refusing oath or affirmation when duly required by public servant to make it.—Whoever refuses to bind himself by an oath [7][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 [1][taka], or with both.

Cases and Materials

1. Scope.—(1) A person refusing to give true information to a public servant will be liable under this section. The evidence of a witness cannot be taken unless he binds himself by an oath or solemn affirmation to state the truth. The refusal to take oath is a contempt of the Court and the witness may at once be death with under section 480 of the CrPC.

(2) In a civil case the witness is entitled to represent to the Court that he has not been paid his expenses properly and on that ground to refuse to give evidence. It is no offence to refuse to give evidence in the first instance on the ground of insufficient payment of the expenses before the Court decides whether the payment is sufficient. *(1908) 7 CriLJ 208.*

(3) An accused becomes a competent witness as soon as his request for his examination as a defence witness is accepted by the Court and after that he is in the same position as any other witness. Where the accused examines himself in chief on his own request his refusal to take oath and to come to witness-box for cross-examination amounts to an offence under this section. *AIR 1965 Pat 331.*

(4) A person to whom a notice is issued under S. 8B, Commission of Inquiry Act, 1952, has the option not to produce any defence but that is something quite distinct from declining by a person to take oath and give evidence when called upon by any authority competent to do so specially when he is present before that authority. *ILR (1981) 1 Delhi 715.*

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7. Ins. by the Oaths Act, 1873 (Act X of 1873, s. 15.

2. Practice—*Evidence*—Prove: (1) That the accused was required by a public servant to bind himself by an oath or affirmation to state the truth.

(2) That such public servant was legally competent to require that the accused shall so bind himself.

(3) That the accused so bind himself as required.

3. Procedure.—Not—cognizable—Summons—Bailable—Not compoundable—Tailable by the Court in which the offence is committed, subject to the provisions of Chapter XXXV of the Cr.PC or if not committed in a court, a Metropolitan Magistrate or Magistrate of the First or second class.

4. Complaint.—Complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 179

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 [1][taka] or with both.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Legally bound to state the truth on any subject."*
3. *Refusal to answer.*
4. *Mens rea.*
5. *Public servant.*
6. *Accused as witness.*
7. *Practice.*
8. *[1]Procedure.*
9. *Charge.*
10. *Complaint.*

1. Scope of the section.—(1) Refusal to answer questions in Court is punishable under this section. If the questions are themselves meaningless, then the witness has no other alternative but, keeping in mind the dignity of the Court, which he is bound to maintain both morally and legally, to keep quite and respectfully refuse to answer them. A complainant is not a witness punishable for refusing to answer *(36 CrLJ 446).*

(2) The ingredients of S. 179 are: (a) the demanding authority must be a public servant; (b) the demand must be to state the truth on a subject in the exercise of legal powers. *AIR 1978 SC 1025.*

(3) An offence under this section is quite distinct from one under S. 178. The latter section provides punishment for refusal to take oath or make affirmation when duly required by a public servant to do so. *(1908) 7 CriLJ 95.*

2. "Legally bound to state the truth on any subject."—(1) The term "legally bound" is to be taken in the sense explained in S. 43. Taken in that sense, where there is no question of the omission to answer being "prohibited by any law" or giving rise to a cause for a civil suit, it must be shown that such omission is an offence. *(1899) 4 Mys CCR 245.*

(2) The word "offence" in this context refers to a thing made punishable under the Code and not under any special or local law. *AIR 1945 PC 147.*

(3) The words "shall be bound to answer all the questions" in S. 161(2) of the Criminal P.C., 1898, do not constitute an express provision of law requiring a person examined under the section to state the truth; and hence, a refusal to answer questions put by a police officer making an investigation is not punishable under this section. *(1881) ILR 7 Cal 121.*

(4) The committing Magistrate had a discretion to examine the complainant as a witness under S. 219 of the Criminal P.C. (5 of 1898) and if the complainant refused to answer questions he could be punished under this section. *AIR 1935 All 267.*

(5) After taking oath a witness is subject to the rules of the Court and cannot refuse to answer questions put to him on the ground that his expert fees have not been paid. *(1909) 10 CriLJ 257 (Mys).*

(6) Under S. 14 of the Oaths Act a witness is bound to speak the truth on the subject on which he is asked to give his evidence. In this respect no distinction can be made between the opinion of an expert witness and statement of an external fact. If the opinion of the witness is asked he is bound to give his true opinion and if he refuses no give the opinion he can be made to suffer the penalty under this section. *(1908) 10 CriLJ 257.*

(7) Offence under Railway Property (Unlawful Possession) Act—Enquiry—Persons summoned to produce documents and to give statement—Filing of false documents or disobeying of summons on their part—They shall be deemed to have committed offences in judicial proceedings and liable to be prosecuted under Ss. 174, 175, 179, 180 and 193 P.C. *1983 CriLJ 1432 (Andh Pra).*

(8) A person to whom a notice is issued under S. 8B, Commission of Inquiry Act, 1952, has the option not to produce any defence but that is something quite distinct from declining by a person to take oath and give evidence when called upon by any authority competent to do so specially when he is present before that authority. *ILR (1981) Delhi 715.*

3. Refusal to answer.—(1) When a witness though persistently asked by the Court to give certain information persists in giving indirect answers this amounts to refusal to answer questions within the meaning of this section. *AIR 1925 All 239.*

(2) Where the witness replies to a question asked by the Court that he does not remember, it is not a refusal to answer. *AIR 1926 Lah 240.*

(3) Where a witness was asked as to what was the result of a certain case and the witness first said that he did not know but after recollection said that the case was dismissed it was held that the witness gave perfectly rational answers and could not be considered to have refused to answer the question. *AIR 1934 All 136.*

(4) Where the accused said he was confused and did not understand the questions put to him it was held that he had not intentionally committed an offence under this section. *AIR 1962 Cal 195.*

4. Mens rea.—(1) Section 179 has a component of mens rea, and where there is no wilful refusal but only unwitting omission or innocent warding off, the offence not made out. *AIR 1978 SC 1025.*

5. Public servant.—(1) The person to be penalised under this section must be legally bound to state the truth to a public servant. A person who is appointed to be a public prosecutor under Ss. 24, Criminal P.C., is an officer in the service of the Government and is remunerated by fees for the performance of the duty and therefore, is a public servant for the purpose of the case in which he is appointed as a public prosecutor. *AIR 1962 Cal 195.*

6. Accused as witness.—(1) Section 313(2), Criminal P.C. provides that no oath shall be administered to the accused person when he is examined under sub-section (1) of the section and sub-section (3) provides that the accused cannot render himself liable to punishament by refusing to answer questions put to him in his examination under sub-section (1) or by giving false answers. *AIR 1924 Mad 540.*

(2) An accused becomes a competent witness as soon as his request for his examination as defence witness is accepted by the Court and after that he is in the same position as any other witness; he cannot be excused from being cross-examined or from answering questions on any relevant matter on the ground that the answer may incriminate him. *AIR 1965 Pat 331.*

7. Practice—Evidence—Prove: (1) That the accused was legally bound to state the truth to a public servant on the subject in question.

(2) That such public servant questioned him touching such subject.

(3) That such public servant was exercising his legal powers in putting such questions.

(4) That the accused refused to answer such question.

8. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXXV of the CrPC or if not committed in a Court, a Metropolitan Magistrate, or Magistrate of the first or second class.

9. Charge .—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about—, at—, being legally bound to state the truth on the subject namely—to a public servant refused to answer questions demanded of you touching that subject by such public servant in the exercise of legal powers, committed an offence punishable under section 179, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

10. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 180

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 [1][taka], or with both.

Cases and Materials

1. Scope.—An accused is bound to sign under section 364(2), CrPC a record of his examination under section 342, CrPC and he may be punished under this section for refusal to do so.

(2) Accused refusing to sign record of his examination under Section 342 CrPC, whether commits an offence under Section 180, Penal Code. Held: An essential ingredient for offence under Section 180, Penal Code is that the public servant concerned should legally be competent require a person to sign a particular statement. It is therefore obvious that if there is no compulsion on securing the signature of

the accused on his statement his refusal to do so cannot make him guilty under section 180. *PLD 167 Kar 75.*

(3) Offence under Railway Property (Unlawful Possession) Act—Enquiry—Persons summoned to produce documents and to give statement filing of false documents or disobeying of summons on their part—They are liable to be prosecuted under Ss. 174, 175, 179, 180 and 193. P.C. *1993 CriLJ 1432*

(4) An inquest report is not a statement within the meaning of this section and a refusal by a person examined at the inquest to sign it is not an offence. *(1910) 11 CriLJ 500 (Mad).*

(5) Where there is a refusal to sign a receipt for a summons, there is no scope for applying this section as there is no statement made by the person on whom the summons is sought to be served. *(1893) ILR 20 Cal 358 (359) (DB).*

(6) It is only when a person refused to sign a statement which a public servant is legally empowered to require him to sign that he renders himself liable to punished under this section. *(1906) 4 CriLJ 205 (Low Bur).*

(7) There is no obligation upon witnesses in civil cases to sign their depositions and they are not liable to prosecution for refusal to sign them. *(1912) 13 CriLJ 713 (713) (Lah)*

(8) The accused commits no offence under this section by refusing to sign record of his examination by the Magistrate because the procedure indicated by S. 281(5). Criminal P.C. involves the Magistrate offering the record for the accused's signature but it does not empower him to require the signature. *(1906) 4 CriLJ 205 (Low Bur).*

(9) The Court is legally competent to require the accused to sign the record and the refusal amounts to an offence under this section. *AIR 1935 All 652.*

2. Practice.—*Evidence*—Prove: (1) That the accused made the statement.

(2) That he was required to sign such statement by a public servant.

(3) That such public servant was legally competent to require him so to sign it.

(4) That the accused refused to sign that statement.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXXV or if not committed in a Court, by a Metropolitan Magistrate, or Magistrate of the first or second class.

4. Complaint.—Complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate is required under section 195, CrPC. An inquest report is not a statement within the meaning of section 180 of the Penal Code and refusal to sign it is not an offence.

Section 181

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 [7][or affirmation] to state the truth on any subject to any public servant or other person authorised by law to administer such oath [7][or affirmation], makes, to such public servant or other person as aforesaid, touching that 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.

Cases and Materials

1. Scope.—(1) This section to cases in which the false statement on oath is made to any public servant in proceeding other than judicial. A deliberate intention to deceive is necessary. A person making a false return of service of summons or making a false statement in an affidavit sworn before a Magistrate is not guilty of an offence under this section.

(2) The provisions of S. 313 (2) and (3), Criminal P.C., do not preclude the accused from making an affidavit in support of an application under S. 407, Criminal P.C. and there is no bar to his being prosecuted for making a false statement in such affidavit. *AIR 1925 Lah 312.*

(3) Section 4 of the Oaths Act enumerates the Courts and persons who are authorised to administer oaths and affirmations. A Magistrate before whom an affidavit is sworn does not come under S. 4 of the Act. Consequently a person making a false statement in such affidavits is not guilty of an offence under this section. *AIR 1939 657.*

(4) Where the Collector to whom an application for refund under S. 51, Stamp Act (1 of 1870) had been made, made it over to a Deputy Collector for enquiry it was held that the Collector alone was empowered by law to hold the enquiry and to administer oath to persons whose oral or written statement he required and he could not delegate his authority to the Deputy Collector. Hence, the latter was not entitled to put persons upon their oaths and no charge under this section or S. 193 in reference to their statements before him could be sustained. *(1883) ILR 5 All 17.*

(5) A Court conducting an enquiry respecting the conduct of a legal practitioner under the Legal Practitioners Act is not competent to take a statement on solemn affirmation form him and hence he does not render himself amenable to a charge of making a false statement under S. 181 or giving false evidence under S. 193. *(1883) ILR 6 Mad 252.*

(6) A lie is more than a mere untruth. It is untruth spoken with a deliberate intention to deceive. Thus a person may, in good faith, make a statement which, in fact, is incorrect. *AIR 1933 Sind 412.*

(7) Making a statement which is found to be false, made without any knowledge whatever in the subject one way or the other still amounts to an offence of giving false evidence as the maker could not have believed what he deposed to be true. *(1865) 2 Suth WR 47 (Cr).*

2. Practice.—*Evidence*—Prove: (1) That the accused took the oath, or made the affirmations in question.

(2) That the same was legally binding upon him.

(3) That such oath or affirmation was administered by a public servant or by a person authorised by law to administer the same.

(4) That the accused whilst so bound made the statement in question to such person.

(5) That such statement was made touching the subject on which he was thereby bound to state the truth.

(6) That what he so stated was false.

(7) That he then knew that his statement was false, or had reason to believe it was false or did not believe it was true.

3. Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first or second class.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, being legally bound by an oath to state the truth on a certain subject, to wit, to a public servant (or person authorised by law to administer such oath) did make to such public servant (or person as aforesaid) touching that subject, a statement, which you knew (or believed) to be false, to wit and thereby committed an offence punishable under section 181 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is necessary under 195, CrPC.

Section 182

[8]**[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 information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

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

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

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 [1][taka], 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 esquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section]

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8. Substituted by the Indian Criminal Law Amendment Act, 1895 (Act III of 1895), s. 1, for the original section 182.

Cases and Materials : Synopsis

1. Scope of the section.—(1) This section would be inapplicable unless it is established that the accused gives to public servant any information which he knows or believes to be false. The scope of section 182 is restricted to those cases where an accused person gives information which he either knows or believes to be false; this apparently means that the prosecution must affirmatively establish that the accused had either positive knowledge or he positively believed the information given by him to be false. The language of this section, inter alia, requires as an essential ingredient thereof that the false information must have been given with the intention to cause or knowing it to be likely that will cause, a public servant in the exercise of his duties; as such (a) to do or omit anything which he ought not to do if the true facts were known to him, or (b) to use his lawful power to the injury or annoyance of the person *(1 CrLJ 576)*. Conviction of a person under section 182 for a statement made by him in his examination on oath or in the course of an application for transfer of his case pending in another Court is bad in law. Such statement is not iformation given to a public officer within the meaning of section 182 *(11 CrLJ 537)*. Statement by a prisoner for the purpose of their defence are not information given to a public servant *(12 Mad 451)*. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under section 182, the burden of showing that when he made it he delivered it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false *(29 CrLJ 753)*. The words "public servant" in section 182 sufficiently cover a police officer *(AIR 1935 Sind 94)*. Therefore, if any person gives the first information statement to the police even though not voluntarily which is recorded under section 154, CrPC and if it ultimately turns out to be false it would amount to giving false information and the offender would be punishable under section 211, Penal Code and not under section 182. Where the officer in charge of a police station after the usual investigation following an information submitted a report to the Magistrate to the effect that the case was false, an order by the Magistrate directing prosecution of the complainant under section 182 is wholly without jurisdiction *(52 CrLJ 394)*. Sections 182 and 211, Penal Code in reality differ fundamentally as regards the ingredients of the offence concerned. Section 182 is primarily intended for case of false information which do not ordinarily involve a particular allegation or charge against a specified and defined person. Section 211 covers case where there is a definite information which is against a particular person *(26 CrLJ 934)*. The gist of the offence under section 182 is the giving of information so as to cause a public servant to act upon it and the offence is completed when the information reaches the public servant. A case under this section has to be tried at the place where the public servant received the information *(AIR 1932*

Mad 427). In a case where the information given to a public servant is contained in a letter posted at one place and delivered at another the offence is committed partly in one local area and partly in another. The Court at the place where the letter is written and posted has jurisdiction to try the case. Even if that Court be supposed to have no jurisdiction, section 531, CrPC will cover the case *(AIR 1936 All 105).* There is a difference between section 182 and section 177. The difference is that in section 182 the false information is given with a particular intent. No person can be prosecuted under section 177, unless he is legally bound to give information. No such restriction is imposed in section 182.

(2) The ingredients of the offence are:--(i) The giving of false information, (ii) to a public servant, (iii) which the informant knew or believed to be false, and (iv) which he gives in order to influence the public servant to behave in a way in which he ought not to behave if the true state of facts were known to him. *AIR 1959 All 71.*

(3) The offence under this section is complete as soon as a person moves the public servant for action and the fact that the public servant did not, take any action is not material. *AIR 1962 SC 1206.*

(4) An offence under this section whether falling under clause (a) or clause (b) involves moral turpitude, so as to disqualify the person convicted of such offence, for any office for which the relevant law says that conviction for offence involving moral turpitude is a disqualification. *AIR 1959 All 71.*

(5) Refusal to take cognizance of an offence under section 182 P.C. for absence of complaint by public servant concerned does not amount to acquittal. An acquittal would mean an acquittal on facts which creates a bar for further trial under section 403, Cr.P.C. What the Additional Sessions Judge said in respect of section 182, P.C. is only this that in the absence of a complaint he was not prepared to take cognizance. The refusal to take cognizance is not bar for further trial and does not operate as an acquittal of a charge. *Rana Md. Afzal Khan Vs. State(1962) 14 DLR (SC) 235 = (1962) PLD (SC) 397.*

(6) Prosecution not illegal though the charge before the police is taken to the Court later on. A prosecution under section 182 cannot be regarded as illegal even though the charge made before the police may have been taken to Court subsequently, where the possibility of a conflict with the accused or opinion of the Court concerned ceases to exist. *3 PLD (Lah) 405.*

(7) Onus on the prosecution to prove positively that the information given by the accused was false to his knowledge or his belief. It is necessary for the prosecution to prove by means of positive evidence that the accused had knowledge or belief to the effect that the information given by him was false. The onus, therefore, is undoubtedly on the prosecution to prove that the information was false to the knowledge or belief of the person who gave information. It will, therefore, appear that the prosecution has to prove that the accused positively knew or believed the information to be false. It would not suffice to prove that the information was given on insufficient foundation. The Court has accepted the opinion expressed by the two witnesses. P.W. 2, the Assistant administrator stated: "It transpired that the allegations made by the accused in his petitions are also absolutely false and malicious. I made a report to the Administrator of Wakf that the allegation brought by accused in his petition against Mutwallies were false and malicious." Held: It will appear that the two witnesses informed that the accused knew that these allegations were false because he failed to substantiate them. This does not bring the offence home to the accused on a charge under section 182. The distinction between the false and malicious prosecution and complaint under section 182 in which it has to be found as a fact that the information given was false to the knowledge of the accused or was believed by him to be so, has not been considered by the Magistrate. *Nurul Kabir Vs. Administrator of Waqfs (1967) 19 DLR 460.*

(8) Refusal to take cognizance of an offence under section 182 of the Penal Code for absence of complaint by the public servant concerned does not amount to acquittal. An acquittal would mean an acquittal on facts which creates a bar for further trial under section 403 CrPC. What the Additional Sessions Judge said in respect of section 182 is only this, that in the absence of a complaint he was not prepared to take cognizance. The refusal to take cognizance is no bar for further trial and does not operate as an acquittal of a charge. It is open to the public servant concerned to file complaints on which proceedings can be taken de novo. Legal right—What the expression legal right connotes is defined in jurisprudence as an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty and disregard of which is a wrong. Unless and until the effect of the certificate was that in consequence somebody would be legally obliged to do something or to refrain form doing something it could not be said that the certificate (in the present case) carried with it any legal right. Whether the certificate in question was not a "Property" within the meaning of section 415 of the Penal Code—"property" does not depend upon its possessing a money or market value and still may have a value for its owner. *14 DLR (SC) 235.*

(9) A person who is directed to show cause why a complaint under section 182 should not be filed is entitled to lead evidence. A complaint can be lodged only after the Magistrate "came to a prima facie" conclusion that the information given was deliberately false. Complaint under section 182 of the Penal Code can only be filed by the Magistrate after himself making up his mind and not on the direction of another authority. *(Ref 3 PLD 405 Lah). 12 DLR (WP) 78.*

2. "Whoever gives to any public servant any information".—(1) The word 'gives' in this section cannot be given the restricted meaning of the word 'volunteers' and an informant knowingly giving false information to a public servant on being questioned is punishable under this section. *AIR 1959 All 378.*

(2) Information given by way of answers to question put to the informant in an investigation or enquiry under the law would not properly fall under the category of information given. *AIR 1962 SC 1821.*

(3) The information which is penalised under this section is an information which is intended to cause or known to be likely to cause the public servant concerned to take action. Where information has already been given and the law set in motion further statements in the course of investigation would not be information falling under this section. *AIR 1970 Guj 218.*

(4) Where in a proceeding for issue of a certificate for age of a certain girl the accused produced another girl, it was held that the offence under this section was committed as there was misrepresentation as to the identity of the girl. *AIR 1951 Sau 8.*

(5) A person who is a mere writer of an anonymous application which is made by an other person cannot be guilty of the false statements made in such application. The reason is that in such a case the necessary intention required to constitute the offence cannot be held to exist. *AIR 1956 Bom 265.*

(6) Section 195(1)(a) Criminal P.C., provides that no Court shall take cognizance of any offence punishable, inter alia, under this section except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate. *1974 BLJR 35 (40).*

(7) The word 'concerned' means concerned in the offence. Thus in the case of an offence under this section the complaint that is necessary is that of the public servant to whom the false information was given and not that of the public servant sought to be injured by such information. *AIR 1961 All 352.*

(8) The public servant concerned would mean a public servant to whom a false information is given with the intention or knowledge that such public servant will do something in his official capacity as a public servant. If the information is given with the intention that the public servant will do something which has no connection with his office as a public servant, this section and consequently, S. 195, Criminal P.C., will have no application. *AIR 1950 Cal 97.*

(9) Where the false information is given to the Deputy Inspector-General of Police, he would be the 'public' servant concerned and not the station to whom the complaint is sent for investigation. *AIR 1952 Raj 142.*

(10) Where a first information report of robbery was lodged before a sub-Inspector of Railway Police but the investigation was made by an Assistant Sub-Inspector of another police station who as a result of that investigation made a complaint for prosecution of the informant under this section, it was held that the latter could not file the complaint as the false information was given to the Sub-Inspector of Railway Police. *AIR 1947 Pat 64.*

(11) A false report was lodged at police station B by a person that his pocket had been picked at the railway station at B. The report was forwarded by the Station Officer of B for investigation to the Station Office G.R.P. at H, the offence having occurred in the railway. It was held that it was the Station Officer of B and not of H who could make a complaint under this section. *AIR 1952 All 436.*

(12) Where a petition containing false information made to the Chief Minister is sent for inquiry to the Sub-Division Magistrate and that information is again repeated in the inquiry made by the later, the latter will be the public servant concerned. *AIR 1959 All 378.*

(13) Where a false complaint is lodged at one police station and the complaint is sent for investigation to the police station in whose jurisdiction an offence was alleged to have been committed, the officer to whom the complaint is made and not the one to whom it is sent for investigation is the public servant to whom the information must be said to have been given. *1966 AllLJ 980.*

3. "Which he knows or believes to be false".—(1) A necessary ingredient of an offence under this section is that the information which the accused gave must have been known or believed by him to be false. *(1971) 1 Mad LJ 497.*

(2) An allegation which is found not proved is not necessarily false and false to the knowledge of the maker. *1955 Cri LJ 171 (Madh B.)*

(3) The fact that an information is shown to be false does not cast upon the accused the burden of showing that when he gave it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false. The prosecution must prove a positive knowledge or belief of the falsity of the information. *AIR 1920 Cal 994.*

(4) It is not sufficient to find for a conviction under this section that the accused has given information which he had reason to believe to be false or which he did not believe to be true. *(1961) 63 Pun LR 566.*

(5) Unlike S. 191, the scope of this section is restricted in that whereas S. 191 also makes it an offence on the part of the accused person to make a statement which he does not believe to be true, this section does make it so and under this section it must be proved positively that the accused knew the information to be false or that he believed it to be false. *(1961) 63 Punj LR 566*

4. "Intending thereby to cause.....such public servant."—(1) It is an essential ingredient of an offence under this section that the person giving the false information to the public servant should

intend to cause or should know it to be likely that the information given by him to the public servant will cause either of the two consequences, that is, it will cause the public servant to do or omit something which such public servant ought not to do or omit if the true state of facts were known to him or it will cause him to use his lawful powers to the injury or annoyance of any person. *AIR 1966 Raj 101.*

(2) The guilt of the accused lies in his intention or knowledge and the fact that the public servant did not, in fact, do or omit to do anything or did not use his lawful powers in consequence is not a deciding factor. *AIR 1959 All 71.*

(3) The offence is complete as soon as the accused moves the public servant for action. *AIR 1962 SC 1206.*

(4) If the information is given to a public servant with the intention, that the public servant would do something which has no connection with his office as a public servant, this section will not apply. *AIR 1950 Cal 97.*

5. Clause (a).—(1) Clause (a) can be read independently of clause (b) without importing into it the words "to the injury or annoyance of any person." *(1895) ILR Cal 31.*

(2) Where the accused falsely informs a Magistrate that a big fire is raging in some place in order to make the Magistrate to send the necessary force to put out the fire, the accused will be guilty under clause (a) of this section even though the accused may have no intention that any one should be injured or annoyed. *AIR 1959 All 71.*

(3) The object of the provision is that public servants ought not be unnecessarily distracted from their duties. *AIR 1959 All 71.*

(4) A, the accused, falsely informs the Magistrate that the tenant of A's house has absconded after locking the house and that the house has to be opened for crying out certain badly needed repairs. A requests the Magistrate to have the lock broken open so that the house can be repaired. The Magistrate direct the police to look into the matter and do the needful. The police report that the information given by A is false. A is then prosecuted under this section for giving false information to the Magistrate. It was held that A commits no offence in such cases , inasmuch as the Magistrate will have no jurisdiction to interfere in such cases even if the information given by A were true. *AIR 1918 All 85.*

(5) Where a report of loss of cattle was made with the object of driverting the attention of the Sub-Inspector of Police from charge against the accused and the report induced the Sub-Inspector to register a case of suspected cattle theft and make an investigation which he ought not to have made if he had known the report to be false, it was held that the accused had committeed an offence under this section. *AIR 1943 All 96.*

(6) A candidate for an election to a Town Area Committee, seeing that he was losing the election, made a false application to the Sub Divisioin Officer and the Station-House Officer that the supporters of the rival candidate were going about in the village armed with lathis and weapons and were holding out threats to the voters not to vote for the applicatnt. It was held the applicant had committed an offence under this section. *AIR 1952 All 178.*

(7) Where in a proceeding for issue of a certificate regarding the age of a girl the accused produced another girl, it was held that the accused had committed an offence under this section, there being misrepresentation as to the identity of the girl. *AIR 1951 Sau 8.*

(4) A driver of motor-car was driving without licence. When the Superintendent of Police asked for his name, he gave a false and fictitious name. It was held that though the effect of the wrong

information was merely to obstruct the prosecution of the real offender yet, the intention of the informant being to cause the police officer to take steps for the prosecution of a person who did not exist and to omit to take steps against himself, the false information came with in the mischief of clause (a). *AIR 1929 Pat 4.*

(9) A person making a statement in his petition of appeal or revision cannot be held to have committed an offence under this section simply because his claim is not substantiated, even assuming that the false statement was made with the object of inducing and that it did induce the Court to send for the record of the case, as in such a case it cannot be said that the Court was thereby induced to do what it ought not to have done if it had known the true facts. *AIR 1928 Pat 574.*

6. Clause (b).—(1) When false report is made to the police the question in deciding as to whether it amounts to an offence under this section is not whether the report is one of a cognizable offence but whether it is of such a nature as might be supposed to lead the police to make use of their lawful powers to the injury or annoyance of any person. *AIR 1943 All 96.*

(2) Even where a person makes a complaint to the police of a non-cognizable offence and it is found to be false, he can be convicted under this section. *AIR 1943 All 96.*

(3) A fasle report of a non-cognizable offence made to a police officer without expecting any action on his part cannot form the ground of conviction under this section. *AIR 1920 All 196.*

(4) Where a false report was made to the police, merely to the effect that a certain property was missing the report not being one of an offence, cognizable or non-cognizable, did not by itself call for any action on the part of the police officer to whom the information was given, and hence, no offence was committed under this section. *AIR 1932 Pat 170.*

(5) Where the accused who had sold his horse to another, made a false report to the police that his horse had been stolen, it was held that he must have known that his information would lead the police to use their powers to the injury or annoyance of others in whose possession the horse might be found, and hence, the accused was guilty under this section. *AIR 1922 All 272.*

(6) Where false report of a burglary was made to the police with the object of suppressing certain documents by pleading that they had been stolen, no offence was committed under this section inasmuch as it was not the objcet or intention of the accused that the police should use their powers to cause injury or annoyance to any other porson. *AIR 1959 All 545.*

(7) A District Judge has lawful power which he can use to the injury or annoyance of a Subordinate Judge because under S. 24, Civil P.C. and S. 22(2) of the Bengal, Agra and Assam Civil Courts Act (12 of 1887) the District Judge has power to transfer suits and appeals pending on the file of a Subordinate Judge to some other competent Court and the exercise of such a power by the District Judge on receipt of information about corruption on the part of a Subordinate Judge would manifestly be to the annoyance, if not also to the injury, of the subordinate judge. *AIR 1938 Pat 83.*

(8) Where a person while resigning his office submitted a petition to the Collection containing false allegations against the other servants without any intention that the Collector should use his lawful powers to the injury or annoyance of the those others, it was held that he could not be held guilty under this section. *AIR 1918 All 265.*

(9) The accused petitioned the Magistrate that a certain person was collecting men to cause him some injury and asked for an inquiry by the police. It was held that the accused could be prosecuted under this section as the false information given by him was intended to cause the Magistrate to use his lawful powers to the injury or annoyance of another. *AIR 1919 Pat 321.*

7. Position of accused person.—(1) Statements made by an accused person for the purpose of his defence cannot be held to be "information given" to a public servant within the meaning of this section. *(1870) 2 NWPHCR 128.*

(2) Where in a criminal case, the accused makes an application to the superior Court for transfer of his case from the court in which his case is pending and in such application he makes false averments against the trying Magistrate, the accused does not thereby commit any offence under this section. *(1910) 11 CriLJ 537.*

(3) Where the accused in his petition of appeal falsely stated that the trying Magistrate had declined to summon witness cited for the defence, it was held that the information in the petition appeal was not intended to injure the trying Magistrate but only to secure his acquittal and he could not be prosecuted under this section. *(1889) ILR 12 Mad 451.*

8. This Section and S. 211.—(1) There is a clear distinction between an offence under S. 182 and one under S. 211. An offence under S. 182 is committed when an information false to the knowledge or belief of the accused is given to a public servant but under S. 211 the accused should have instituted or caused to be instituted against another some criminal proceedings through a definite accusation and not by a mere expression of a suspicion. *AIR 1949 Lah 28.*

(2) An offence constituted by a false complaint against unknown persons is not one under S. 211 but is one under S. 182. *AIR 1941 Cal 288.*

(3) It is sufficient, in a case under S. 211, for the prosecution to establish that there was no just or lawful ground for the action taken by the accused and that the accused knew this. But to bring a case within S. 182, it is necessary for the prosecution to prove not merely absence of reasonable or probable cause for giving the false information but a positive knowledge or belief of the falsity of the information given. Section 182 does not necessarily impose upon the informant criminal liability for mere want of caution before giving the information. There must be positive and conscious falsehood established. *AIR 1925 Sind 184.*

(4) The offence of giving false information to the police falls under S. 182, there being no charge or criminal proceeding within the meaning of S. 211 in such a case. *AIR 1930 Oudh 414.*

(5) The offence u/s. 211 includes an offence under S. 182 and action can be taken under either of the sections but in cases of more serious nature it is desirable to proceed u/s. 211. *AIR 1952 Raj 142.*

(6) Where the accused first lodges a first information with the police and follows it up with a complaint containing the same information before a Magistrate, the informant cannot be prosecuted for an offence under S. 182 unless the complaint made to the Magistrate is found to be false and the Magistrate files a complaint in writing about an offence under S. 211. *AIR 1969 SC 355.*

9. This Section and S. 500.—(1) The offences under S. 182 and S. 500 are quite different. The offence under S. 182 is committed against the person to whom false information is given; in the case of offence under S. 500 it is committed against the person about whom the defamatory statement is made. The charges under the two sections have to be prosecuted under the authority of different persons who are injured by their commission. *AIR 1953 SC 293.*

(2) Where false information of a defamatory character is given to the police against a certain person two distinct offences are committed, one under S. 182 against the police and the other, under S. 500 against the person against whom the information is given. In such cases the aggrieved party can prosecute for defamation even though the police have not laid a complaint under S. 182. *AIR 1953 SC 293.*

10. Whether informant should be given opportunity to prove his case.—(1) Where a 'narazi' petition against the report of police has been actually dismissed by the Magistrate under Section 203, Criminal P.C., it is finished and done with, and there is nothing further to prevent the trial under Section 182, P.C. *AIR 1939 Cal 340.*

(2) Where a person when called upon to show cause why he should not be prosecuted under Section 182, P.C., challenges the police report and reiterates the charges made before the police, it is clearly a complaint and the case under Section 182, P.C., cannot be proceeded with until that person's complaint has been dealt with in accordince with law. *AIR 1939 Cal 271.*

(3) Petition of complaint against conduct of police to District Magistrate—Order 'file' passed on complaint—Subsequent prosecution of petitioner under section 182—Held: petitioner could claim that sanction of District Magistrate was necessary for prosecution—Proceedings, held, should be quashed. *AIR 1937 Sind 209.*

(4) Where on the police reporting to be false and information filed against certain persons by the accused, a warrant was issued against him under Section 182, Penal Code and on receipt of the warrant the accused filed a naraji petitioner against the police report—Held that the Court ought to have enquired into the naraji petition first before the accused was tried under S. 182. *AIR 1933 Cal 614.*

(5) Although where the accused filed a naraji petition in a case under Section 182, it is a better procedure to give the accused an opportunity of proving the truth of his case before the Magistrate enquires into case; if the accused is convicted without giving him such opportunity, the trial cannot be said to be illegal. *AIR 1933 Cal 532.*

(6) Where on a police report that the case of the complainant was false, he filed a narazi petition objecting to the police report—Held that process cannot be issued against him under Section 182 without enquiring into and disposing of the complainant's narazi petition. *AIR 1932 Cal 550.*

11. Evidence.—(1) Where in a prosecution under this section for having made a false report to the police the only evidence was the opinion of the investigation officer that the report was false it was held that such opinion was not legal evidence and no conviction could be sustained on such opinion. *AIR 1935 All 981.*

(2) In a prosecution under this section, the evidence must show that the very statement which the prosecution alleges to have been made by the accused was made by him. This is purely a matter of evidence. Where the statement which the accused was proved to have made was different from the one attributed to him by the prosecution, nor did the proved statement convey the meaning of the statement attributed to him, it was held that the point was not proved. *AIR 1956 Bom 265.*

(3) As in every criminal case the ingredients of the offence under this section also should be proved by the prosecution and the burden is not on the accused to prove that the information given by him was not false or was not false to his knowledge and belief. *(1971) 1 Mad LJ 497.*

(4) Prosecution under S. 182—Trial protracting for more than 10 years and despite opportunities no witness was produced by prosecution—Accused need not undergo further trial and must be acquitted. *1983 WLN (UC) 172 (DB) (Raj).*

12. Punishment.—(1) Where the lower Court had awarded a sentence of three months 'rigorous imprisonment, the High Court maintaining the conviction in revision did not think it proper after a lapse of about 4 years form the event to send the accused to jail for the short period of three months but awarded a fine of Rs. 300 in lieu thereof. *AIR 1959 All 378.*

(2) Where the accused who was a mere servant and had given false information against his master and was out of employment at the time of his conviction, the fine of Rs. 200 was reduced to Rs. 100. *AIR 1957 Cal 382.*

13. Form of charge.—(1) Self-contradictory statement by accused—Charge in alternative form for offence under S. 182 or in alternative for offence under S. 193—Charge held to be bad in law. *(1886) ILR 10 Bom 124 (DB).*

(2) The charge of giving false information should mention the name of public servant to whom false information is given and also the names of those persons to whom the accused is alleged to have intended to cause injury and annoyance. *(1865) 2 Suth WR (Letters) 7.*

(3) The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, gave to—(name of the public servant), a public servant the following information namely—intending thereby to cause (or knowing it to be likely that you would thereby cause) such public servant to do (or omit) something namely—which such public servant ought not to do if the true state of facts were known to him, or omit to do something if the true state of facts were known to him (or the lawful power of such public servant to injury or annoy) and thereby committed an offence punishable under section 182 of the Penal Code, and within my cogniizance.

And I thereby direct that you be tried on the said charge.

14. Procedure.—(1) An offence punishable under S. 182 is not one of the offences either mentioned in cl, (b) or cl. (c) of sub-s. (1) of S. 195, Cr. P.C. Therefore while acting within the scope of S. 476, Criminal Procedure Code, 1898 a complaint for an offence cannot be made. *1974 CriLJ 1451 (Delhi).*

(2) Not Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

15. Complaint by public servant concerned.—(1) The absence of a complaint as prescribed by S. 195 of the Criminal Procedure Code is a fatal defect and cannot be cured under S. 465 of the Criminal Procedure Code. *AIR 1960 SC 576.*

(2) Police could not prosecute the informant for false information or false charge while the informant's complaint to Magistrate on the same facts as disclosed in the report to police was pending as that would circumvent provision of S. 195 (1), (b), Criminal P.C. if offence under S. 182 is covered by offence under S. 211. *AIR 1969 SC 355.*

(3) Superintendent in charge of C. T. Office—Whoever happens to occupy that post at the time of filing the complaint is the public-servant concerned and can file complaint. *AIR 1969 Andh Pra 41.*

(4) Complaint giving false information addressed to the Senior Superintendent of Police—Officer subordinate in rank to him competent to initiate prosecution under Sec. 182. *(1983) 1 Chand LR .*

(5) F.I.R. lodged with police—Complainant during the course of trial resiling from what he had stated in the F.I.R.—Accused acquitted—Complaint for offence u/s. 182 by police and not by additional Sessions Judge was competent. *1981 Jab LJ 122 (MP).*

(6) Final report submitted by Police Station officer indicating no action against 'M' in respect of an offence under S. 182. Mere fact that another officer had taken charge of the police station was hardly a ground for change of opinion while initiating proceedings u/s. 182 against 'M' without any fresh materials of evidence that has come to the knowledge of the officer concerned. *1982 WLN (UC) 354.*

(7) When a final report is accepted by the court it was not necessary that complaint should be filed by Court under S. 182. The S. H. Officer could file the complaint for the offence. *1983 CriLJ NOC 56.*

16. Limitation—Starting point.—(1) In accordance with the provision of S. 469 of the Criminal Procedure Code the limitation in such a case would start to run from the date when the investigation comes to an end and offence complained of is found to be false and not from the date of the false complaint or of the giving of the false information. *(1977) 4 CriLT 124.*

17. Practice.—*Evidence*—Prove: (1) That the person to whom the information was given was a public servant.

(2) That the accused gave the information in question to that public servant.

(3) That such information was false.

(4) That the accused knew or believed such information to be false when given it.

(5) That the accused intended thereby to cause, or knew that it was likely that he would thereby cause such public servant to do or omit anything which public servant ought not to do or omit if the true state of facts were known to him or that he intended thereby to cause or knew that it was likely that he would thereby cause such public servant to use his lawful powers to the injury or annoyance of any person.

18. Complaint.—Complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate, is necessary under section 195, CrPC. A complaint under section 182 should be made to a competent Court.

Section 183

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 [1][taka], or with both.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *Resistance to taking of property by lawful authority of public servant.*
3. *"Property."*
4. *Resistance, what constitutes.*
5. *"Knowing or having reason to believe that he is such public servant."*
6. *Punishment.*
7. *Procedure.*
8. *Practice.*
9. *Charge.*
10. *Complaint.*

1. Scope of the section.—No preliminary enquiry under section 476, Cr. P. Code necessary in respect of an offence failing under section 183, Penal Code as such a matter is covered by section 195(1)(a) Cr. P. Code in which case complaint can be made straight without preliminary enquiry. For obstructing service of process for attachment in execution of a decree, a preliminary enquiry was held under section 475, Cr.P.C. and thereafter the Court holding the preliminary enquiry directs a complaint to be made for prosecution of the offending persons. *Per Asir J.* As the matter is one which falls under section 183 of the Penal Code, the complaint as made cannot be said to be proper complaint within the

meaning of clauses (b) and (c) of section 195 (1) read with section 476, Cr. P. C. In the interest of justice it is, however, necessary to examine the peon's report and consider other circumstances and thereafter, if necessary, the Court may exercise its discretion in terms of section 195 (1) (a) of the Cr. P. C., and consequently the High Court sent the case back to be dealt with in accordance with law. *Per S. Ahmed, J.*—Under section 195 (1) (a), Cr. P. C. the Judge acts in its administrative capacity rather than as a court in his judicial function when he considers whether a complaint should be filed or not. *Md. Fayzul Haq Vs. Akbar Haji (1963) 15 DLR 108.*

(2) Dafadar and choukidar are public servants for a limited purpose. No charge will lie under sec. 183 or 186, .P. Code, for resisting a dafadar or a choukidar in the execution of a writ of attachment. *Laknath Sarker Vs. Crown (1955) 7 DLR 344.*

2. Resistance to taking of property by lawful authority of public servant.—(1) This section punishes resistance to the taking of property by the lawful authority of a public servant. This implies two factors: (a) there must be a lawful warrant which authorises the taking of the property; (b) the person who executes the warrant must be clothed with lawful authority under the warrant. *AIR 1916 Pat 272.*

(2) The process is to be signed by an officer of the Court authorised to sign the process. Where a warrant of attachment of property was signed by the Peshkar of an Assistant Collector, it was held that the Peshkar not being an officer authorised to sign such warrants, the accused committed no offence by removing the property before attachment. *AIR 1920 All 51.*

(3) A warrant of attachment which does not specify the date on or before which it is to be executed is invalid, and resistance to such illegal execution is no offence. *AIR 1916 Pat 272.*

(4) The Civil Court passed an order directing the Nazir to remove the encroachment on a certain immovable property and to deliver the property to a certain party. No date was fixed for the delivery of the property. It was nevertheless held that the writ was valid and resistance to delivery of property under the writ was an offence under this section. *1969 CrilJ 85 (Orissa).*

(5) Where the warrant of attachment was addressed to the Nazir who delegated its execution to the peon by endorsement of his name, it was held that the Nazir had authority to delegate execution of the warrant to the peon and obstruction to attachment of property by the peon was punishable. *AIR 1920 Pat 805.*

(6) A process issued to a bailiff cannot be executed by a Nazir. *AIR 1916 Pat 272.*

(7) Where property not belonging to the judgment-debtor is attached, resistance by the real owner to the distriant is no offence. *1932 MadWN 247 (248).*

(8) Where at the time of the execution of a decree passed against some of the partners in their individual capacities, the fact that the property sought to be attached belongs to a partnership business in which some other persons are also partners is brought to the notice of the officer executing the decree, it is his duty to stay his hands and report the matter to the Court for further orders. This important question whether it was a partnership property or not cannot be left for decision for a Criminal Court in which the persons alleged to have obstructed the officer executing the decree are prosecuted for an offence under this section. *1963 BLJR 375.*

(9) Where the fact was brought to the notice of the Nazir seeking to execute the decree against the partnership property but on the Nazir's starting attachment the accused snatched away articles attached by the Nazir it was held that the conduct of the accused did not amount to resistance within the meaning of the section. *1963 BLJR 375.*

(10) Where the prosecution failed to establish that the jurisdiction of the District Local Board to impose tax extended to goods on board the ship before the goods were landed, it was held that conviction under this section for resistance by the tandel of the ship to the Nakedar who had gone on board the ship and seized goods for non-payment of octroi could not be sustained. *AIR 1936 Bom 376.*

(11) Section 256, Municipal Act deals with powers of entry and inspection as contained in S. 255 and prevents an obstruction to entry, inspection or search. Where the Tax Collector and the municipal servants were not obstructed while entering the shop and preparing the attachment list but it was only when the movables were taken into custody that the accused removed the attached articles, it was held that the offence did not come under Section 256 read with S. 297 of the Act but came under this section. *1961 (2) CriLJ 564 (Tripura).*

(12) If the prosecution fails to prove that on the date on which attachment was effected the necessary 15 days had elapsed after the service of the notice (required by the law) and the bill, the taking of the property cannot be said to be lawful authority as provided by S. 109 of Municipal Act and therefore, an offence under this section has to be treated as not proved. *(1961)CriLJ 564 (Tripura.)*

(13) Where an Amin through inexperience or negligence failed to notice that the duration of his warrant had expired but proceeding to attach honestly believing that he was entitled to do so, it was held that the accused was guilty under S. 326 for causing grievous hurt by sword. *AIR 1933 All 620.*

(14) Where a survey empowered to survey an estate under S. 17(a) of the Survey and Boundary Marks Act (1897) put up boundary marks bona fide on land that he was not authorised to survey and was engaged in taking measurements on what he thought was the estate land and the accused told him not to measure and removed the marks already set up, it was held that the accused was guilty under S. 434. *AIR 1917 Mad 889.*

3. "Property".—(1) The word "property" in this section will include also immovable property and resistance to delivery of such property under the orders of the Court will be an offence under this section. *1969 CriLJ 85 (Orissa)*

4. Resistance, what constitute.—(1) A mere oral statement by a person claiming to be the owner of certain property attached by a bailiff in execution of a decree that he would not allow the bailiff to take hold of the property unless he entered it as his property does not amount to a resistance within the meaning of this section. *(1891) ILR 15 Bom 546.*

(2) An article in possession of the accused was, during their absence, seized by the head constable who had come to investigate a case of theft and was kept loaded in a bandy for being taken. The accused, when they knew this, came and standing before the bandy and raising their hands said that the bandy should not be driven as they objected to the articles being taken. The action of the accused did not amount to resistance within the meaning of this section. *AIR 1944 Mad 45.*

(3) Where certain property is entrusted to a firm of sale and subsequently the management of the owner's estate is handed over to the Court of Wards, a refusal by the firm to deliver the property until their general account is settled does not amount to resistance to the taking of property by the lawful authority of a public servant in view of S. 171 of the Contract Act. *AIR 1926 Oudh 202.*

(4) Where there was no resistance to the entry of the attaching officers in the shop and their preparation of the attachment lists, but after the articles were seized and taken into custody, the accused removed the attached articles it was held that there was "resistance to the taking of property" within the meaning of this section. *1961 (2) CriLJ 564 (Tripura).*

5. "Knowing or having reason to believe that he is such public servant".—(1) "Public servant" is defined in S. 21. A Union Karnam has been held to be a public servant within meaning of clause (10) of S. 21, his duty being to levy a rate for the secular common purpose of the group of villages constituting the Union. *1 Weir 128.*

6. Punishment.—(1) Where the resistance to attachment was not accompanied by any violence and was much exaggerated by the prosecution it was held that the accused should be awarded a nominal punishment. *(1913) 14 CriLJ 239 (Mad).*

(2) Certain properties forcibly recovered from Koravers (a 'criminal' tribe) by police on reasonable suspicion of their being stolen property—The Koravers regaining by force the articles taken from them—Circumstances indicating that the accused were not entirely to blame for the incident—Police also to blame—Held, deterrent sentence not called for. *(1887) 10 MysLR No. 292 (DB).*

7. Procedure.—(1) This is one of the sections referred to in S. 195 of the Criminal P.C. Hence the accused cannot be prosecuted for an offence under this section in the absence of a complaint from the public servant concerned or from some public servant to whom the former is subordinate. *(1903) 7 CalWN 423.*

(2) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

8. Practice.—*Evidence*—Prove: (1) That the person resisted was a public servant.

(2) That the property was being taken by his authority.

(3) That such authority to take the property was lawful.

(4) That the accused offered resistance to such taking.

(5) That the accused at the time knew that he was a public servant who authorised such taking.

9. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, (name of the public servant) obstructed (or offered resistance) or assaulted or voluntarily caused hurt to the taking of property who had lawful authority to such taking of property knowing or having reason to believe that such public servant had such lawful authority, and thereby committed an offence punishable under section 183, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

10. Complaint.—Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 184

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 [1][taka], or with both.

Cases and Materials

1. Scope.—(1) The obstruction may be by direct or indirect means. The direct method would be to apply physical force. The indirect method may be such as to create a false alarm for which intending purchasers hesitate to bid for the property. To justify conviction under section 184 the lawful authority of the public servant offering the property for sale must be proved by the prosecution. The resistance offered would not be physical resistance. Even abusing of bidders at auction sale which made it necessary to postpone the sale was held sufficient for conviction of the accused under this section. *AIR 1938 Nag 529.*

(2) For an offence under this section there must be an intentional obstruction to a sale of property held under the lawful authority of a public servant. Mere posting up of placards asserting a title to the land, warning the intending bidders not to go in for it cannot be regarded as obstruction within the meaning of the section. *(1905) 2 CriLJ 44 (Lah).*

(3) "Obstruction" under the section need not be physical. For instance a concerted plan at a public auction to prevent the auction being carried out by raising shouts or causing disturbance which prevents the bid begin heard and necessitates the closing of the auction amounts to obstruction within the meaning of the section. *AIR 1938 Nag 529*

(4) An execution of a sale deed of a property ordered to be sold in execution of a decree of Revenue Court does not amount to obstruction to the execution sale when no effect whatever is produced on the sale by the execution of the document. *1883 AllWR 197.*

(5) A sale on the adjourned date was not a sale by lawful authority and obstruction to such a sale did not amount to an offence under this section. *(1905) 2 CriLJ 90.*

2. Practice.—*Evidence*—Prove: (1) That the property was offered for sale.

(2) That such sale was by the authority of a public servant.

(3) That such authority was lawful.

(4) That the accused obstructed such sale.

(5) That he did so intentionally.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, intentionally obstructed (name of the public servant) a public servant lawfully authorised to sell property described namely—and thereby committed an offence punishable under section 184, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—Complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate is required under 195, CrPC.

Section 185

185. Illegal purchase or bid for property offered for sale by authority of public servant.—Whoever, at any sale of property held by the lawful authority of a

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 [1][taka], or with both.

Cases and Materials

1. Scope.—(1) This section makes it penal to bid at a public sale for 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.

(2) A person can show his contempt by bidding for the lease of a ferry put up for public auction by a Magistrate, as he can by bidding for any corporal property, not intending to perform the obligation under which he lays himself by such bidding. It is his intention at the time of bidding and not the nature of the thing to be sold which constitutes the offence. *(1865) 3 SuthWR Cr 33.*

(3) A person who bids at a sale, held by a Collector, of the right to sell drugs in a certain area, without the intention to perform the obligation under which he lays himself at the time of bidding is guilty under this section. *AIR 1915 All 93.*

(4) A bona fide bidder at an auction sale unable to deposit earnest money due to circumstances beyond his control prosecuted under S. 185. *AIR 1934 Oudh 186.*

2. Practice.—Evidence—Prove: (1) That there was a holding of the sale.

(2) That such holding of the sale was by authority of a public servant.

(3) That such authority was lawful.

(4) That accused bid for, or purchased such property, either for himself or for some other person.

(5) That the person for whom he bid or purchased (whether for himself or someone else) was under a legal incapacity to purchase at the sale in question.

(6) That the accused then knew of such incapacity.

It will also be sufficient to prove (1), (2) and (3) as above, and further—

(7) That the accused bid for such property.

(8) That, when bidding, he intended not to perform the obligations under which bidding placed him.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day of—, at—, purchased or bid for the property—held by a public servant namely—having lawful authority (without any intention to perform the obligation consequent to such bidding) or (that the accused bid or purchased on behalf of a person who was under a legal incapacity to purchase at the sale or auction) and thereby committed an offence punishable under section 185 of the Penal Code and within any cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—Complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 186

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 [1][taka], or with both.

Cases and Materials : Synopsis

1. Scope of the section.—(1) This is a general section and is applicable in every case where a public servant is obstructed in the discharge of his functions. Where the public servant is a judicial officer the procedure laid down in section 480, CrPC may be followed. The obstruction which is punishable by this section may be by an act voluntarily done or omitted in order to hinder the public servant in executing his duty. Obstruction means active opposition such as by the use of physical force or by threats. A mere passive resistance, that is, by objection or refusal without threat or violence etc. does not amount to obstruction. To constitute an offence under this section it must be proved that the obstruction was given to a public servant, voluntarily, while engaged in doing a legal duty. "Public functions" contemplated by this section mean legal or legitimately authorised public functions and are not intended to cover any act, that a public functionary may choose to take upon himself to perform (*25 CrilJ 721).* Public servant means public servant as defined in section 21 of the Penal Code.

(2) Obstruction to a public servant must be when he is discharging a public function. Under section 174 of the Penal Code non-attendance in obedience to an order from public servant is punishable only when the said order was legal order and was issued by a public servant legally competent to issue the same. Section 186 of the Penal Code which deals with the obstruction of a public servant in the discharge of his public duties, shows that the obstruction must be voluntary and the said obstruction must be in toleration to a public servant who was discharging his public functions. Criminal Trial—A citizen can be deprived of his liberty strictly according to law. High-handedness on the part of the Government official is severely condemned. *30 DLR 29.*

(3) The word "obstruction" in section 186 connotes physical obstruction. Section 186 Penal Code clearly contemplates the commission of some overt act of obstruction and is not intended to render penal merely passive conduct. The word "obstruction" means "physical obstruction" i.e. actual resistance or obstacle put in the way of a public servant. *9 DLR 77.*

(4) Public functions mean legal and legitimately authorised public functions. Where obstruction is caused to acts which are not in due discharge of public functions, no offence committed. *8 DLR 452.*

(5) Allegation of giving instruction over telephone cannot be the basis of proceeding against the petitioner under section 186 of the Penal Code. The identity of caller cannot be proved and as such continuation of the proceeding shall be abuse of the process of the Court. *Major General (Retd) Mahmudul Hasan Vs. State (Criminal) 52 DLR 612.*

(6) S. 152 deals with the offence of assaulting or obstructing a public servant when suppressing a riot, etc. In case falling under S. 152, therefore, the general provisions of this section (under which the punishment is relatively much milder) will not apply. *(1894) 17 MysLR No. 461 P. 708.*

2. Claim of right.—(1) A claim of right is no defence to a prosecution for obstruction of a public servant in the discharge of his public duties under this section. *(1881) 4 MysLR No. 352.*

3. "In the discharge of his public functions".—(1) In order to sustain a conviction under this section the prosecution must show that the public servant who is obstructed was acting in the discharge of his public function. *AIR 1952 Pat 85.*

(2) The function should be in fact and in law public functions. *AIR 1940 Sind 42.*

(3) Public functions mean legal or legitimately authorised public functions and do not cover every act undertaken to be performed by public functionary. *AIR 1925 Lah 139.*

(4) Mere bona fide belief of the public servant that he is acting in the discharge of his duties is not sufficient to attract this section unless the public servant was in fact so acting. *AIR 1925 Lah 139.*

(5) Where the accused is charged with obstructing or resisting a public servant in the execution of a warrant of attachment, the Court should look at the warrant of attachment and see whether the officer was doing something which was not contained in the warrant, which would have justified reasonable resistance to its execution. *AIR 1932 Pat 276.*

(6) A public servant need not actually show to the accused the written authority under which he acts but he must have it in his possession ready to be shown. *AIR 1918 Oudh 162.*

(7) The accused persons who were no parties to a suit in which a public right of way was claimed did not allow the Munsif in whose Court the suit was pending to pass through their private property for the purpose of making a local inspection in connection with the suit. It was held that the accused did not commit any offence under this section. *AIR 1917 Cal 180.*

(8) An order requiring the defendant to furnish accounts is not an injunction within the meaning of O. 21, R. 32, Civil P.C. Hence, the disobedience of such order is not contempt of Court for which a person can be sent to prison. The arrest of the person who has failed to comply with the order to furnish accounts will, therefore, be illegal and resistance to such arrest will not be an offence under this section. *AIR 1918 Pat 451.*

(9) Order 21, R. 46 of the Civil P.C. provides for the mode in which movable property not in the possession of the judgment-debtor may be attached. The mode provided is by serving a prohibitory order on the person in possession, not to hand over the property to the judgment-debtor. The rule does not authorise the sealing up of the premises in which the property may be kept. Hence, obstruction to such sealing up is not an offence under this section. *AIR 1932 Pat 279.*

(10) Even though a receiver appointed under O. 40, Civil P.C., is a public servant (see Section 21, Cl, fourth), under O. 40 R. 1(2), the Court has no power to deprive a third person of the

possession of any property when no party to the suit has a present right to do so. In such a case the resistance to the receiver's possession is no offence. *AIR 1939 Sind 333.*

(11) Where the police try to arrest a person without warrant in a case in which the police have no power to do so, resistance or obstruction to such arrest will not be an offence either under this section or under the more specific S. 224. Similarly, escape from custody after a person is so arrested will not be an offence under S. 224. *AIR 1936 Pat 249.*

(12) Where the General Manager of a sugar factory obstructed the Special Officer in charge of rationing who had gone to the factory to search for and remove sugar in pursuance of an order of the Government under S. 3 of the Essential Supplies (Temporary Powers) Act, it was held that the seizure of the sugar must be regarded as duly authorised and lawful and the Manager by obstructing its removal committed an offence under this section. *AIR 1951 SC 201.*

(13) Under S. 38 of the District Boards Act it is the duty of the attaching officer to weigh goods actually and not to give only approximate weight. If the owner prevents the officer from removing the articles unless actual weight is given, he is not guilty under this section. *AIR 1941 All 344.*

(14) A toll contractor is a public servant under S. 21 read with S. 11 of the Toll on Roads and Bridges (Act III of 1875) and an obstruction to him in collecting toll is punishable under this section. *AIR 1935 Bom 24.*

(15) Where a Range Forest Officer has no jurisdiction whatsoever to seize timber under S. 82 of the Forest Act, the obstruction offered to him is not punishable under this section. *AIR 1927 Bom 483.*

(16) Though under S. 285 of the Municipalities Act a person authorised by the Commissioners of the Municipality may enter any shop and inspect and examine articles of food, he is not authorised to seize the article even if in his opinion it is unfit for human consumption. Hence, the shopkeeper who objects to the seizure cannot be convicted under this section. *AIR 1935 Pat 73.*

(17) Where a certain property is entrusted to a firm for sale and subsequently the management of the owner's property is handed over to Court of Wards, the refusal by the firm to deliver the property to the Court of Wards until their general account is settled does not amount to obstruction to a public servant in the discharge of his public functions, in view of the provisions of Sec. 171 of the Contract Act. *AIR 1926 Oudh 202.*

(18) Taxation Officer has no right under provisions of Sales Tax Act to insist on production of account books after refusal by dealer to produce—His act is illegal and his presence at shop after refusal is as treapasser—Hence, even if he was pushed out of shop, dealer or persons assisting him cannot be said to have committed offences under S. 186 and S. 353. *AIR 1965 Punj 264.*

4. Obstruction to process of Court.—(1) To "obstruct" under this section is to do an act which makes it more difficult for a public servant to carry out his duties. *(1958) 1 Malayan LJ 57.*

(2) Where a process-server is obstructed in the execution of a decree, the person obstructing is guilty under this section. *AIR 1915 Lah 456.*

(3) Where a warrant is in order and the officer executing it does not go beyond fulfillment of the instructions given to him in the warrant, the resistance o him is an offence punishable under this section. *AIR 1937 Pat 633.*

(4) Obstruction to the execution of an illegal warrant is not an offence under this section. *AIR 1936 Pat 37.*

(5) A warrant under O. 21, R. 24, Civil P.C., must state the date on or before which it is to be executed. A warrant which does not specify such date is illegal and resistance to such warrant is not an offence. *AIR 1916 Pat 272.*

(6) The execution of the warrant after the expiry of the date mentioned in the warrant is illegal and its obstruction is an offence under this section. *AIR 1927 Oudh 91.*

(7) A warrant of attachment which is not sealed with the seal of the Court as required by O. 21, R. 24, Civil P.C., is illegal and resistance to attachment under such warrant is not an offence. *AIR 1939 Rang 320.*

(8) The Nazir of a Court has no lawful authority to execute a warrant defected to the bailiff of the Court. *AIR 1916 Pat 272.*

(9) Where a warrant is signed by the sheristadar 'by order', such a case is different from one where it is simply signed by the sharistadar and resistance to the execution of the warrant in the former case is punishable under this section. *AIR 1923 Cal 584.*

(10) The Nazir has authority to delegate the execution of the warrant to the peon and obstruction to the execution is punishable under this section. *AIR 1920 Pat 805.*

(11) A warrant cannot be held to be without jurisdiction for a mere failure to record reasons under O. 21, R. 22 (2), Civil P.C., for issuing process at once without waiting of a notice under O. 21, R.. 22(1) and resistance to such warrant is an offence under this section. *AIR 1936 Pat 37.*

(12) Resistance to a warrant for delivery of actual possession when the prayer was only for symbolical possession by a person who is not a party to the decree and is not bound by it is not punishable under this section. *AIR 1925 Mad 613.*

(13) If a warrant is directed to a place beyond the jurisdiction of the Court, the person obstructing the execution of such warrant cannot be held guilty under this section. *AIR 1924 Cal 501.*

(14) A decree for restitution of conjugal rights directed the wife to return to her husband within a certain period. The wife not having obeyed the decree, a warrant was issued against her. The wife was guilty under this section for obstruction to the execution of the warrant. *AIR 1919 Cal 914.*

(15) Where a warrant issued by Assessor Panch under S. 27 of the said Act does not authorised any one to execute it, the warrant is devoid of legal force and by resisting its execution the accused commits no offence under this section. *AIR 1941 Pat 161.*

(16) Where on the date on which the peon was assaulted in the execution of the warrant, there was no proceeding under the Bengal Agricultural Debtors Act, the Judge cannot refrain from taking action under this section merely because subsequently the judgment-debtor has taken proceeding under the Act with the result that the debt in connection with which the warrant was issued becomes non-existent. *AIR 1942 Cal 434.*

5. Public servant.—(1) In order to be "public servant" within the meaning of that section, it is not essential that a person should be in the employ of the Government. *1960 AllLJ 357.*

(2) A Toll Contrator as well as his servant acting under Tolls or Roads and Bridges Act in a "public servant". *AIR 1935 Bom 24.*

(3) A Local Board Road Sirkar who merely supervises road-work is not a public servant within the meaning of S. 21, Cl. 10. *(1907) 6 CriLJ 393.*

(4) A clerk in cess collection department of a District Municipality under the District Municipalities Act is a public servant within S. 21, Cl. 10 and this section. *(1908) 8 CriLJ 269.*

(5) A Commissioner appointed by a Court to divide the properties by metes and bounds as a result of a preliminary decree for partition is public servant within S. 21. *AIR 1951 Mad 773.*

6. Obstruction, what constitutes.—(1) The word 'obstruction' does not necessarily mean physical obstruction; and it is sufficient if there is either a show of force or threat or any act having the effect of preventing the public servant form carrying out his duty. *1971 MahLJ 812.*

(2) There can be no doubt that physical obstruction will be "obstruction" within the meaning of this section. *AIR 1936 Nag 86.*

(3) Where the accused placed a bicycle in the way of a police constable so as to prevent him form dealing with an offending cartman the accused was held guilty of an offence under this section. *AIR 1936 Nag 86.*

(4) In order to prevent the search and the seizure of the stock of sugar in the factory the manager of a sugar factory had locked all the gate of the factory except the main entrance, had placed on the road leading to the factory a huge truck on jacks with all the four wheels removed in such a way as to block the road leading to the godown, had kept heaps of coal firewood and tins on the door leading to the godown making it impossible for any vehicular traffic to reach the godown door and had also caused some of the rails and fish-plates of the railway siding leading to the godown to be removed. It was held that the obstructions found were sufficient to bring the case under this section. *AIR 1950 Pat 436.*

(5) The shutting of the door by the wife, in the officer's face who was about to enter her house to seize the movable in execution of decree passed against her husband amounted to obstructing him in the performance of his duty. *AIR 1942 Mad 552.*

(6) Where the accused ran away and did not submit to lawful arrest by the public servant, it was held that there was not obstruction within the meaning of this section. *AIR 1955 All 104.*

(7) The word "Voluntarily" in the section connotes some overt act and that mere passive conduct will not be an offence under the section. *AIR 1925 Lah 139.*

(8) Mere withholding or refusal or assistance to a public servant does not constitute "obstruction" within the meaning of this section. *AIR 1924 Lah 238.*

(9) When a member of a village panchayat on being asked by the Sub-Division Officer to sit with a member of a depressed class refused to do so and his fellow Panchas not to do so, it was held that though the S. D. O. was hampered in the performance of his duty the conduct of the member did not amount to voluntary "obstruction" within the meaning of this section. *AIR 1925 All 401.*

(10) When a person states to a peon who wants to effect delivery of possession of a house to the decree-holder that he had rented the house from certain person and would vacate it only if he asks him to do so, makes such endorsement on the writ and there is neither threat nor violence on the part of such person and the peon returns without doing anything further, there is no obstruction within the meaning of this section. *AIR 1950 Pat 544.*

(11) The refusal of a patwari to allow the kanungo to go through his books and check them has been held to be an act of insubordination and not a criminal act punishable under this section. *AIR 1925 All 409.*

(12) The section does not contemplate constructive obstruction to a judicial officer in the discharge of his judicial functions even when they are of quasi-executive character or even when the proceedings before him are in execution. Thus where a Nazir is obstructed in the execution of a decree passed by a Judge, the Judge cannot be said to be constructively obstructed. *AIR 1936 Pat 74.*

(13) The obstruction offered to a person acting under the orders of a public servant while fixing the boundaries under the Land Revenue Code has been held to be equal to an obstruction to the public servant himself. *AIR 1929 Bom 385.*

(14) For removing an encroachment, a public servant can employ an agent for the manual task and if the agent is obstructed in what he is legitimately required to do by the public servant, then there is an obstruction offered to the public servant himself because, what he is doing by the hand of the agent is really, in the eye of law, something he is actually doing himself. *AIR 1928 Bom 135.*

7. "Voluntarily".—(1) The word "voluntarily" in the section connotes that the accused does some overt act and that mere passive conduct as, for instance, not opening the door of his house for the police officer to enter, will not be "obstruction" within the meaning of the section. *AIR 1925 Lah 139.*

8. Nature of mens rea.—(1) Under English law 'wilfully' obstructing a police officer in execution of his duty has been made punishable under S. 51(3) of the Police Act, 1964. There in order to prove 'willful' obstruction it is not enough that there is an intention merely to do something which happens to result in some obstruction to the police, but in addition it will have to be proved that this intention also encompassed in itself some sort of hostility towards the police. *(1976) 3 WLR 753.*

9. Good faith.—(1) Good faith on the part of the public servant would render the accused's act an offence though the public servant was acting illegally. *AIR 1938 Mad 649.*

(2) A bona fide belief of the public servant that he is acting in the discharge of his duties is not sufficient to make obstruction or resistance to him amount to an offence within the meaning of this section. *AIR 1934 Mad 664.*

10. Compliant.—(1) A complaint by a public servant obstructed is necessary for the prosecution for an offence under this section (S. 195(1)(a) of the Code of Criminal Procedure, 1898). But when a person is charged with offences under this section and under S. 504 infra (Insult) the fact that no complaint has been made under S. 195(1)(a) of the Criminal P.C. does not render the prosecution under S. 504 illegal. *1969 CriLJ 1459.*

(2) A complaint for an offence under S. 186 filed by the Munsif for obstructing the Amin in executing the decree passed by the Munsif is maintainable. *1982 CriLJ (NOC) 44 (All).*

(3) Obstruction of D.I. in a case diary cannot be treated as petition of complaint. It is wrong for a Magistrate to take cognizance of an offence under this section on the opinion of D. I. *1984 BiharLJ 132.*

(4) Complaint in writing of the public servant concerned, or of some other servant to whom he is subordinate is required under section 195, CrPC. It should satisfy the provision of law *(29 CrLJ 645).*

11. Offence under S. 186 and other offences.—(1) Being a member of an unlawful assembly and resisting the process of law are two separate offences though they may have been committed in the course of the same transaction. Hence, if an unlawful assembly offers actual resistance to a public servant in the discharge of his official functions it commits, beside the offence under S. 143 or 147 a separate offence under this section. *AIR 1960 Punj 356.*

(2) This section and S. 353 relate to two distinct offences. This section is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under S. 353 the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. *AIR 1966 SC 1775.*

(3) Where the accused who was being arrested by a Police Sub-Inspector caught hold of the neck of the P.S.I. and had a scuffle with him, it was held that the offence alleged against the accused was within the framework of S. 353 P.C. and not under S. 186. *1971 MadLJ 812.*

(4) If a person obstructs a public servant in the discharge of his public function, viz., in execution of a warrant of delivery of possession, he commits two offences, one under this section and another, an offence of contempt of Court. *AIR 1957 Bom 10.*

12. Burden of proof.—(1) In a charge for resistance or obstruction to the execution of a warrant or other process, it is for the prosecution to prove that the proceeding was in order and according to law. It is not for the accused to prove that the process or the mode of its execution was not legal. *(1902) ILR 25 Mad 729.*

(2) To convict a person under S. 186 it is necessary for the prosecution to prove that obstruction has been caused to a public servant in discharge of his public functions. *(1976) 3 CrLT 661. (Puni).*

13. Punishment.—(1) The defence of the process of law is serious offence as it hampers the administration of justice. If the offence is allowed to be committed with impurity the prestige of the Court will be lost. Hence, the sentence should not be lenient. *AIR 1938 Pat 548.*

14. Practice.—*Evidence*—Prove: (1) That the person obstructed is a public servant.

(2) That at the time of obstruction he was discharging his public functions.

(3) That the accused obstructed him in the same.

(4) That he did so voluntarily.

15. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

16. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day of–, at—, voluntarily obstructed a public servant in the discharge of his public functions and thereby committed an offence punishable under section 186, Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Section 187

187. Omission to assist public servant when bound by law to give assistance.—Whoever, being bounded 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 [1][taka], 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 [1][taka], or with both.

Cases and Materials

1. Scope and applicability of the section.—(1) Person bound to furnish information to public servants are punished under sections 176 and 177. Persons bound to assist pubic servants come within the purview of this section. In all these cases a breach of legal obligation on the part of the accused is necessary. If a person required to attend a search fails to do so without reasonable excuse he will be guilty under this section. The assistance which a private person is bound to render to a public servant in the execution of his duty must be something definite and specific. Sections 42, 77 and 128 of the CrPC deal with the assistance which a person is bound to render to a public servant.

(2) Where a person when arrested by a police officer lay down on the ground and refused to move, it was held that as he lay down in order to secure his eventual escape from being taken to the thana and the assistance of the accused was demanded by the police officer to prevent the escape, the refusal of the accused to render aid made him liable for conviction under this section. *AIR 1932 All 506.*

(3) Disobedience of an order to join the police in a search to trace out the whereabouts of a person with a view to arrest the person if the search proved successful is not an offence under this section. *AIR 1920 All 265.*

(4) Before the introduction of the sub-section (5) of S. 103 Cr. P. C. in 1923 it was held that a refusal of a search witness to sign the list of things seized in the course of search is not a refusal to render 'assistance' within the meaning of this section. *(1913) ILR 26 Mad 419.*

(5) The failure to attend and witness a search in obedience to a requisition under S. 103, Cr. P.C., is a failure to render 'assistance' within the meaning of this section. *AIR 1920 Mad 286.*

(6) The words "attend and witness a search" in sub-section (5) of S. 103, Criminal P.C., will not include signing the search list and a refusal to sign such list will, therefore, not be an offence under this section. *AIR 1938 Pat 403.*

(7) A refusal to sign the search list does not amount to a refusal to render assistance to a public servant within the meaning of this section. *AIR 1938 Pat 403.*

(8) Even assuming that a refusal to sign the search list is an offence under S. 103(5), Criminal P.C., read with this section, such refusal would be an offence only when there is a written order on the witness to attend and witness the search. *AIR 1938 Pat 405.*

(9) If the witnesses attend and witness the search on a verbal request of the officer concerned but refuse to sign the search list, they are guilty of an offence under this section. *AIR 1938 Pat 403.*

2. Practice.—*Evidence*—Prove: (1) That the person requiring assistance is a public servant.

(2) That he was then in the execution of his duties.

(3) That the accused was legally bound to render or furnish assistance to him.

(4) That the accused omitted to give assistance.

(5) That he did so intentionally.

3. Procedure.—No cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you on or about the—day of—, at—, being bound by law to render or furnish assistance to a public servant in the discharge of his public duty (intentionally omitted to give such assistance) and when such assistance was demanded from you by such public servant for executing any process lawfully issued by a Court of justice or of preventing commissioner of any offence or suppressing a riot or affray or of apprehending a person charged with or guilty of an offence or of having escape from lawful custody intentionally omitted to give such assistance to such public servant and thereby committed an offence punishable under section 187 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

5. Complaint.—Complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate, is required under section 195, CrPC.

Section 188

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, anoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisnoment for a term which may extend to one month, or with fine which may extend to two hundred [1][taka], or with both;

and if such desobedience 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 [1][taka], 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 disobeyance produces, or is likely to produce, harm.

Illustration

An order is promugated 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.

Cases and Materials : Synopsis

1. *Scope of the section.*
2. *"Order promulgated by a public servant."*
3. *Order of Civil Court, etc.*
4. *"Lawfully empowered to promulgate such order".*
5. *Knowledge of order.*
6. *Direction to abstain or to take certain order.*
7. *Disobedience, what constitutes.*
8. *"Cause or tends to cause....."*
9. *Orders under Section 144, Criminal P.C.*

1. Scope of the section.—(1) One of the essential ingredients of section 188 is that the order said to have been disobeyed must have been issued by a public servant lawfully empowered to promulgate the order. The word "promulgation" is not used in any narrow or technical sense in section 188. The word "promulgate" connotes two ideas (a) making known of an order, and (b) the means by which the order is made known must be by something done openly and in public. Private information will not be promulgation. For proceeding under section 188 it is necessary to establish first that there were lawful order which the accused has disobeyed.

(2) The ingredients of the offence under section 188, PC are (1) that the prosecution must show that there was an order promulgated, (2) that it was promulgated by a public servant, (3) that such public servant was lawfully empowered to promulgate the same, (4) that such order directed the accused to abstain form a certain act or to take certain order, etc. and (5) that the accused knew of such direction to him. Criminal trial—Concurrent finding of facts—In a criminal revision, it is not open to an accused to challenge a concurrent finding of fact of the Courts below particularly when there is some evidence to support the said finding. It cognizance is taken by Magistrate not competent to take cognizance, it is merely an irregularity curable under section 529, CrPC. The question whether in the circumstance of the case the violation of second prohibitory order promulgated just after the expiry of the first prohibitory order though not proper is not always a nullity and therefore disregard of the second prohibitory order is punishable under section 188. *12 DLR 838.*

(3) Imminent danger of breach of peace. When order under section 144, CrPC has spent its force, whether proceedings under section 188 of the Penal Code for disobedience of order can be quashed. Section 144 cannot remain in force indefinitely and when the order has spent its force the proceeding under section 188 of the Penal Code for disobedience of the order can be quashed. *5 DLR 76.*

(4) Violation of order passed under section 144, CrPC by District Magistrate. Proceeding under section 188 of the Penal Code cannot be initiated on compliant of a police-officer. Section 144 of the CrPC and section 188 of the Penal Code, read along with section 195(1)(a), CrPC make it abundantly clear that the expression "Public servant concerned" within the meaning of section 195(1)(a). CrPC refers to the public servant whose order restraining from a particular act has been violated. Where, therefore, a person had been charged of violating an order passed by District Magistrate under section 144, CrPC but he was prosecuted and convicted under section 188 of the Penal Code on complaint initiated by a police officer, it was held that the conviction was rendered illegal for non-compliance of the mandatory provision of section 195(1)(a). CrPC under which the complaint should have been instituted either by the District magistrate or by some officer to whom he was subordinate. *PLD 1967 Pesh. 307.*

(5) Since the second order is made some time after the expiry of the first order in ignorance of the fact that such an order had previously been made, the order would not be an order which the Magistrate was not lawfully empowered to promulgate and the violation of such an order, even though it is not a

strictly proper order, would still be sufficient to justify a prosecution under section 188. *Azhar Khan Vs. State (1960) 12 DLR 838 : 1961 PLD (Dac) 484.*

(6) Essential ingredient of the offence—An essential ingredient of an offence under section 188 is that the disobedience must cause or tend to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed. *Crown Vs. Muhammad Ali (1954) 6 DLR 396.*

(7) Where there is no finding by the trying Magistrate that the disobedience of the accused persons actually did cause any obstruction, annoyance or injury, the conviction under section 188 of the Penal Code is illegal. *Crown Vs. Muhammad Ali (1954) 6 DLR 396.*

(8) It was obligatory on the part of the learned Magistrate to make a written complaint which was the nature of the order made by him alleged to have disobeyed by accused and the manner of violation in order to form an opinion that accused persons have committed an offence punishable under section 188 of the Penal Code. *Abdul Ahad @ Md. Abdul Ahad Vs. The State, 20 BLD (HCD) 372.*

(9) The learned Magistrate suo motu initiated a proceeding under section 188 of the Penal Code and took cognizance of the offence violating the provision of section 195((1)(a) of the Code of Criminal Procedure. *(Criminal) 5 BLC 598.*

(10) The ingredients of the section are as follows:

(i) There must be an order promulgated by a public servant;

(ii) The public servant must have been lawfully empowered to promulgate such order;

(iii) A person having knowledge of such order and directed by such order (a) to abstain from a certain act, or (b) to take certain order with certain property in his possession or under his management must have disobeyed such direction.

(iv) Such disobedience must cause or tend to cause (a) obstruction, annoyance, or injury or risk of it to any person lawfully employed, or (b) danger to human life, health or safety, or (c) a riot or affray. *1975 CriLJ 1784.*

(11) Where an order was issued to a land-holder of a village under the relevant law to nominate some person to act as village watchman—the former watchman having either died or been dismissed—held that non-compliance with the order was not an offence under this section. *(1881) 7 CalLR 575.*

(12) Section 144 of the Criminal Procedure Code (1898) is not ultra vires Art. 37 of the Bd. Constitution. It follows that the prosecution of the offender under this section for violation of the order under S. 144, Criminal P.C., cannot be questioned as being unconstitutional. *AIR 1961 SC 884.*

(13) This section is not ultra vires Art. 47 of the Bd. Constitution. *AIR 1968 All 100.*

(14) The accused cannot be convicted if he was ignorant of order alleged to have been disobeyed by him. But the burden will be on the accused to prove such ignorance. *(1900) 5 Mys CCR No. 156.*

2. "Order promulgated by a public servant.—(1) The expression 'public servant' includes a person holding the office of the public servant for the time being and also a successor in office of that public servant. *1982 CriLJ 1473.*

(2) The word "promulgated' connotes two ideas: (1) making known of an order, and (ii) that the means by which the order is made known must be by something done openly and in public. But the law does not prescribe any particular mode in which an order is made known openly and publicly. It may be by beat of drum or by publication in Gazette or by reading out the order openly in public. *1975 CriLJ 1784.*

(3) An order duly pronounced in open Court must be deemed to be duly promulgated so far as the parties to the case are concerned. *1959 AllLJ 163.*

(4) The duty of the Magistrate under Section 133 of Criminal P.C. to order the removal of a public nuisance is a public duty. Failure to comply with such an order is punishable under S. 188. *AIR 1980 SC 1622.*

(5) Private information will not be "promulgation". *AIR 1968 Cal 523.*

(6) Where there is no order prohibiting a certain kind of act, the doing of such act will not be an offence under this section. *AIR 1968 Goa 14.*

(7) A Regulation made under the Epidemic Diseases Act (1897) is treated as an "order" within the meaning of this section and its disobedience is made punishable as an offence under this section. *AIR 1963 Orissa 216.*

(8) Rule 2 of the Rules sanctioned by the Government under the Epidemic Diseases Act, 1897, contained the proviso that "the prohibition mentioned in this rule must not be issued until segregation quarters have been erected outside the town or village." No such quarters were erected outside the village in question. The plague authority advised the accused, in whose house a case of plague had taken place, to go and live in another house of his in the same village. It was held that it was a mere piece of advice or recommendation rather than a positive order not to leave the village and the accused committed no offence under this section by leaving the village. *(1899) 1 BomLR 51.*

(9) A notice under the Local Boards Act (5 of 18840 is a mere preliminary to the action to be taken by the President himself and not by the party under S. 100. It is therefore merely a notice and not an order of the kind contemplated by this section. *(1897) ILR 20 Mad.*

3. Orders of Civil Courts, etc.—(1) The orders contemplated by this section are orders made by public functionaries in the public interests. *ILR (1971) 1 Cal 23.*

(2) The section will not apply to orders made in a civil suit between parties. *1959 All LJ 163.*

(3) The section will not apply to other orders of civil nature. Thus, where a Rent Suit Officer made a prohibitory order under the Tenancy Act for appeasement and division of the crop in respect of a plot, held that the order being of a civil nature, and not for maintenance of public peace and tranquillity, the accused could not be punished under this section for its disobedience. *(1959) 25 CutLT 264.*

(4) On the landlord putting into execution an eviction order the tenant filed a civil suit for a declaration that the order was illegal and obtained an *ad interim* injunction restraining the landlord from executing the order of eviction. It was held that the tenant having obtained an injunction from the Civil Court was fully entitled to rely upon it and refuse to vacate the house so long as it subsisted and could not be prosecuted under this section for disobeying the order of eviction. *AIR 1952 Pat 356.*

(5) During proceedings under the Guardians and Wards Act the District Judge issued an order prohibiting the guardian from celebrating the marriages of the minors. It was held that the section had no application to the disobedience of the order. *AIR 1915 Bom 22.*

(6) The order under S. 219 of the Land Revenue Act is not in anyway analogous to the decree of a Civil Court; it is an order by public servant specially empowered by law and the person disobeying it is liable to be punished under this section. *AIR 1922 Nag 209.*

(7) The primary purpose of the orders under S. 69 of the Bengal Tenancy Act, although it is a civil proceedings being the prevention of a breach of the peace, disobedience of an order under s. 69(3) of the Act can be punished under S. 188, Penal Code. *AIR 1921 Cal 260.*

4. "Lawfully empowered to promulgate such order.—(1) Where in a proceeding in which a person was prosecuted for disobedience of an order under S. 144 of the Criminal P.C., the validity of the section was questioned on the ground of its being violative of the provisions of Art , 47 of the Bd. Constitution it was held that the section was valid. *AIR 1961 SC 884.*

(2) It is for the prosecution to prove the order and its legal validity and not for the accused to prove the absence of such valid order. *(1913) 14 CriLJ 620 (Mad).*

(3) It is not sufficient to show that the public servant was justified in directing a certain thing to be done or not to be done. It must be shown that he was legally empowered to order its commission or omission. *AIR 1925 All 165.*

(4) Even if the prosecution establishes that the order was promulgated by a public servant lawfully empowered to promulgate such order, the accused can plea in his defence that the order, though made within jurisdiction was utterly wrong or improper on the merits. *AIR 1956 Cal 102.*

(5) The Court trying a case under this section has only to see whether the order disobeyed was of the particular kind mentioned in this section and whether it was promulgated by a public servant lawfully empowered to do so, and that the Court has no jurisdiction to "superimpose its own view on the property of the order. *AIR 1949 Cal 677.*

(6) Proceedings under the Legal Practitioners Act are quasi-criminal and a person disobeying an order passed by the District Judge under S. 36 (4) of the Act excluding a person from the precincts of a Court by reason of inclusion of his name in the list of touts is liable to be punished under this section. *AIR 1960 Nag 158.*

(7) Where a person refuses to get himself inoculated against cholera on the ground that he has taken preventive homeopathic medicine, he contravenes the provisions of paragraph 7 and 8 of the Regulations made under the Epidemic Diseases Act (1897) and hence, he is guilty under this section. *AIR 1963 Orissa 216.*

(8) An order forbidding persons to enter railway quarters except for purposes of traveling is illegal as the public has a right to go to the railway premises for many purposes other than traveling and conviction under this section has to be set aside. *(1913) 14 CrLJ 122.*

(9) The act of the accused persons in taking of the bride and bridegroom in palanquins along the public road or highway is legal and a Police Inspector is not empowered under the law to issue an order directing them to get down and walk along the road. *AIR 1936 All 534.*

(10) A Sub-Inspector of Government Railway Police who was conducting an investigation into the suspected theft of certain logs of wood lying on trucks at a certain railway station issued an order to the Station Master directing him to detain the logs. It was held that the order was irregular. The sub-Inspector could have, in such a case, availed himself of the provisions of S. 102, Criminal P.C., to seize the logs in question. *AIR 1914 Oudh 230.*

5. Knowledge of order.—(1) For a conviction under this section it must be established that the order of the public servant has been brought to the actual knowledge of the person sought to be affected by it. *AIR 1960 Assam 109.*

(2) It is the duty of the prosecution to prove by positive evidence that the accused had knowledge of the order with the disobedience of which he is charged. *1975 CriLJ 178.*

(3) The proof of general notification promulgating the order does not satisfy the requirements of the section. *AIR 1955 NUC (Manipur) 1836.*

(4) The Magistrate, in determining the question of knowledge of the order, should take into consideration the facts and the circumstances of the case including the one that the person lived at a place where the order was duly promulgated. *AIR 1955 NUC (Manipur) 1836.*

(5) Where the accused had actual knowledge of the order by reason of the fact that he acknowledged service of the order on him, the failure to leave duplicate copy with him does not affect the validity of the proceedings under this section. *AIR 1949 Cal 677.*

6. Direction to abstain or to take certain order.—(1) The section does not make punishable any act as such; but it is the disobedience of the order prohibiting the act (or directing the accused to take certain order with a certain property) that has the effect of attaching to it the penalty of the section. *AIR 1968 All 100.*

(2) To be justified in directing a certain act to be done or not to be done is one thing and to be legally empowered to order its commission or omission with the consequence of the disobedience being punishable under this section is quite another thing. *AIR 1925 All 165.*

(3) A notice under the Local Boards Act is a preliminary to the action to be taken by the President himself and not by the party himself. It is, therefore, merely a notice and not an order of the kind contemplated by this section. *(1897) ILR 20 Mad 1.*

(4) Where a Sub-Collector, who was entrusted with the duty of seeing that water for irrigation was properly distributed, ordered the accused to fill up the new channel and restore the old one because the new channel made more water available to the accused and less to the lower lands, it was held that the Sub-Collector had no authority as a revenue authority to promulgate such order and consequently the accused could be not convicted under this section for disobedience of the order. *1 Weir 141.*

(5) A notice was issued that under S. 10 of Act of 1882 no tenant would be liable to pay any cess on account of the wages or fees of patwaris after 30th June 1882. In spite of the notice one K collector the patwari cess. It was held that conviction of K for disobedience under this section could not stand as there was no order as contemplated by this section. *1883 Oudh SC No. 65.*

(6) Where by an order the police were directed to attach the land in dispute but there was no direction upon the accused of any kind, the accused cannot be convicted under this section for disobedience of the direction to the police. *AIR 1960 Assam 109.*

7. Disobedience, what constitutes.—(1) To sustain a conviction under the section it must be shown that the accused has knowingly disobeyed an order promulgated by a public servant. *AIR 1933 Sind 93.*

(2) The disobedience contemplated is that type of disobedience which affects the very purpose for which such an order was promulgated. *1972 CriLJ 1156 (Mys).*

(3) Where an order promulgated under S. 30 of the Police Act prohibited the convening or collecting any assembly or directing or promoting any procession in the regulated area without obtaining licence, it was held that merely joining the procession did not amount to contravention of the order and no offence was committed thereby. *1960 NagLJ (Notes) 114.*

(4) Where a person refused to get himself inoculated against cholera on the ground that he had taken preventive homoeopathic medicine it was held that he contravened the provision of paras 7 and 8 of the Regulations made under the Epidemic Diseases Act and hence, was guilty under this section, inasmuch as the provisions of the Regulations made disobedience an offence punishable under this section. *AIR 1953 Orissa 216.*

(5) An order under the Tenancy Act suspending or remitting arrears of rent does not prohibit the land-holder from receiving the same if tendered or attempted to be realised by lawful means. Therefore a land-holder endeavoring to collect suspended arrears by process of distraint is not guilty under this section. *AIR 1915 All 372.*

(6) The Cantonment Magistrate ordered the accused to provide a duly constituted agent resident within such cantonment (as required by the Rules) on the supposition that the accused was a non-resident owner of a house situate within the cantonment. It was held that in the absence of proof that the accused was the owner of the house he could not be convicted under this section. *1982 All WN 52.*

(7) Where the disobedience is by another person there is no burden on the accused to prove that the disobedience was without his consent. *AIR 1933 Sind 93.*

(8) Where the accused is charged with disobedience of a notice by the Municipal Chairman directing him to remove a latrine stated to have been newly constructed and the accused pleads that the latrine was in existence since a long time and there was no newly construction, there is no legal basis for convicting the accused under this section for disobedience of the order without a finding on the plea of the accused. *1993 MadWN 223.*

8. "Cause or tends to cause.....".—(1) Mere disobedience of an order lawfully promulgated by a public servant is not sufficient to warrant a conviction under this section. To sustain the conviction it must further be shown by the prosecution that the disobedience caused or tended to cause one or other of the consequences specified in the second and third paragraphs of the section. *1974 BLJR 561 (563).*

(2) It is not necessary that actual annoyance etc. is caused. It is sufficient even if it is shown that the infringement has a tendency to cause annoyance etc. *AIR 1964 Pat 526.*

(3) It is not necessary that the accused should intend to produce the harm. It is sufficient that he knows of the order and that his disobedience thereof produces or is likely to produce harm. *AIR 1934 Oudh 162.*

(4) The likely consequence of the breach of order have to be proved affirmatively and the gap cannot be filled up by a resort to judicial notice *AIR 1950 Nag 12.*

(5) The Magistrate should come to the conclusion form the actual facts whether there was a certain tendency specified in the section and should not argue from the general to the particular and hold that the conduct such as that of the accused must tend to cause an affray. *AIR 1932 Cal 868.*

(6) The tendencies described in the second and third paragraphs of the section have, however, to be inferred from the proved facts and circumstances of each case and are not capable of direct proof. *AIR 1957 Orissa 214.*

(7) In order to establish that annoyance was the result of the disobedience of the order there must be some proximity between the conduct of the accused and the annoyance. The annoyance has to be proved as a fact; mere mental annoyance of the authorities concerned is not sufficient under the section. *AIR 1960 Assam 20.*

(8) The Collector by a disobedience of his orders under the Buildings (Lease and Rent Control) Act and the Sub-Inspector of Police lawfully employed in operations under the Act must be said to be annoyed and can file a complaint under this section. *AIR 1950 Mad 599.*

(9) The Government is not a person and, therefore, where the disobedience is alleged to cause injury to the Government the ingredients of the section cannot be said to have been satisfied. *AIR 1949 Cal 677.*

(10) 'Government' is a 'person' within the meaning of the definition in S. 11 ante. *AIR 1914 Low Bur 23.*

(11) There must be some definite evidence to justify the Court in classifying the offences under one group or another of the cases with which the section deals. They cannot be classified in the graver category, that is third paragraph, merely upon the general consideration that now-a-days if a person is arrested it may lead to a riot or affray. *AIR 1931 Cal 122.*

9. Orders under S. 144, Criminal P.C.—(1) A person disobeying an order under S. 144, new Criminal P.C. is liable to be punished under this section. *AIR 1967 All 579.*

(2) By virtue of S. 487(1) of the Criminal P. C., a Magistrate whose order under S . 144 of the Cr. P. C. has been disobeyed cannot himself take cognizance of the offence under this section. He can only file a complaint under Section 195 (1) (a) of the Cr. P. C. *AIR 1939 Mad 496.*

(3) The Court trying an accused person for disobedience of an order under S. 144, Criminal P.C., has to take the order as a good and valid order unless it is it shown that the order was a nullity. It is not to superimpose its own views on the property of the order. *AIR 1949 Cal 677.*

(4) Where the order is one not warranted by S. 144, Cr.P.C. or the requirements of the section are not duly complied with, a prosecution under this section cannot stand. *AIR 1955 Manipur 41.*

(5) No order under S. 144, Criminal Procedure Code can remain in force for more than two months from the making thereof, (unless the duration of the order has been extended by the Government under clause (4) of the section) and no prosecution can be made where the alleged disobedience has taken place after the expiry of the order. *AIR 1960 All 397.*

(6) A mere irregularity in the method of promulgation of the order under S. 144, Cr.P.C. will not in itself make it ultra vires so as to prevent the conviction of any person disobeying it, if he had knowledge of its contents. *AIR 1949 Cal 677.*

(7) The legality of the order is liable to be questioned in proceeding under this section. *AIR 1961 SC 884.*

(8) The accused should be proved to have disobeyed the order at a time during the continuance of the order. *AIR 1920 All 223.*

(9) Orders under S. 144 of the Criminal P.C. are intended to be only of temporary character, normally to be in force only for a period of two months from the making of the order unless extended by order of the Government under clause (6) of the section. *AIR 1920 All 223.*

(10) Where a person is prosecuted for disobedience of an order under S. 144, Criminal P.C., during its continuance, the fact that the order had ceased to be in operation at the time of his trial is no ground for his acquittal. *AIR 1940 Bom 195.*

(11) It is not necessary that the evidence should establish that the disobedience led to or caused a breach of the peace. It would be sufficient if there is evidence to show that the disobedience resulted in the likelihood of a riot or affray or annoyance to any individual. *AIR 1964 Pat 526.*

(12) It has to be established that the annoyance, etc., was the result of the disobedience of the order by the accused and therefore there must be some proximity between the conduct of the accused and the annoyance, etc. In the absence of some such conduct the section cannot apply merely because of the mental annoyance caused to the authorities concerned by the breach of the order. *AIR 1960 Assam 20.*

(13) For the purpose of deciding as to what part of the penal provision of this section applies to a breach of an order under Section 144, Criminal P.C. the Court can look only to the order under S. 144 Criminal P.C. *AIR 1942 Oudh 39.*

(14) Parties are entitled to resist the execution of an order which is ultra vires and no offence would be constituted by such resistance provided the limits of the right of private defence are not exceeded by disobedience of such order. *AIR 1921 Pat 415.*

10. Orders under Section 145, Criminal P.C.—(1) A breach of an order under Section 145, Criminal P.C., is punishable under this section. *AIR 1967 All 579.*

(2) In case of disobedience of an order under S. 145, Criminal P.C. by any person, it would be inappropriate to proceed against him for contempt of Court instead of prosecuting him for an offence under this section. *AIR 1958 Cal 474.*

(3) There must be a legal order under this section. If the order is illegal there can be no conviction under this section. *AIR 1960 Assam 109.*

(4) The essentials as mentioned in paragraphs 2 and 3 of this section applies even to cases of breaches of order under Criminal P.C., S. 145 also. But in such cases where forcible possession is taken by the accused from the person in whose favour the order under S. 145 has been passed, the accused's act of disobedience must be held by itself to cause annoyance to the person in whose favour the order has been passed. *AIR 1951 All 828.*

(5) Where the final order under Sec. 145, Criminal P.C., was served on the accused after he had cut and removed the crop from the land, he could not be held to have disobeyed the order within the meaning of this section. *AIR 1942 Mad 275.*

11. Order under Section 146, Criminal P.C.—(1) In order to attract S. 188, Penal Code the accused must have been directed to abstain from certain acts or to take certain order with property in his possession or under his management. By an order under S. 146, Criminal P.C., the Court orders the custodian to keep the property in dispute in his charge and possession till further orders from a competent Court. But the order is not directed against the parties themselves. Hence even if a party encroaches upon the attached land no offence under this section is committed. *AIR 1961 Assam 94.*

(2) The wall which was under attachment under S. 146, Criminal P.C., was in a dilapidated condition. There was a marriage of a girl in the family of one of the parties and on account of this marriage ceremony the wall was repaired without the permission of the Court. It was held that assuming that there was an order preventing the parties from going upon the land, the act of repair did not cause or tend to cause obstruction etc., within the meaning of this section. *AIR 1960 Pat 125.*

12. Orders under Section 147, Criminal P.C.—(1) The accused started constructing a wall to enclose a threshing floor on a plot belonging to him. The Magistrate finding that the public had a right of user by a path over that plot and also that the structure interfered with the flow of Basti water through the ground restrained the accused by an order under S. 147(2) of the Criminal Procedure Code (5 of 1898) from interfering with that right of user. The accused thereupon stopped proceeding with the construction. He did not however demolish the construction. It was held that as the Magistrate had no power to order demolition of the wall, the accused could not be held guilty of any disobedience of the order of the Magistrate inasmuch as he did nothing to cause further obstruction. *AIR 1938 Nag 297.*

(2) In proceedings under S. 147, Cr. P. C. the Magistrate has no power to issue an interim order and hence for violation of such an order action under S. 188, P. C. cannot be instituted. *1981 AllLJ 783.*

13. Orders under Chapter X, Criminal P.C.—(1) Where a Magistrate lawfully makes a conditional order under S. 133, Criminal P.C., and the same is served or notified as prescribed by

Section 134, Criminal P. C., the person against whom the order is made is bound to do one of the things specified in S. 135, Cr. P. C. If he fails to do so a conclusive presumption arises under S. 136, Criminal P.C., that the conditional order was correctly made and accordingly such order is to be made absolute. He also becomes liable to the penalty prescribed in S. 188, Penal Code. *1891 AllWN 169.*

(2) No notice under S. 141, Criminal P.C., is necessary to be given to the person not complying with S. 135, Criminal P. C., before he is prosecuted therefor. *(1908) 8 CriLJ 151 (Mad).*

(3) Where the order under S 133, Criminal P. C., is made absolute on the failure to comply with S. 135, Criminal P. C., a disobedience of such order is clearly within S. 188, Penal Code. In such a case, however, it is necessary that under S. 141, Criminal P.C. a notice should be given to the person that in case of non-compliance with the order within a time fixed by the Court, he will be liable to the penalty under S. 188, Penal Code. *(1908) 8 CriLJ 151.*

(4) In order to attract the penalty prescribed by S. 188, Penal Code, the order passed under S. 133. Criminal P.C. should be a legal order. If it is not a legal order its contravention cannot be punished under S 188, Penal Code. *AIR 1915 Cal 741.*

(5) The question as to the validity of an order passed under S. 133 Criminal P.C., cannot be raised in a trial for an offence under S. 188, Penal Code for disobedience of the order. *AIR 1934 Cal 242.*

14. Order for production or inspection of documents.—(1) A disobedience of an order for production or inspection of documents can now be dealt with only in the manner prescribed by O. 11, R. 21. Civil Procedure Code, and is not punishable under the Penal Code. *(1910) CriLJ 386 (Lah).*

15. Punishment.—(1) The section contains two scales of punishment. The punishment is made to vary with the anticipated consequences of the disobedience. *AIR 1933 Bom 1.*

(2) The Legislature has recognised that the anticipated result of the disobedience would also be a circumstance in mitigation or aggravation of offence. *AIR 1933 Bom 1.*

(3) Where a person refused to get himself inoculated against cholera on the ground that he taken preventive homoeopathic medicine, it was held that he contravened the provisions of paras. 7 and 8 of the Regulations made under the Epidemic Diseases Act and hence was guilty under this section. But the offence was of a purely technical nature and hence a token punishment would be sufficient. *AIR 1963 Orissa 216.*

(4) In determining the offence the Court has to see whether the disobedience has caused or tended to cause the effects specified in the second paragraph of whether it has caused or tended to cause the effects described in the third paragraph. Thus, from the fact that Government had issued certain notification on the ground that a riot or affray was apprehended it cannot be said that the offence committed by the disobedience must necessarily be punished under the third paragraph and not under the second paragraph. *AIR 1923 All 606.*

(5) A penalty harsher than the one provided by S. 188 and not provided by any other law cannot be threatened with by an Executive Instruction for the disobedience to an order duly promulgated by a public servant such as a curfew order issued under S. 144, Criminal P.C. *1975 CriLJ 661.*

16. Procedure.—(1) No Court shall take cognizance of the offence punishable under S. 188, Penal Code, except upon the compliant in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. *1979 All CriR 454.*

(2) In proceedings under S. 188 the complainant is the public servant whose order is violated. Consequently a party at whose instance the proceedings in which the order alleged to have been violated was passed, came to be instituted cannot file a revision against an order dropping proceedings under S. 188. *(1984) 88 CalWN 249.*

(3) Where persons carry out of the State goods contrary to orders of the Ruler and customs penalty is recovered from them at the outpost, that cannot dispense with the prosecution under this section for the offence which they have committed by their act. *AIR 1950 Kutch 62.*

(4) Violation of prohibitory order under Section 144 or 145. Criminal P.C.—Magistrate may prefer complaint under S. 188, Penal Code but he cannot take cognizance himself. *AIR 1970 Pat 102.*

((5) Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

17. Refusal to prosecute not appealable.—(1) According to S. 195(1)(a), Criminal P.C., cognizance of an offence punishable under S. 188, P.C. can be taken by a Magistrate only on a complaint in writing of the concerned public servant or some other public servant to whom he is subordinate. The concerned public servant on an application made to him or otherwise, is not competent to make an enquiry under Section 340, Cr. P. C. in respect of any alleged offence under S. 188, P.C., nor his refusal to make a complaint is appealable under S. 341. Cr. P. C. *AIR AllLJ 637.*

(2) No appeal lies against the refusal of a public servant to file a complaint *(40 CriLJ 568).*

18. Practice—Evidence—Prove: (1) That there was the promulgation of the order.

(2) That it was promulgated by a public servant.

(3) That such public servant was lawfully empowered to promulgate the same.

(4) That such order directed the accused to abstain from a certain act or to take certain order etc.,

(5) That the accused knew of such direction to him.

(6) That he disobeyed such direction.

(7) That such disobedience caused or tended to cause, obstruction, annoyance or injury, or risk of the same to a person lawfully employed or that such disobedience caused, or tended to cause, a riot or an affray.

19. Charge.—The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of, at,, knowing that by a certain order, to wit—promulgated by a public servant, lawfully empowered to promulgate such order, to wit—were directed to abstain from (specially the act) or to take certain order, to wit—with certain property, to wit in your possession or under your management disobeyed such direction, and thereby committed an offence punishable under section 188 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the charge.

20. Complaint.—A complaint under section 188 for disobedience of the order of the Court can be made by a Magistrate and not by a police officer or by the opposite party. Where the Magistrate to whom the complaint was made by the opposite party proceeded on it he acted entirely without jurisdiction *(PLD 1963 Lah 269).* Complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required under section 195, CrPC.

Section 189

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.

Cases and Materials

1. Scope.—(1) According to the provisions of this section threat of injury should have been held out for the purposes of inducing a public servant to do any act or to forbear or delay the doing of an act. Thus the mere fact that the accused abused a process server will not constitute an offence under section 189 *(16 CrLJ 477)*. The object underlying section 189 is to protect a Government servant from a real fear of injury. Separate conviction under sections 186 and 189 are bad when the accused is found to have refused to follow the Court peon when arrested under civil warrant and threatened to use violence *(AIR 1925 Pat 183)*. For the meaning of word "injury" section 144 and "Public servant" section 21 may be read.

(2) Specific injury, implied or direct, must be present in words of threat offered by the accused. *1952 PLD (Bal) 19.*

(3) Section 189 deals with menaces which would have a tendency to induce the public servant to alter his action because of some possible injury to himself or to someone in whom the accused believes he has an interest. *AIR 1916 Mad 408.*

(4) A mere threat to bring a legal complaint either before a Court or before the superior of the public servant does not amount to a threat of illegal harm and so does not amount to a threat of injury within the meaning of this section. *AIR 1928 Lah 139.*

(5) A threat of assault will amount to an offence under this section if the other requirements of the section are satisfied. *AIR 1927 Oudh 296.*

(6) It is of the essence of an offence under this section that the threat of injury should have been held out for the purpose of inducing a public servant to do an act or to forbear or delay the doing of an act. A mere threat uttered is an exhibition of bad temper or in the course of an altercation which has not this effect will not amount to an offence under this section. *AIR 1936 All 171.*

(7) Where the accused when arrested under a civil warrant refused to follow the Court peon and threatened to use violence and the peon being frightened went away without executing the warrant it was held that the facts amounted to an offence under this section. *AIR 1925 Pat 183.*

(8) Members of a political party demanding the release of their co-workers threatened the police officers with injury. They are guilty under S. 189. *1982 CriLJ 319.*

(9) Two police constables went at night to the house of a dagi who was under surveillance under the Bengal Police Regulations and called him out from a public street. The accused who was the brother of the dagi came out with a lathi and enquired the purpose of their coming. When they explained their purpose the accused threatened that he would break their heads with a lathi if they came again to look for his brother. Thereupon the constables went away without making any further trouble. It was held that the constables were discharging their public functions, and the accused was guilty under this section. *AIR 1931 Cal 443.*

(10) A process-server has no right to enter into a house without obtaining the permission of the owner. If in such a case the owner abuses the process-server this will not constitute an offence under this section. *AIR 1916 Mad 408.*

(11) A Village Chaukidar is not an officer of the Government and is not therefore a public servant within the meaning of S. 21 (Eighth) and this section. Hence, a threat held out to him for the purpose of inducing him to refrain from reporting to the police the death of a boy by drowning will not attract this section. *AIR 1923 Lah 260.*

(12) An offence under S. 176 is of a different nature from the offence under this section and is constituted by an entirely different set of facts. *AIR 1923 Lah 260.*

(13) This section can be distinguished from S. 353 in that in S. 353 there is an actual assault while under this section there is only a threat of such assault (where the charge is one of threat of injury by assault). *AIR 1927 Oudh 286.*

(14) Members of a political party entered the police station and demanded the release of their co-worker from the jail and threatened the police officers with injury. Held that their act was an act of misguided, over-enthusiastic, ill advised outburst so while amending the sentence a lenient view should be taken. *1982 CriLJ 319.*

(15) Offence under S. 189 is non-cognizable. As such an accused charged under S. 189 cannot be arrested under S. 151 of Criminal P. C. *1988 CriLJ (NOC) 235.*

2. Practice.—Evidence—Prove: (1) That the accused held out the threat.

(2) That such threat was of injury.

(3) That person threatened was a public servant or some person in whom the accused believed such public servant, was interested.

(4) That the purpose for which such threat was held out was to induce such public servant to do or to forbear or delay to do any act, connected with the exercise of his public functions.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Charge.—The Charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, held out a threat of injury to a public servant to—[in whom you believed that a public servant, to wit—interested] for the purpose of inducing that public servant to do an act, to wit—[or to forbear or delay to do—connected with the exercise of the public functions of such public servant and thereby committed an offence punishable under section 189 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the charge.

5. Complaint.—No Court can take cognizance of an offence under this section except on a written complaint of the public servant concerned or an officer to whom such public servant is subordinate.

Section 190

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 form 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.

Cases and Materials

1. Scope.—(1) 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. A threat for institution of a civil suit for a declaration of right against a person who is objecting to that right cannot be said to be an injury within the meaning of section 190. For the meaning of the word "threat" section 189 and for "injury" section 144 and for "public servant" section 21 may be read.

(2) A threat of institution of a civil suit for a declaration of right against a person who is objecting to that right cannot be said to be a threat of injury within the meaning of the section. *AIR 1926 All 277.*

(3) This section will only apply where the object of the alleged threat is to deter the complainant from applying to the authorities for protection. *(1885) ILR 8 Mad 140.*

2. Practice.—Evidence—Prove: (1) That the accused held out the threat.

(2) That such threat was of an injury.

(3) That the purpose for which such threat was held out was to induce the person threatened to refrain or desist from making a legal application for protection against some injury.

(4) That the person to whom such legal application was about to be made was a public servant.

(5) That such public servant was legally empowered, as such, to give the protection, or to cause the same to be given.

3. Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

4. Complaint.—No Court can take cognizance of an offence under this section except on a written complaint from a public servant duly empowered.