CHAPTER IV

OFFENCES AGAINST PUBLIC PEACE AND TRANQUILLITY IN SUBSTANTIVE CRIMINAL LAWS.
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It is a principle well recognised that law should discourage tumultuous assemblage of men. In early times, therefore, the mere assemblage of men was regarded as a menace to peace and therefore, unlawful. But with the growth of democratic power the assemblage of men became the public necessity though law still continues to look askance at the concourse of men but it could not punish men assembled for a lawful purpose and therefore, it had to lay down that though an assemblage of men however, large is not per se illegal, it may become illegal if more than five persons meet for an unlawful purpose. Legality was thus transferred from the assembly of the passage of the assembly, and thus enumerated in the five clauses which forms a part of the Section.

This chapter consisting of Sections 141 to 160 deals with offences against public tranquillity. Offences in between offences against the State and those against a person. The intention indicated in the Head of the chapter was to constitute certain acts which endangered public peace into offences against public tranquillity. But in construing the Sections included in this chapter regard is to be had
not only to the general intention deducible from heading of the chapter but also to the specific mode in which the Legislature intended to carry out that intention. The
offences listed stand midway between those against the persons and those against the State. The public tranquility is atonce to protect all his suitable and strong
Government and the foundation confidence of the public in the State. The need for its preservation is confidence. Section 141 to 160 of Indian Penal Code cover this aspect.
They seek to prevent acts meeting members of the society against others or against exercising the lawful power by the State. They are a reminder to the scheming men to adopt BURNS, that-

"The best laid scheme O'prime an' men.
Gang oft agley
An 'lea's us nought but grief and pain,
for promised joy". 2

This chapter contains the following five species of offences against the public tranquility:

(I) Unlawful assembly covering Sections 141 and 142
   (a) punishment for taking part there in (Section 143).
   (b) aggravated offences by members of such an assem-
       bly covering Section (144 and 145).
   (c) rationing aid to them in various ways covering Sections (150, 152, 154, 157 and 158).

1. *Queen Empress Vs. Tirakadu*, I.L.R. XIV Mad. 126.
2. See, *Batra, T.S.: Criminal Law In India* at p. 575.
(II) Rioting covering (Section 146)
(a) aggravated riot covering (Section 148)
(b) liability of members to unlawful assembly for offences committed by one of them covering (Sections 149, 157)
(c) committing a riot in various ways covering (Sections 152, 153, 154, 155, 156 and 158)

(III) Dispersing of an unlawful assembly covering (Section 151)

(IV) Promoting enmity covering (Section 153A)

(V) Affray covering (Section 159)

This Section appears to have been founded on the general principles of the English Common Law to protect public peace from dangers to it caused by the combination of forces of a number of persons.¹

The law suppresses unlawful assemblies because if not suppressed they may lead to more serious crimes like rioting and murder and does this by punishing persons for being murder thereof. This Section defines unlawful assembly and Section 142 defines "being member of unlawful assembly".

The object of this Section is to prevent resort to criminal force by five or more persons to do any of the five acts set out in the Section.² The intention indicated by the heading of the chapter was to constitute certain acts which endangered the public peace, into offences against public tranquility, but it does not follow from it

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either that a person may do what he is entitled to do or prevent another from doing what he is not so entitled by means of or show of criminal force. In constructing the Section regard must be had not only to the general intention deducible from the heading of the chapter, but also to the specific mode in which the legislature intended to carry out that intention.

**Unlawful Assembly:**

In order to constitute an unlawful assembly there should be an assembly of five or more persons for any one or more of the five objects laid down under Section 141 of the Indian Penal Code, which renders the assembly

5. Indian Penal Code, 180

Section 141: An assembly of five or more persons is designated "an unlawful assembly" if the common object of the persons composing that assembly is-

(i) to overawe by criminal force or show of criminal force (the Central or any State Government or Parliament or the Legislature of any State or any Public Servant in exercise of the lawful power of such Public Servant; or

(ii) to resist the execution of any law or of any legal process; or

(iii) to commit any mischief or criminal trespass or any other offence; or

(iv) by means of criminal force or show of criminal force to any person to take or obtain possession of any property or to deprive of any person of the enjoyment of the 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

(v) 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.
unlawful in its inception; or that the assembly, having
came together for a lawful object, at same period during
its continuance adopted are of these objects as its
common purpose by which it changed from a lawful to an
unlawful assembly. It is found that the common object
of the person out of five persons charged was not unlaw-
ful, the remaining three are entitled to an acquittal, for
it must be proved that five or more persons had a common
object. In Section 141, the word "offence" denotes any-
thing punishable under the Penal Code, or under any special
or local law, provided the thing punishable under such
special or local law is punishable with imprisonment for
six months or upwards, whether with or without fine.

It is necessary also to prove that the defendant was
aware of the object for which the meeting was assembled
or of the object which was adopted during its continuance.
This may be shown from the defendant's acts, or from those
of the assembly, done in his presence, or from words spoken

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Explanation: An assembly which was not unlawful when it
it assembled, may subsequently become an unlawful
assembly. That his cross language and gestures would
lead to breaches of the peace being committed by persons
who were approached to his view, although he himself had
committed no breach of peace and had advised his own suppor-
ters not to do so. Another case which has excited some
discussions is Duncan Vs. Jones, 1936 Kings Bench 218,
but as this case was concerned obstructing a Police
Officer when in the execution of his duty and there was
no charge of unlawful assembly.
in his hearing or from any other facts from which it may reasonably be inferred that he was cognizant of the object and of the meeting. Finally, prove that the accused intentionally joined or continued in the assembly after he knew its character. If the accused joined merely from curiosity, to hear what was going on, and as soon as he had found out its objects, went away, or if, being in the crowd, he was unable to extricate himself, he will not be guilty of the offence mentioned in this section; not if he joined under compulsion, he took any active part in the proceedings, or did not leave as soon as the coercion ceased, he would be guilty of the offence of being a member of an unlawful assembly.

The 42nd Report of Law Commission regarding unlawful assembly is also necessary to be referred here, the report of the chapter of Public Peace and Tranquility enlightens with what are common law opinion as group offences i.e. offences committed by a large number of persons which disturb the public tranquility or gross breach of the peace. In other chapters are also included offences involving breach of the peace or disturbance of the public tranquility. But the essence of most of the offences under this chapter is combination of several persons united in the purpose of committing a criminal offence and that conscience of purpose is itself an offence
distinct from the criminal offences which these persons agree and intend to commit. The essential connecting link amongst the offenders of common object to do any of the acts described in Section 141 which makes all of them members of unlawful assembly. Vicarious liability attaches to everyone of the members of the assembly not only for any offence committed by any members in prosecution of the common object of the assembly but also for any offence committed by for an unlawful assembly, it makes no difference if the number of convicted persons falls below this number. Supreme Court on this point observes:

"If the courts below could legally find that the actual number of members in the appellants party were more than five, the appellants party will constitute an unlawful assembly even when only three persons have been convicted". 6

It is not necessary, the Supreme Court in Sukha and others Vs. State of Rajasthan, 7 that an assembly must be unlawful from the very beginning; it may become so subsequently when the members of an otherwise lawful assembly insist using force or violence. It has been held that the apprehension of marauders who prowl the town at night and the defence of person and property are lawful objects. Those who rushed to the scene in the circumstances must be presumed to have gone there for a lawful purpose even

if they are armed. But when that object is exceeded and persons begin to beat up the suspects, the act of beating becomes unlawful is for private persons are no more entitled to beat and ill-treat than are the police specially at a time when there is nothing beyond suspicion against them. But if five or more persons exceed the lawful object and each has the same unlawful intention in mind and they act together and join in the beating then in themselves form an unlawful assembly. There is no difference in principle between this and a case in which the original object was unlawful. The only difference is that a case like this is more difficult to establish and must be scrutinized with greater care.

In Amar Singh Vs. State of Punjab\(^8\) Supreme Court has held that initially seven accused charged for an offence under Sections 148 and 149 two of them were acquitted by trial court and by High Court, no other persons a part from seven accused involved in crime, conviction of remaining four cannot be sustained. In the same way, in Maiku Vs. State of Uttar Pradesh\(^9\) where a Sub-Inspector of Police was pursuing investigation which was his duty, it was in persuasion of unlawful object. It was while pursuing the investigation that the accused persons resorted to violence.

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8. A.I.R. 1987, SC 826
when the suspected tried to escape. The object was either to recover the deadbody or to recover the stolen property. This object apparently could not be said to be an unlawful object and therefore, the accused could not be convicted under Section 147. In Bhudeo Mandal Vs. State of Bihar, 10 it has been held by the Supreme Court that before recording a conviction under Section 149 of the Code the essential ingredients of Section 141 must be established. The emphasis is on common object. In the instant case, the accused were convicted under Section 326/149. There was no evidence to show that the common object of the assembly was unlawful nor any finding that the ingredients of Section 149 were established by the prosecution. Therefore, the conviction of the accused could not be sustained. In State of Uttar Pradesh Vs. Mahendra Singh, 11 it has been held that members of the assembly knew that in prosecution of such an object murderers of the opponents were likely to be committed and, therefore, every member of the unlawful assembly would be vicariously liable for the acts committed by any member of that assembly. If the accused who took part in dragging dead-bodies and tried to do away with the evidence of murders by removing the Heads and burning the dead-bodies, the other accused whose presence was proved were members of the unlawful assembly, they could not escape the liabi-

11. A.I.R. 1975 SC 455
liety of their line for murders.

In a very famous case of Masalti Vs. State of Uttar Pradesh, the Supreme Court has held the tests for unlawful assembly, it has been held that the mere presence in an assembly does not make a person, who is present as a member of unlawful assembly unless it is shown that he had done something or and to infer that all these were originally part of its common object, but the conclusion must normally be based on more evidence than the mere acts themselves. Common object of the unlawful assembly can be collected from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. The common object is an inference of the fact overt act is certainly evidence of fact that the accused was a member of unlawful assembly but the converse is not true. In other words, it cannot be contended that there is no proof of the commission of certain overt act by the accused he is not a member of the unlawful assembly.

The mere fact that a person resides in the same street or his mere presence at the time when offence of rioting is committed is not sufficient to show that he was a member of the unlawful assembly, which committed the offence. In Baladin's case the Supreme Court has observed

12. A.I.R. 1965 SC 202
13. A.I.R. 1956 SC 181
that mere presence in an assembly does not make a person member of an unlawful assembly unless it is shown that he had done something or committed to do something which would make him a member of unlawful family or unless the case falls under Section 142. In that case it was held all the members of a family and other residents of the village assembled all such persons could not be condemned so-facto as being members of that unlawful assembly and that is necessary for the prosecution to lead evidence pointing to the conclusion that the member accused had done something overt act in prosecution of the common object of the unlawful assembly. It was further held that the case of each individual accused should be examined so that mere spectators who had not joined the assembly and who were unaware of its motive, may not be branded as members of the unlawful assembly. In Masalti's case\textsuperscript{14} the Supreme Court has held that the crucial question to determine in such a case 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 by Section 141. While determining this question, it becomes relevant to consider whether the assembly consist of some persons and were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.

\textsuperscript{14} A.I.R. 1965 SC 202.
Assembly, Unlawful Under English Common Law:

The term used in common law for an assembly of three or more persons with intent to commit a crime by force or to carry out a common purpose (whether lawful or unlawful) in such a manner or in such circumstances could in the opinion of firm and rational men endanger the public peace or create fear of immediate danger to the tranquility of the neighbourhood. In the Year Book of Third Year Henry VII reign assemblies were referred to as not punishable in terrorem populidomini regis. An assembly otherwise lawful is not made as unlawful if these who take part in it know before hand that there will probably be organized opposition and that it may cause a breach of the peace; but if words are said act done indirectly inducing others to commit a breach of peace, the meeting becomes unlawful, all persons may and must if called upon to do so, assessed in dispersing an unlawful assembly. This is merely one aspect of the common law duty of every-man to assist in keeping the peace and it is an indictable mis-demeanour to refuse so to assist. Assembly which is lawful cannot be rendered unlawful by proclamation unless the proclamation is authorised by Statutes. Meeting for training or drilling or Military

movements, are unlawful assemblies unless held under lawful authority from the Crown. The Lord Lt. or two Justices of the peace.

An unlawful assembly which has made a motion towards its common purpose is termed a riot and if the unlawful assembly should proceed to carry out its purpose, begin to demolish a particular enclosure, it becomes a riot. All these offences are mis-demeanours in English law punishable by fine and imprisonment. The common law as to unlawful assembly extends to Ireland subject to the Special Legislation referred under the title riot. The law of Scotland includes unlawful assembly under the same head as rioting.

An unlawful assembly at Common Law is defined to be an assembly of three or more persons with intent to commit a crime by open force and with intent to carry out a common purpose lawful or unlawful, in such a manner as to give firm and courageous persons reasonable grounds to apprehend a breach of the peace in consequence of it. The main purpose of the Common Law and of Statutes relating to unlawful assemblies is the protection of the public peace. The arrest of a person charged with having participated in an unlawful assembly before the assembly is dispersed has been held not an essential element of the crime. Thus in 1882, the famous case of Beatty Vs. Gilliranks\textsuperscript{20} decided that an

\textsuperscript{20} 1372-9 Q.B.D. 308.
assembly of public peace for a lawful purpose and with no intention of carrying out such purpose in an unlawful manner is not rendered unlawful by the fact that those who composed it meet with the knowledge that is likely to be attacked or resisted by other. The principle in this case was some what modified in Wise Vs. Dunning in which it was held that a person might properly be bound over to keep the peace if he had agreed to address a public meeting on certain controversial religious questions.

After the above discussions, it can be said that to constitute an unlawful assembly there must be:

(1) an assembly of five or more persons,
(2) they must have a common object, and
(3) the common object must be one of the five specified in the section.

It is also necessary to elaborate the above three ingredients for the complete study of an unlawful assembly. It becomes difficult to do so afterwards, it rises and increases until it overwhelms and the most valuable work of men.

Being member of unlawful assembly, Section 142:

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

21. Extract from the charge of Tindal, C.J. to the grand jury of Vristal in 1842.
This section declares who may be said to be a member of unlawful assembly for it is even such a person who can be punished Section 143, Indian Penal Code. This Section defines who is a member of such as assembly all persons present at a meeting are not members nor for that purpose is it necessary that all persons should assist to its purpose. If a person attends a meeting innocently but he continues therein after he is made aware of its illegal purpose, he is so far as his legal responsibilities concerned in the same predicament as if he had attended the meeting with previous knowledge and approval of its object. Such knowledge may be communicated to him at any time in any manner directly or indirectly. If he is once apprised of it is then his duty to withdraw failing which his presence will be construed as of one who had willingly joined the assembly with the purpose of furthering its common object. This rule is however, made subject to the exception that his joining or continuance in the assembly should be intentionally. This excludes a case of one individual into a assembly by deception or mis-representation. It is not, of course necessary that a person should be aware of all proceedings or purposes of the assembly. It is enough if he continues in it after being made.

In Bala Din Vs. State of Uttar Pradesh22 e.g. Sinha

J. as he when was held that mere presence in an assembly did not make a person, who was present, a member of unlawful assembly, unless it was shown that he had done something or had omitted to do something which made him a member of an unlawful assembly or unless the case fell under Section 192, Indian Penal Code. Referring to other observations of Sinha J., Gajendra Gadkar, C.J. in held that—

"the said observation cannot be read as laying down a general proposition of law unless overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is member of such an unlawful assembly". 23

In appreciating the effect of relevant observation on which Mr. Sawhney has built his argument, we must bear in mind the facts which were found in "Angrezi hatao". Movement with the &Longans "Socialist Party- Zindabad", Dr. Lohia- "Zindabad" "Angrezi Hatao" "Yeh Sarkar Nikammi Hai".

An attempt was made to show that only those who actually tarred, old boards and tried to write some legends should be convicted and not those who stood by.

23. Ibid
It was held that every-body who was in the assembly either did these acts or who uttered slogans in particular Angrezi Hatao Movement, would be guilty under Section 143 read with Section 426 as the law would show privity to the common object. Board suffered decreases in their utility. Utility for the purpose of Section 425, Indian Penal Code is utility as conceived by the owner and not utility as conceived by the accused the remaining four cannot be said to be the members of an unlawful assembly and their conviction cannot stand. The fact that the prosecution evidence showed on many more persons than ten mentioned in the charge participated in the crime is immaterial.

This Section 144 of Indian Penal Code, is an aggravated form of the last section, the aggravation consisting in carrying of arms which is itself a menace to peace, and it shows preparation to use force and it has further the effect of overawing those against whom it is directed. The punishment in such cases, therefore, varies with the amount and nature of the danger threatened. The term "deadly


26. "Whoever, being armed with any deadly weapon, or with anything which, uses as a weapon of offence is likely to cause death, is a member of unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, with fine or with both".
weapon does not occur in the original draft in which the corresponding words used were weapon for seizing, stopping or cutting". The term is now more general and would include not only those weapons but others having a deadly effect.

The gravity of a defence depends upon the gravity of the consequences threatened or possible. A number of men armed with deadly or dangerous weapons are obviously a menace to public peace, as they are capable of greater mischief, so must be the punishment comparatively very deterrent.

This section does not define the term but it obviously describes it by its effect, anything which, used as a weapon of offence is likely to cause death. The question whether a particular instalment is or is not lethal then depends whether it is or is not likely to cause death. It may not be designed as a weapon of offence but if when so used, it is likely to cause death, it is deadly weapon may have been in its nature and character. A hatched or of crowbar would this be a deadly

27. "A deadly or dangerous weapon is a weapon which when used will probably cause death, e.g. a gun, a sword or a spear anything which, used as a weapon of offence is likely to cause death. The only distinguishing feature of an offence under the section is that a member of the unlawful assembly is armed with a deadly weapon. As such, he is liable to enhanced punishment under this section, but only a person armed with a
weapon, for when used as weapon of offences, they are likely to cause death.

So while in an ordinary stick cannot be so described still it may by its length and weight assumed that character. But it has been observed by the Calcutta High Court that a lathi condition is not a deadly weapon, it performs precisely the same function in the ordinary life in this country as the walking stick does in other countries, it is universally used by everybody in the mofussil and it certainly cannot be regarded as in any way of deadly weapon unless and until it is used on the head or some vital part of a person. As to this, it may be remarked that a weapon may be deadly, though commonly carried by the people, and the true test of whether a lathi is a deadly weapon or not depends upon its size and weight for instance, it cannot be doubted that the ferruled sticks usually carried by professional Lathians, are weapons of this description and stoutmale. Bamboos cannot be otherwise described. The question is thus a question of fact solely depend upon the effect which a given weapon is likely to produce upon a human being.

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deadly weapon would be so punishable, others being punished under the last section. In order to render a person liable to the enhanced penalty provided by this section, it must be shown that besides being member of unlawful assembly he was armed with deadly weapon". 
This section speaks of whoever being armed which would seem to suggest that only persons actually so armed are liable to the enhanced penalties here described. But it has been held that this is by no means necessary and a person may be convicted under this section though he was not himself armed with a deadly weapon. Such a case has been held to arise when one person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins that assembly himself, in which case he may be punished under this section, read with Section 14 of the Code though he was not himself armed with a deadly weapon. But this view has been controverted by the another Bench of the same court who held that the word whoever could not mean any person other than the person actually armed with a deadly weapon. In their view no-one can be subjected to the aggravated penalty provided by this section, on the ground of being constructively armed with a Section 145 of the Indian Penal Code.\(^{28}\) deadly weapon.

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28. Indian Penal Code, 1860, Section 145: "Whoever joins or continues in 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 terms which may extend to two years or with fine or with both".
This section is closely allied to Section 151 of the Code and these two sections must be read with Section 127 Criminal Procedure Code, that section refers to the dispersal of an assembly of more than five persons, if it unlawful, or is likely to cause a disturbance of the public peace. This section prescribes the penalty applicable to the former as Section 151 prescribes a singular penalty applicable to the latter. As however, the penalty for refusing to disperse an assembly likely to cause disturbance of the public peace is lesser than that prescribed in this section and as such, an assembly may also be unlawful, the explanation appended to Section 151 provides that such a case should be dealt with under this section. The provisions of both the sections are generally similar to Section 188, it is enacted to meet a general case of disobedience to an order duly promulgated by a public servant.

A person who joins or continues to be a member of unlawful assembly after it has been legally ordered to disperse is guilty of contempt of the Lawful Authority of a public servant. But this section and Section 151 deal specially those cases arising under this Chapter. They are, however, cases of the same kind and subject to the same rules. The provisions of this section are, however much stricter and a falling under this section could not
be properly punished under Section 198 of the Indian Penal Code, 1860.

The offence of rioting consists in the use of force or violence by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly. Use of force or violence is an essential ingredient of the offence of rioting, the offence has no reference to the injury or damage caused by the same. 29 Section 147 provides the punishment for the rioting. 30

Hawkins defines rioting thus—

"A riot is a tumultuous disturbance of the peace by three or more persons assembling together of their own authority that an intent mutually to assist one another against any who shall oppose them, in execution of some enterprise of a private nature and afterwards actually executed the violent and turbulent manner, to the terror of the people, whether the acts intended were of itself lawful or unlawful".

29. Section 146, Indian Penal Code, provides: "Whenever force or violence is used by the unlawful assembly, or any member thereof in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting".

30. Section 147, Indian Penal Code, provides: "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".
In England this definition has been held to be good in cases arising under the Riot Act which contains no definition of rioting and the definition here-given is a mere adaption of it. The basis of the Law to rioting is the definition of an unlawful assembly, a riot being simply an unlawful assembly in a particular state of activity, that activity being accompanied by the use of force or violence. It is only the use of force that distinguishes rioting from an unlawful assembly. The word rioting is a term of riot and contrary to popular belief, a Riot may involve no noise or disturbance of the neighbours though there must be some force violence. 31

Force is defined in Section 349 of the Indian Penal Code and it has been used here in that sense. Violence is force used to in object other than a human being, e.g. to a building or other property. It is a word of water import than force and includes force and used against any inmate objects, force is narrated down by the definition under Section 350 to persons while the word violence is comprehensive and is used to include violence to property and other objects. But it is not necessary that the force or violence may be to direct against any particular person

or object. The use of any force even though it be of the slightest possible character by anyone or an assembly once established as unlawful constitutes rioting. A person who is a leader of an unlawful assembly whose common object is to assault passers by commits the offence of rioting. Thus a husband and his friends take possession of his wife by force and violence, they are guilty of rioting. Actually use of force and not merely show of force is necessary. Where a number of men who are assembled at a certain place run away on being attacked by the opposite party, they are not guilty of rioting.

This word is not restricted to force used against persons only but it exists also to force used against by any object. Thus if an unlawful assembly came together for the purpose of pulling down a man's house and proceeded to carry out the object, they can be said to have used violence. Similarly, where the accused struck at the door of the complainant who fled away to save himself from being beaten, it was held that they used violence. Applying lighted match to a hayrick or burning on cattle shed amounts to using violence. Looting a Kutchery, demolishing of Privy and erecting a fence on the land of the other party are also acts of violence.

Whether only one or more than one of the persons assembled, use of force the penal consequences apply equally to all. It will be otherwise however, if the force or violence is used for a distinct purpose as if it consists of a mere affray or assault upon each other or upon by standards by some members of the assembly. If any person encourages or promotes or takes part in rioting whether by words, signs or gestures or by wearing badge or unsigned of the rioters, therefore, himself considers a riotor. Active participation in actual violence is not necessary, some may encourage by words, others by cesism and others against may actually cause hurt and yet all will be equally guilty of rioting. 34

Section 141 indicates that if the common object of an assembly is not illegal, it is not rioting, if force is used by any member of that assembly. If the common object is not unlawful, then there can be no unlawful assembly and consequently no rioting. Thus resistance to the execution of an illegal warrant with a reasonable bounds does not amount to rioting because the common object is not unlawful but when a riot of resitsence is existed and a severe injury not called for is inflicting the person who inflicts such injury may be convicted of grievous hurt.

Rioting And Civil Commotion:

Expression rioting and civil commotion have not been defined by the Statutes. These expressions are works of legal art and it is the settled rule of interpretation and judicial construction that where they are not used in some special sense, they should be given their technical meaning. In Damodar Das Vs. Rubi General Insurance Company, the court observed— "neither riot nor civil commotion has been defined in the policy of Insurance. But it is a settled rule of judicial construction that where terms of legal art are used in a policy of Insurance they must be given their technical meaning. Therefore, riot when it occurs in a policy of Insurance, is to be encouraged with the special meaning attached to it by the criminal law. The expression riot in a policy of Insurance must be understood in its legal sense and not in a popular intrusion, the principle is that where words are used in an instalment which have a well recognized legal connotation, it will be presumed that they have been used in that sense, unless a contrary intention appears from the context or other relevant evidence. The word riot is a word which has a legal meaning and in our opinion that it is primary meaning and before we can be persuaded to give it any other meaning we must be

fully satisfied that from the instalment itself or from the circumstances of the case the parties intend to give it any other meaning. The word riot in the policy of Insurance in this case shall, therefore, have to be given its legal meaning which is given in the Indian Penal Code.

Civil Commotion, on the other hand has, no such strict legal meaning but yet it has come to have a fixed meaning by recognized judicial interpretation. This phrase was first introduced as an exception in the London Assurance Fire Policies in 1720. Lord Mansfield in Langdela Vs. Mason, defined it as an insurrection of the plea for general purpose though it may not amount to ravelling. The court has to determine whether the loss to the property caused by riot, accident or some such cause, the court has to see what was the direct proximate immediate and operative and efficient cause of the losses. In determining the cause we must distinguish between an accident, facilitating the loss and an accident causing the loss. In the instant case, the accidents of striking against the unfortunate boy did cause some loss to the vehicle insured but fire was not certainly caused by it. Thereafter the death of the boy caused some people to take the law into their own hands to cause a riot, in the court of which the vehicle was set-

36. (1780) 2, Marshall, p. 794.
fire to and all that can reasonably be said is that the accident furnished the occasion for causing loss and not that it caused the loss.

**Fight or Quarrel:**

If a number of persons assemble for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit a riot in the legal sense of the word. Somarily if a fight were to spring up between two of the persons of unlawful assembly, this would only make them individually responsible and not convert the assembly into a riot. Where on a sudden quarrel only three accused actually joined an assault on the deceased and the other three accused only kept abusing although they had lathies in their hands, it was held that by mere presence of the accused it could not be said that they had all shared the common object of committing assault on the deceased. It is, however, not necessary that there should be a common object prior to the commencement of the fight. It is also immaterial that the accused conceived the idea of injury suddenly after they went to the scene of offence. A plea of right to possession is no answer to a charge of sisting by making a forcible entry on land cultivated by a trespasser who is in possession and opposes the entry. A person does not lose possession of a field by going home to extend to

three years or with fine or with both.

The application of Section 148 can be attracted only as a rioter is armed with a deadly weapon or with weapon of offence likely to cause death. A person cannot be found guilty unless he actually had a dangerous weapon in his hand. The only offence that Section 148 describes or refers is the offence of rioting and provision is made enhanced punishment if the rioter at the time of rioting is armed with deadly weapon. If some members of unlawful assembly are armed with a deadly weapon and riot is committed the other members of the assembly no so armed cannot be convicted under Section 148 and 149. It is well settled that only the actual persons who are armed with a deadly weapon should be liable for the aggravated offence under Section 148 and that the other rioters who were not so armed would be liable only under Section 147 Indian Penal Code. It should however, be remembered that it is not possible to convict accused in a riot case both under Sections 147 and 148. Where an accused has been found to be armed with a dangerous weapon at the time of rioting on the scene of occurrence, even if he is found not to have applied that weapon actually, he can be still held guilty and can be convicted under Section 148 as being vicariously responsible for the injuries caused to the complainant or
his party.\footnote{38}

There is no scope for reading Section 148 along with Section 149. Section 149 contemplates only constructive liability whereas Section 148 deals with direct liability. Being armed with a weapon a person cannot be made to be of a constructive liability and one who does not carry weapon himself cannot be convicted under Section 148 by virtue of Section 149. Where owing to a difference not being pointed out to the jury, they fail to understand the implication of the Section and erroneously returned a verdict of guilty under both the sections read together conviction under Section 148 read with Section 149 was bad in law and liable to be set aside.\footnote{39}

Where in pursuance of a criminal conspiracy the accused and their friends who form together into an unlawful assembly having the common object of assaulting and murdering a Police Inspector and the Police Constables who had come to their places and in prosecution of that common object all of them attacked the Police Party springing upon them from both sides of a lane as the Police Party were passing through it and also cutting and sweeping and beating the Inspector and the Police Constables with deadly

\footnote{38. Basant Vs. State, A.I.R. 1965, Allahabad, 120.}
\footnote{39. Rajab Ali Vs. State, 1955, Cr.L.J. 780.}
weapons such as knives, daggers, stones, sticks and slings as a result of which the Inspector and a Constable died on the spot and other persons died in the hospital. It was held that all the accused were guilty of the offences punishable under Section 120 B and all of them were also found guilty under Section 148. Acts done in the exercise of the Private Defence, where accused can successfully invoke the right of their property and persons can not be convicted 147 and 148 of Indian Penal Code.  

In the same way where there is no clear finding on exact weapon used, the general finding that the weapon was sharped-edged, no inference with High Court orders called for it was held that the conviction under Section 148 is justified as the weapon used was dangerous and was likely to cause death. The definite finding on the weapon is immaterial. Where murder caused by indiscriminate firing the accused on way side culvert and Jeep carrying victim was on its move on road firing started suddenly and it was not clear whether fatal injuries caused by Rifle or other guns, oral evidence clearly corroborated by Medical evidence as to formation of unlawful assembly by accused persons with common object, motive was also clear it was held con-

viction and sentences be confirmed.  

The Offences Committed In Prosecution of Common Object:

The court/code prescribes three cases of the constructive liability some of which overlaps in practice. Widest liability is where two or more persons agree to commit an illegal act in which case they become members of conspiracy, but not a criminal conspiracy punishment under Section 120 B for which one of them must do overt act in persuasion of the crime. This section requires the conscientious of five persons to do an unlawful act prohibited, in addition to which in order to create a liability under this section, there must be proof that the accused know that the offence committed by one member of the assembly was likely to be committed by any of them. As such the rule here-enacted is as regards mens rea some of the wider than enacted Section in 34, they both deal with constructive liability, i.e. to say liability for an act not actually done by the accused. As Section 149 prescribes.  


43. Section 149 of Indian Penal Code, provides—"If an offence is committed by any member of 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 committing of that offence is a member of the same assembly is guilty of that offence."
The distinction between Section 149 and 34 Indian Penal Code, has been expounded authoritatively by the Supreme Court. There is clear distinction between provisions of Section 34 and Section 149 of the Code. Unlike Section 34, Section 149 creates a specific offence but the punishment depends on the offence of which the offender is by that section made guilty and therefore, the appropriate punishment section must be read with it. The two Sections 34 and 149 overlap to some extent but are not to be confused. The principal element in Section 34 is the common intention to commit a crime. In furtherance of a common intention several acts may be done by several persons resulting in the commission of that crime. In such a situation Section 34 provides that each of them would be liable for that crime in the same manner as for all the acts resulting in that crime had been done by him alone. There is no question of common intention in Section 149. An offence may be committed by a member of unlawful assembly and the other members will be liable for that offence provided the conditions laid down in the sections are fulfilled. Thus if the offence committed by that person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, every member of the unlawful assembly would be guilty of that offence. Although there may have been no
common intention and no participation by other members in the actual commission of that offence. There is also a difference between object and intention as pointed out in Verendra Kumar Ghosh Vs. Emperor. 44 Although the object must be common the intention of the several members of the unlawful assembly may differ and indeed may be similar only in respect of that they are all unlawful, while the element of participation in action, which is the leading feature of Section 34 is replaced in Section 149 by membership of the assembly at the time of committing of the offence. A common intention pre-supposes a prior concert or meeting of minds. Section 149 differs from Section 34.

The difference is suggested by Khundkar J. in Ibra Akanda Vs. Emperor. 45 The common intention of an unlawful assembly may also be gathered from its acts and in this sense. Section 149 differs from Section 34 in that where Section 34 contemplates a pre-arranged plan Section 149 does not.

An accused who is a member of unlawful assembly is not necessarily guilty of the graver offence committed

44. A.I.R. 1925, P.C.1.
45. 1944, Calcutta, 339.
by any member of the unlawful assembly but he could be convicted of a lesser offence provided it is found that he was a member of the unlawful assembly and that such lesser offence was likely to be committed in prosecution of the common object of the assembly, where the accused were members of unlawful assembly had started beating the deceased and the assembly was armed with deadly weapons but accused were found not guilty of murder, it was held that the accused must have known that the grievous injury was likely to be caused and they could be constructively held guilty of the offence causing grievous hurt read with Section 149.

Section 301 applies to a situation when a person causes the death of another, whose death that person neither intends nor knows him likely to cause. That being so, it is rather difficult. As a process of logical reasoning to apply Section 149 to a situation like that. The members of an unlawful assembly other than the members who have actually caused the death would not have known to it to be likely that the death of that particular person would be caused.

This section is not intended to subject a member of an unlawful assembly the punishment for every offence which is committed by one of its members during the time,
they are engaged in the prosecution of the common object. It is divided into two parts.

i. An offence committed by a member of an unlawful assembly in prosecution of the common object of that assembly.

ii. An offence such as the members of that assembly knew to be likely to be committed in prosecution of that object.

In Sabid Ali's Case, Phear J. says that in as much as continuance of the unlawful assembly is by the definition of Section 141, made co-terminus with prosecution of the common object it seems probably clear that the Legislature must have employed the words prosecution of the common object with some difference of meaning of these two cases. Also the mere fact that the Legislation thought fit to express the second alternative appears to show very distinctly that it did not intend the words in prosecution, which are found in the first to be equivalent to during prosecution. For if they were, then the second alternative, would have clearly been unnecessary, an offence in order to fall within the first of above alternatives in order to be complete in the prosecution of the common object must be immediately executed with the common object by virtue of the nature of the object offence will fall in the second alternative. If the members of the assembly for any reason knew before hand that it was likely to be committed in the pro-
secution of the common object though not knit thereto by the nature of the object itself.

To attract provisions of Section 149, the prosecution must establish that there was unlawful assembly and crime was committed in prosecution of its common object.\textsuperscript{46} When several persons armed with lathies and one of them is armed with hatchet and are agreed to use those weapons in case they are threatened in the achievement of their object it is by no means incorrect to conclude that they were prepared to use violence in prosecution of their common object and that they knew that in the prosecution of such common object it was likely that some-one may be so injured as to die as a result of those injuries. Where violence is used in prosecution of their common object and one person dies as a result of the injuries inflicted, the offence made out on account of the death caused by the concerned acts of the several accused is the offence of murder.\textsuperscript{47}

Even if it be assumed that the common object was only to rescue the two accused who were in the Lock-up it was obvious that the use of violence was implicit in that

object. People do not gather together at the dead of night armed with crackers and choppers and sticks to rescue persons who are guarded by armed Police without intending the use of violence in order to overcome the resistance of the guard and a person.

Engaging Persons to join unlawful Assembly:

If a person hires or engages an other person to join or become a member of a particular unlawful assembly as if he is a member of such unlawful assembly commits the offence under Section 150 of the Code. 48

The object of this Section 150 of Indian Penal Code is to bring within reach of the law, those who are really the originators and instigators of offences committed by hired persons. The ordinary law of abatement might be sufficient to punish those who, by hiring or engaging instigate to join them an unlawful assembly. But if the prime

48. Section 150, Indian Penal Code, provides—"Whoever hires or engages or employs or promotes or connives at the hiring engagement or employment of any person to join or to 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 persuasion of such hiring, engagement or employment in the same as if he had been a member of such unlawful assembly, or himself had committed such offence."
agent aloof and the work of hiring although known to him is left entirely to his Manager or servant he will probably succeed in evading the ordinary law. The terms of this section, therefore, extend not only to act of instigation by the master but to acts of instigation when done by others or knowingly permitted or connived act by him.

The last word is generally enough to cover all that is intended to be conveyed by three words. Hiring is engaging for a stipulated reward and engaging is employing one for a definite purpose while employing one is to make use of one generally.

These words are important. Promotion of hiring engagement or employment is the rendering of active support and assistance while conniving is closing the eyes upon a fault. It is following it without encouraging or even approving of it. It employs the state of mind in which this approval of the act is joined to desire not to oppose it and for any offence in persuance of such hiring i.e. employer is responsible for the act of his employee done within the scope of his employment.

Though this section is perhaps too generally worded still the class of persons it is intended to reach is clear.
Persons who are neither co-supporters nor abators but who nevertheless, hires or employs and thus call conspiracies and unlawful assemblies into being are no less guilty than those who counsel take part in them. In one sense such persons are abators but the law of abatement requires proof which may be lacking in their case. If they keep aloof and leave the work of hiring to their Agent or Manager the latter may be tried as abators but the former may probably succeed in evading the ordinary indirect assistance as where a Zamindar finances his lessees to maintain an army of men as his own retainers. If he offers them any facilities he may be proceeded either under this section or Section 157. It is not so difficult to establish promotion as to prove one's connivance at the hiring of men to form an unlawful assembly. The word "connivance" implies possession of power or control over the thing connived at. It is not the duty of every person to prevent the formation of unlawful assembly whenever and for whatever purpose formed. Consequently it is not connivance at the employment of the men where one has neither the right nor the power to prevent it.

Knowingly joining or continuing an assembly after it has been commenced to disperse:

It does not apply to cases in which the assembly
was unlawful from its inception. 49

The order disobedience for which has been penal by this section is only to disperse. An order to an assembly to back and not to proceed any further along the routes which is going, is not an order to disperse. Disobedience of such an order is not punishable under this section even the order may have been justified under the circumstances of the case. The section does not apply to cases in which assembly was unlawful from its inception or had become so before the command for dispersal was given.

In order to make a person liable it must be shown that the command was lawfully given. This implies that a person commanding had jurisdiction as well as reason to order dispersal of the meeting. 50 They are both questions of facts dependent upon the powers possessed by officers ordering the dispersal and the grounds upon which it was ordered. First question depends upon the construction of

49. Section 151 of the Indian Penal Code— "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 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".

Criminal Procedure Code. That section empowers any Magistrate or Officer-in-charge of a Police Station to command the dispersal of a tribulent assembly it is then sufficient to show that the officer ordering the dispersal was either a Magistrate, Stipendiary or a Honorary or Officer-in-charge of a Police Station a term which necessarily includes his superior Supervising Officers, i.e. today those who though not actually Incharge of a Police Station are still in superior Executive control of it or of the Officer-in-charge of it.

Supreme Court in a case held that a policeman who witnessed the incident merely warned the two factions who were pelting stones upon crowd it cannot be said it was commanding dispersal given by them. Section 151 cannot be invoked the accused with the aid of Section 149.51

The next question presents some difficulties for it requires for its validity that the order should not be passed unless there is an assembly of five of more persons likely to cause the disturbance of a public peace. Here in the first place there must be an assembly. Now strictly speaking an assembly is a company of persons gathered

together in one place for common purpose. To this is not the sense in which the term has been used here for it is immaterial for the purpose of this section whether the assembly was stationary or moving compact or scattered. It is sufficient if there was a concurrence of five or more men for a common purpose. If such an assembly existed it is next necessary to see whether it was likely to cause a disturbance of the public peace. The question is of course, one of fact but it is one which it is for the prosecution to establish to the satisfaction of court. It is not sufficient to establish a charge under this section that in the opinion of the Magistrate or Police Officer who gave the command the assembly was likely to cause a disturbance of this public peace.

Such was the case of the salvation army insisted upon their right to march out in procession though the streets of Bombay, inspite of an order prohibiting them from so proceeding the court considered the opinions of the policeman who knew the buildings of Bombay as obviously valuable though the Magistrate himself must look to the surrounding circumstances and form his own as to whether the acts committed were reasonably to likely to lead to a breach of peace. It may be added that an exactly similar case arose about the same time and in connec-
tion with the same organization in England but in that case the rule laid down was very different. In both cases the salvation army accepted their right to march to march out in procession and in those cases led procession inspite of legal prohibitions. They were prosecuted in both cases, but while in England their right to proceed in procession was not upheld that right had been denied in Bombay. This difference could scarcely be casual for if the two cases were rightly decided, there should be a difference in the laws of two countries. But this is not the case for both laws right to proceed in procession is conceded and in both it is made subservient to public peace. The true rule applicable to such cases may be stated to be this a lawful gathering assembled for a legitimate purpose will not be ordered to disperse when it is opposed by people who disagree with it and are prepared to fight it by force.

Assaulting a Public Servant Suppressing a Riot:

If assault or obstruction to same particular servant is used, the Section 152 of Indian Penal Code is attracted body of Police in the purformance

52. "Whoever assaults, or threatens to assault or obstruct, or attempts to obstruct any public servant in endeavouring to disperse an unlawful assembly or
This Section 152 of the Indian Penal Code punishes an active opposition to public servant in the discharge of his duty as such public servant. In the first place, as the section is worded it is not necessary that the public servant concerned should be then employed in the lawful discharge of his duties. He is protected because he acts in a moment of imminent danger, and he is protected if he acts in good faith under colour of his office though his act may not be strictly justifiable by law. It is, of course otherwise for his act causes an apprehension of death or grievous hurt in which case there is a right of private defence.

The gist of the offence described in the section consists of the use of force on a public servant with a view to deterring him or which has effect of deterring him from the discharge of his duty. It must therefore, be shown not only that the public servant was then on duty, but also that he was then as a part of his duty endeavouring to disperse an unlawful assembly. If therefore, he was not actually so engaged an assault on him may be an offence but it is not the offence described in

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to suppress a riot of affray or uses criminal force or threatens or attempts to use criminal force to such public servant shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both". 
this section. Again the section speaks only of an unlaw-
ful assembly a riot and an affray. It does not refer to
a lawful assembly likely to cause a disturbance of the
public peace spoken of in the last section.

wantonly Provoking to Riot:

Section 153 Indian Penal Code provides

Law has always looked with disfavour upon medley/
meddlers whereas whether they provoked one to maintain a
civil suit for the enforcement of his rights or whether
it provokes him to take the law in his own hands and
thus committed a breach of the peace. In the one way the
offence is one of maintenance and the other offence is
punishable under this section.

The ingredients necessary to establish the offence
are:

i. That the accused did an act which was illegal.

ii. That he thereby gave provocation to any person.

53. "Whoever malignantly or wantonly by doing anything
which is illegal gives provocation to any person
intending or knowing it to be likely that such pro-
vocation 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

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iii. That he did this malignantly or wantonly.

iv. That he did this act intending that the provocation will cause the offence of rioting be committed or be knowing it to be likely that such provocation will cause the offence of rioting to be committed.

Malignantly or wantonly means maliciously or with virulent enmity. It implies dispossessing want of evil. The word "wantonly" means wrecklessly thoughtlessly without regard for right or consequences. It implies a dispossessing not evil but reckless or mischievous. A man may do a thing wantonly when he has reason to do it, but does it because he takes pleasure in doing it though he knows it that its consequences together may be serious.

During the excitement of Hindus and Mohammedans riots which broke out in Bombay in 1893 the accused published poem giving an account of the outbreak.

Promoting community between classes:

Section 153 whoever

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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".

54. "By words either spoken or written or by signs or by visible representation or otherwise promotes or attempts to promote on grounds of religion ract, language, caste of community or any other ground whatsoever,

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Commits any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups or castes or communities and which disturbs or is likely to disturb the public tranquility, shall be punished with imprisonment which may extend to three years or with fine or with both.

This section is new and was added by an Indian Penal Code (Amendment) Act of 1898. Its language is similar to that used in the definition of defamation in Section 499 of the Code. This section has been held to be more ancilliary to last section than Section 124A is to Section 124. The explanation appended to this section and Section 124A affording some measures of protection to honest criticism was contrasted with the sweeping provisions of the Press Act.

The section has a long history. It started as a provision designed to punish acts promoting enmity or hatred between "different classes of Her Majesty's subjects" which later became "different classes of the citizens of India". There was also an explanation below

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feelings of enmity or hated between different religious, racial or language groups, or castes or communities".
the section, the effect of which was to save honest criticism without malicious intention. Barring the verbal adaptations made from time to time the section retained this shape till 1961. The amendment of 1961^{55} made three changes in the original section. The term "classes" was replaced by religious racial or language groups or castes or communities. Secondly, the scope of the section was enlarged by making it an offence also for anyone to do any act which is prejudicial to the maintenance of harmony between different religious racial or language groups, or castes of communities and which is likely to disturb public tranquility. Thirdly, the explanation was omitted.

In 1969,^{56} the section was expanded further and the reasons for the amendment were stated^{57} as follows:

"Promoting enmity between different groups on ground of religion, race, language, etc. is made an offence under section 153A of the Indian Penal Code. It is proposed to include therein promoting enmity between different groups on such as place of birth or residence as well. It is also proposed to widen the scope of the provision so as to make promotion of disharmony or feelings of ill-will an offence punishable thereunder. Clause (b) of the said section provides for the punishment for doing acts prejudicial to the maintenance of harmony between different groups. That

^{55} Act 41 of 1961.

^{56} Gazette of India, 27th August, 1968, Part 2, Section 2, Extraordinary, p. 1052.

^{57}
provision is also proposed to be widened so as to include acts prejudicial to the maintenance of harmony between different regional groups as well. It is also proposed to provide for enhanced punishment for any such offence committed in a place of worship.

Article 19 of Constitution of India and 153 of Indian Penal Code:

Since Section 153A constitutes a restraint on the freedom of speech and expression the question may be raised with reference to Clauses I (a) and (2) of Article 19 of the Constitution whether it is a reasonable restriction imposed in the interests of the security of the State or in the interest of the public order decency or morality or in relation to incitement to an offence.\(^{58}\)

Though the constitutionality of the section has not yet been decided by the Supreme Court, two High Courts\(^ {59}\) have held that it imposes a reasonable restriction in the interest of public order and is therefore a valid law.

58. Infra chapter III.
   (b) Khan Gufran Zahidia Vs. State (1964) All., 545, 551, 1964 All W.R. (H.C.) 694.
   (c) Wajih Uddin Vs. The State, A.I.R. 1963, All., 335, 336, 337 (Jagdish Sahai and Ramabhadran JJ).
After the decision of the Supreme Court in Kedarnath's case, interpreting Section 124A and upholding validity, it would appear that the validity of Section 153A could also be supported provided one reads into the likelihood of disturbance of public tranquility—a requirement expressly mentioned in clause (b) of Section 153A though not to clause (a). Reference may also be made to the Supreme Court judgment in Ramjilal Modi's case, in which the validity of Section 295A was upheld on the ground that the section imposed a reasonable restriction in the interest of public order. We may, therefore, assume the constitutional validity of the section.

Since Parliament has very recently considered the section in detail and revised it, we do not think it necessary to scrutinise the substance of the provision. There is, however, one point which requires careful consideration. Before its amendment in 1961, Section 153A contained the following explanation:—

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 remo—

val matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of the citizens of India”.

This explanation was omitted\(^64\) by the Amending Act of 1961. It was stated\(^65\) by the Minister sponsoring the amendment that the intention in omitting the explanation “was to cast the responsibility on the offender to prove that his intentions were not malafide or malicious”. Before 1961, the majority of the High Courts had taken the view that under Section 153A, it was necessary that the purpose or part of the purpose of the accused was to promote feelings of enmity of the nature referred to in the section and if it was no part of his purpose then the mere circumstances that there may not be such a tendency would not suffice. It was observed by the Calcutta High Court:\(^66\)

“It is settled law that Section 133A Indian Penal Code does not mean that any person who publishes words that have a tendency to create class hatred can be convicted under that section. The words 'promotes or attempts to promote feelings of enmity' are to be read as connote a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings, and if it is no part of his purpose the mere circumstance that there may be a tendency is not sufficient”.

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64. The Indian Penal Code (Amendment) Act, 1961 (41 of 1961).
In several subsequent decisions it was held that intention was a necessary ingredient of the offence under Section 153A. Some of the cases laid stress on the explanation as re-enforcing the view that intention was essential to constitute the offence.

On the contrary the Allahabad High Court had taken a different view. While the earlier Allahabad case, spoke merely of a presumption of intent later cases, totally ruled out any question of mens rea. The leading decision in favour of this view is that of Sulaiman, C.J. who observed:

"It is quite clear to my mind that there are many offences in the Indian Penal Code for which the proof of an express intention on the part of the accused is not at all necessary. Indeed, wherever it is necessary that intention should form a necessary part of the offence the sections expressly say so."

67. (a) Devi Sharan Sharma Vs. Emperor, A.I.R. 1927, Lah. 594, 598 (Case law reviewed at p. 602);
(b) Emperor Vs. Banomali Maharana, A.I.R. 1943, Pat. 382, 386.
(c) Raj Paul Vs. Emperor, A.I.R. 1927, Lah. 590.
(e) Ishwari Prasad Vs. King Emperor, A.I.R. 1927, Cal. 747 (Play) 'Balidan' about the murder of Swami Shradhanand was the subject matter of the prosecution because the writer had argued in favour of the Shuddhi movement. Accused was acquitted there being no intention to excite enmity.


Contrasting the language of Section 153A with that of Section 499 (where the word "intended" appears twice), Sulaiman C.J. added:—

"It would therefore, seem to follow that the Legislature contemplates that the words spoken or written, which do promote hatred etc., would create sufficient mischief so as to fall within the scope of the section, and that it is not necessary for the prosecution further to establish that the writer had the intention to promote such hatred."

The Allahabad decisions related to Section 99A and 99B of the Code of Criminal Procedure, 1898 and the observations made there regarding Section 153A could be regarded as obiter. But it is obvious that the view that Section 153A does not require mens rea is at present firmly established in that High Court.

So far as could be ascertained, there is no later case of the Allahabad High Court to the contrary. In one case decided in 1964, the question was considered whether members of a Hindu Mahasabha constituted a 'class' under Section 153A. In that case, the High Court held them to be a class but since the charge spoke of enmity between Hindus and Muslims the accused was acquitted by the High Court.

In the opening part of the judgment after quoting the unamended Section 153A (the case relates to a speech made before the amendment of 1961), the High Court observed:

"The class or group can be based not only grounds of religion, race, language, caste or community, but also on political or economic affiliation. However, the explanation to 153A protects honest criticism or any act of the person criticising a political party".

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 any person having or claiming an interest in such land shall be punishable with fine not exceeding one thousand rupees if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station and do not in the case of his or their having reason to believe that it was about to be committed use all lawful means in his or their power to prevent it and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Every word of Section 154 is important and must be carefully noted.
A riot took place in the accused's khalyan not, however, in respect of the khalyan, but with respect to the right to collect rents from the tenants, that is to say the real dispute was as to who should remain in possession of the village. It was held that the accused was guilty of offence under Section 154 and 155.72

The accused was the sole proprietor of village. A serious riot involving loss of life took place at village A and the accused's naib instead of doing anything to prevent or suppress the riot accompanied the rioters and stood close by while the riot was going on after which he absconded. The accused who had no knowledge that a riot was likely to be committed was convicted under Section 154 and fined. It was held that a landlord was liable under Section 154 for the act of commission as well as commission not only of himself but of his agent or manager. Knowledge on the part of the owner or occupier of the land of the acts or intentions of the agent is not an essential element of an offence, under Section 154 and he may be convicted under that section, though he may be in entire ignorance of the acts of his agent or manager. There seems to be no ground for holding that Section 154 is intended in order to punish the landlord

72. A.I.R. 1917, Pat. 523, 18 Cr.L.J. 447, 38 IC 1007, (Doma Sahu).
where his agent has not rendered himself liable to the
criminal law, and that when the agent has done so then his
liability is at an end. On the contrary the provisions of
the section impose on non-resident landholders and their
agents the duty of maintaining the public peace and preven-
ting unlawful assembly and riots on their estates and render
the former liable for any dereliction in the discharge of
this duty. Owners of property are made responsible by law
for the negligence of their agents or managers but not for
their criminal acts. A charge of neglect assumes that the
agent is not directly concerned in the commission of the
offence. If he is so concerned it ceases to be neglect, it
is a crime. It would be straining the law to make the
absent owner, who has himself no knowledge of the occurrence,
liable for not giving information of a riot that has taken
place if his agent takes part in it, and as a rioter actually
taking part in it, does not as a matter of course, give
notice of it. 73

The criminal liability of a person specified in
Section 154 for the acts or commissions of an agent or
manager depends upon the question by whom the latter was
appointed. Where, therefore, it was shown that three Hindu

73. 28 CAL 504 (Zeam-uddin).
parda-nashin ladies had the management of the estate and were responsible for the appointment of the naib who had fomented the riot, and that their adopted sons had nothing to do with such appointment, though they took some share in the active management of the estate, it was held that the ladies were alone liable under Section 154. It is impossible no active part in the management of the Land.74

The person liable under Section 154 must:

(i) have reason to believe that an unlawful assembly or riot is likely to be committed or

(ii) have knowledge that it is being or has been committed. The riot need not be in respect of the land.

(iii) very greatest caution is required before proceedings are started against persons under Section 154.

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 committed was likely to be held shall not respectively use all lawful means in his or

74. 39 CAL 834, 7 CLR 289, 8 CAN 908, See also note 3.
their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Every word in the section is important and must be carefully noted. All the ingredients stated in the section must be proved.

In order to convict the manager of an indigo factory under Section 156, it must be shown by legal evidence—(i) that a riot was committed; (ii) that the riot, if committed, was committed for the benefit of the accused; and (iii) that the accused had reason to believe that a riot was likely to be committed.\(^{75}\) Section 155 does not apply to an absentee co-sharer in a zamindari who takes no active part in its management.\(^{76}\)

The mother of the two petitioners and the wife of one of them had interest in certain land. The petitioners demanded kabuliwats from certain persons but there was no evidence to prove that the petitioners demanded them for themselves. It was held that the petitioners could not be held to have claimed an interest in the land and that, therefore, they could not be convicted under Section 155.

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\(^{75}\) 10 CAL 338 (Brae).
\(^{76}\) 3 CAN 908.
In a case under Section 155 the record of the riot case should be excluded from evidence. 77

The riot must be in respect of the land but this is not necessary in Section 154. 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, 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.

Section 155 punishes the owner or occupier for whose benefit riot is committed. Section 156 punishes his agent or manager.

Whoever harbours receives or assembles in any house or premises in his occupation or charge, or under his control

77. 22 IC 767 (Pramatha), See also 15 SC 76.
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.

Compare Section 150. Every word in the section and all its ingredients are important.

An act of harbouring a person, with the knowledge that, in some time past he had joined or was likely to have been a member of an unlawful assembly is not an offence under Section 157. Section 157 clearly refers to some unlawful assembly in the future and provides for an occurrence which may happen, not which has happened. 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.79

78. 58 CAL 1401, AIR 1931, Cal 712 (Radha-raman).
79. 29 CAL 214 (R.L. Sarcar).
For conviction under Section 157 it must be shown that the persons were hired engaged or employed and of that if there is really no evidence, a conviction under that section cannot be sustained. Volunteers engaged in preparing salt cannot be said to be hired engaged and employed by their leader. Merely because accused had engaged servants from a district where men are well known as 'lathials' and a riot takes place subsequently accused cannot be held to be guilty under Section 157.

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— 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.

80. 4.I.R. 1931, Mad. 440, MWN 326, 32 Cr.L.J.664 (S.Aaron). 81. 7 CLR 289.
Being hired to take part in unlawful assembly or riot or to go armed:

Every word of the section is important and must be noted carefully.

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

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

Every word in Section 159 and all its ingredients are important.

To constitute affray fight between two sides is essential. Mere passive submission to beating by the other side will not do. Where a person beats another in a public place and the latter submits to the beating without the least retaliation and simply howls in pain, no offence of affray is committed. 82 Abusive quarrels, some and

threatening words do not in themselves amount to an affray. In a public two persons attacked and over-powered another person, who merely defended himself it was held that the two persons were rightly convicted of affray under Section 160, as there was a "fighting" in a public place, notwithstanding the fact that the third person only defended himself in exercise of his right of private defence. Where L and M met and after abuse came to blows and each struck the other down while others had also joined the fight and M died of the injuries received but there was no reliable evidence that L alone was the assailant, it was held that L could not be convicted under Section 304, Part 2, and no offence beyond an affray under Section 160 had been committed.

To constitute an affray there must be a fight between two sides and it is not a fight in which both parties should participate.

There must be a definite assault or breach of peace. If P beat Q in a public place and Q submits to the beating without retaliation and simply howls in pain, no defence of affray is committed. If two man are found fighting in

83. Hale PCC 28, S.2 1937, MAN 977 (1).
84. 53 All 229 (Babu Ram).
85. 13 Cr.L.J. 718 (Langar).
86. AIR 1952 All 788, Cr.L.J. 1282 (Jodhey) AIR 1957 Oudh 425 and AIR 1938, Mad. 924 were relied on.
87. AIR 1928 Lah 813 (1), 30 Cr.L.J. 571.
88. AIR 1950 Mad. 408, 51 Cr.L.J. 979.
street one must be able to say the other attacked him and he was only defending himself. If was only defending himself and not attacking, that is not a fight and consequently not an affray. A man may well defend himself and then pass to attack or in repelling an attack he may be more than necessary force. 89

To constitute an affray there must be a fight. Fighting connotes necessarily a contest or struggle for mastery between two or more persons against one another. A struggle or a contest 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. When members of one party beat members of another party and the latter do not retaliate or make any attempt to retaliate, but remain passive, it cannot be said that there was fighting between the members of the one party and the members of the other and offence of affray cannot be said to have established. 90 There is a difference between an 'affray' and an 'assault'. The offence of affray as defined in Section 159 postulates the commission of a definite assault or a breach of the peace; mere quarrelling or abusing in

89. 1957, 1 All. Er. 577 (R. Vs. Sharp).
90. AIR 1938 Mad. 924, MWN 975, 40 Cr.L.J.86 (R.Reddy).
street without exchange of blows is not sufficient to
attract the application of Section 159.91

Mere exchange of abuses at a public place does not
amount to an affray.92

A chabutra which was neither a place to which the
public had a right of access, nor a place to which the
public were ever permitted to have access, was not thought
it adjoined a public road, a "public place" within the
meaning of Section 159.93 A goodsyard is a public place.
The public may have a limited right of access but as a
fact no one is prevented from going inside the yard.94
Fighting in a private place or at some distance from a
highway in a place where no others are present than those
who are aiding and abetting does not amount to affray.95

A general description of a public place is to be
found in The Queen Vs. Wellard,96 dealing with indecent
exposure of the person, where Grove, J. says - "a public
place is a place where the public go, no matter whether

91. AIR 1937 Oudh 425, 38 Cr.L.J.169 (F.Sah), AIR 1928,
    Lah 813, 39 Cr.L.J. 571 (Ganesh Das).
92. 65 Punj LR 813 (Puranchand), AIR 1955 Punj 191, AIR
    1937, Oudh 425 relied on AIR 1937 Mad.286 distinguished.
93. 17 All 166 (Sri Lal).
94. Ex-parte Kippins, 1897 i QB i, 26 BOM 609, 4 blr 290,
    (Cawasji).
95. 1845-1 Cox, C.C.177 (R. Vs. Hunt).
96. (1884) LR 14 QBD 63 (66) decided under 14 and 15 Vict.
    c.100, s.29.
they have a right to go or not." A very similar ruling is to be found in Turnbull Vs. Appleton, where a field maintained for the benefit of the colliers of a Colliery Company, to which strangers were admitted was held to be a public place. It was held that a chabutra which was private property adjoining a public thoroughfare and was not a place to which the public had a right of access nor a place to which the public were used to have access nor were ever permitted to have access was not a public place. The place where gambling took place was situated in the compound of a Thakoorbari surrounded by a pucca wall and was held not to be a public place though it was possible to enter it from the street. All these cases seem to be consistent with one another as also consistent with the idea that the place may be public place, though it is the private property of an individual. Where a place is in any way dedicated to the use of the public, it is, of course, a public place. But it is owned privately, and no such dedication has taken place the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it. Where the place is open

97. (1875-45 J.P. 469) decided under 36 and 37 Vict.c.38, s.3.
98. 17 All 166.
99. 6 CWN 33.
piece of ground the presumption that it is a public place is naturally more easily created than where it is a building, or is surrounded by a wall. ¹⁰⁰

Where a place is public or not does not necessarily depend on the right of the public as such to go to the place though of course a place to which the public can go as of right must be public place. The place where the public are actually in the habit of going must be deemed to be public for the purpose of the offence of affray for instance, place like railway platforms theatre halls, and open spaces resorted to by the public for purposes of recreation, amusement, etc. ¹⁰¹

A public place is one where the public go whether they have a right to or not, it is sufficient to constitute a place a public one even if only a section of the general public such as Hindus have a right to go to it. ¹⁰²

A place is a public place if people are allowed access to it, though there may be no legal right to it. So a well is a public well if people are allowed to use

¹⁰⁰. 31 CAL 542 (Hari Singh).
¹⁰¹. AIR 1937 Mad 286, 38 Cr.L.J. 588 (Muthuswami).
¹⁰². 40 Mad 556 (Musa), AIR 1937 Mad 286 (Muthuswami).
its water. A harbour premises must be considered a place of public resort. A legal right of access by the public is not necessary to constitute a public place. Vide The Queen Vs. Wellard. In the words of Grove J. "a public place is one where the public go, no matter whether they have a right to go or not."

Fighting in a private place or at some distance from the highway in a place where no others are present than those who are aiding and abetting, does not amount to affray.

The expression "any place to which the public have or are permitted to have access" used in the Gambling Acts was the subject of interpretation in several cases. "Where a place is in any way dedicated to the public it is, of course, a public place. But where it is owned privately... the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it." A place which is not enclosed and from which the public were not refused access or excluded was

103. 9 ibid.
104. 14 QBD, 63.
105. See also Kiston Vs. Ashe (1 QB 245) 39 Mad 886 (G.Rajulu).
106. 1845, 1 Cox C.C.177 (R. Vs. Hunt).
107. 1938 All 318, 45 All 265, 17 All 166, AIR 1934, All 17, 49 All 913, 46 All 787, 32 blr 790, 28 blr 93, 40 blr 1082, 53 Bom 137, 36 blr 1113, 31 Cal 910, 31 Cal 542, AIR 1938 Mad 74, 1945 Nag 430, AIR 1936 Sind 90, AIR 1936 Sind 126.
108. 31 CAL 542 (Hari Singh)
held to be a public place, Ballu Singh case of the edge of a grove a few paces from a public pathway.

Offences Affecting the Public Health, Safety, Convenience decency And Morals:

According to Blackstone, "common nuisances are a species against the public order economical regim of the state; being either the doing of a thing to the annoyance of all the King's subjects or neglecting to do a thing under which the common good requires. This chapter deals with nuisances considered as offences. Chapter X (Sections 133 to 143) and Chapter XI (Section 144) of the Criminal Procedure Code prescribe the procedure relating to the abatement of nuisances in case of urgency. The powers conferred by those section on certain Magistrates are confined to the nuisances in Section 133, which however is another working definition of the term. Proceedings under Chapters I and XI of the Criminal Procedure Code are optional and the fact that no proceedings were taken under the Criminal Procedure Code cannot be pleaded as a bar to a prosecution under this section.

Nuisances cause for or are conducive to the injury, destruction danger or annoyance of a person or persons.

109. 1938 ALL 348.
collectively. This chapter deals with such nuisances as affect the public and not only some of its members. The definition of the term given in Section 268 Criminal Procedure Code, makes this sufficiently clear. The rest of the chapter then describes and provides for specific nuisance, those not so covered being punishable under the residuary provisions of Section 290. There are 11 principal cases of nuisances specifically dealt with. They are—

(i) Spread of infection (Sections 269-271)
(ii) Fouling water (Section 277)
(iii) Making atmosphere noxious to health (Section 278)
(iv) Adulteration of food, drink and drugs (Sections 272-76)
(v) Rash driving (Section 279)
(vi) Rash navigation (Sections 280-282).
(vii) Endangering Public Ways (Sections 281-283)
(viii) Negligent handling of poisons combustible and explosives (Sections 284-286)
(ix) Negligence with respect to:
(a) machinery (Section 287)
(b) Buildings (Section 288)
(c) animals (Section 289)
(x) Spread of obscenity (Sections 292-294)
(xi) Public gambling (Section 294-A).

Nuisance (nocumentum), or annoyance, means anything which works hurt, or damage. Nuisances are of two kinds: public or common nuisance which materially affects the public, and is a substantial annoyance to all the Queen's
subjects; and private nuisance which may be defined as anything which causes material discomfort and annoyance, to a man in the use for ordinary purposes of his house or property. Public or common nuisances, as they affect the whole community in general, and not merely an individual, from the subject of public remedies and do not give a cause for private suit for it would be unreasonable to multiply suits suits by giving every man a separate remedy for what damages him in common only with rest of the lieges.

Public nuisances may be considered as offences against the public by either doing a thing which tends to the annoyance of all the King's subjects or by neglecting to do a thing which the common good requires. 110

This chapter dealing with the subject of public nuisances is intended to protect three classes of persons:

(a) the public,
(b) the neighbours as distinct from the public, and
(c) persons possessing a public right.

In each case, the nuisance feasor must be guilty of an act or an illegal omission. But the resultant effect is not in each case, the same. For instance where nuisance affects

the public or the neighbours it must cause a common injury where it affects the enjoyment of a public right, it must necessarily cause an injury. In such a case the injury may be likely and it need not be suffered in common. This distinction is important for while in the one case there must be evidence of an actual injury it will suffice in the other case, if the injury is inevitable though it was not actually caused. Again, while in the former case there must be evidence that the nuisance affected a number of persons generally in the latter case this is not necessary. If any individual suffered or was likely to suffer an infringement of a public right it may amount to a nuisance though the public at large may be unaffected by it.

The question what amounts to "injury danger or annoyance" in the one case and an obstruction to use of a public right in the other, depends upon public convenience. As such criminality in such cases depends not upon intention and knowledge but upon injurious effect produced in the manner stated. This is true whether the nuisance be public or private and whether it is indictable or merely actionable.

111. Steph (1866) L.R. 1 Q.B. 702, Nisar Mohd., 6 Lah. 203.
Negligent Act dangerous to life: 113

It is an essential rule for the preservation of society that no member thereof jeopardize the existence by any act criminal, unlawful or negligent. Indeed, individual responsibility for its preservation is not limited by those words, but it is limited by criminal law which enforces it within those limits by the pains and penalties. The offence extends as much to wilful acts as to acts done needlessly but in presence of the danger thereby threatened to society of which the accused had knowledge or belief. His responsibility will, therefore, vary with his knowledge of the infectious character of the disease. His ignorance of that fact is then a sufficient defence, whatever havoc his act may have played on his fellow-beings.

In this case the act of the accused is "malignant" or malicious, otherwise his act is the same as that punishable under the provisions of the last section. It is comparatively easy to conceive of an unlawful or negligent dissemi-

113. See also Section 269 of the Indian Penal Code—"Whoever unlawfully or negligently does any act which is and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both."
nating infection but it may not always be possible to trace act to a malignant origin. Indeed, if it could be unmistakably traced the case would then by one of homicide and not mere nuisance under this section. Maliciously causing infections... As the Law Commissioners observed— "If any person died of plague, and his death could be traced to infection so caused maliciously, the person who caused it would be chargeable with homicide".\(^{114}\) On the other hand, it is contrary to the principles of the Code to punish acts which the doer, when he committed them, knew to be likely to cause certain results, if in fact, such results were not produced in the same manner as if such evil consequences had actually followed from them.\(^{115}\)

This section deals with the disobedience of any published rule of Government whether such rule had or had not the effect of law and whether it was or was not made under any legislative enactment. As a matter of fact, Government has been empowered to frame and promulgate rules under the provisions of the Indian Ports Act,\(^ {116}\) and the Epidemic Diseases Act,\(^ {117}\) the disobedience of which would be

\(^{114}\) 2nd Rep., Section 226, (Section 270).

\(^{115}\) Ibid.

\(^{116}\) Section 271— The Indian Ports Act (III of 1901)— Now Act XV of 1908.

\(^{117}\) Act II of 1897, Sec. 2.
punishable under Section 188.

**Disobedience of Preventive Rules:**

It relates only to a knowing disobedience of its rules which must, however, be legal but which must having regard to the language of the section be presumed. \(^{118}\)

These rules must so far as this section is concerned relate to (a) quarantine, (b) regulating the intercourse between places where an infectious disease prevails and other places, or in short segregation. The rules must be made by the Government. Rules made under the authority of Government may be otherwise enforceable but they are not subject to the coercion of this section. As the word "Government" in this connection means the Central and State Governments of India, rules made by any other State are not enforceable under this section. But the rules made and promulgated by the Government of this country would be binding on ships of whatever nationality so long as they are within the territorial jurisdiction of that Government. Once they are outside that jurisdiction the rules remain but the power to enforce them (Punishment under such rules) is gone. But a part from this section the rules of quarantine have now an

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\(^{118}\) Cf. Section 188: where the words "lawfully empowered etc." make proof of legality incumbent on the prosecution.
established place in the criminal Codes of all civilised
countries, and master of ships touching their ports do so
on condition that they obey them. In fact, the rules
being made as much for the safety of the vessels concerned
as of those holding communication with them, it is the
mutual interest of both parties to obey them and their
disobedience is punishable whoever is guilty of infringing
the rules regulating the intercourse of such vessels.

This Section 272 of the Indian Penal Code, 119 is not
the only provision penalizing the sale and exposure for
sale of adulterated articles of food or drink, for the
various Municipal Acts contain several other provisions
for seizure and destruction of noxious articles and, in the
case of meat, a previous examination of the animals for
slaughter is required by the bye-laws of most municipali-
ties. This section however, is not confined to food and
drink intended only for human consumption. The purveyor of
noxious food for cattle is equally liable to punishment
under this section, while clause 5 of Section 521 of the

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119. Section 272— "Whoever adulterates any article of food
or drink, so as to make such article noxious as food
or drink, intending to sell such article as food or
drink, or knowing it to be likely that the same will
be sold as food or drink, shall be punished with impris-
sonment of either description for a term which may
extend to six months, or with fine which may extend to
one thousand rupees, or with both."
Code of Criminal Procedure authorises the Court to order destruction of the food or drink in respect of which the conviction of had.

This Section 273 of the Indian Penal Code,¹²⁰ is a necessary adjunct of the last and provides against the sale or exposure for sale of an article unfit for human consumption. Its terms are necessarily wider, for it comprises not only articles adulterated, but also those rendered noxious by lapse of time as tinned provisions kept too long, or those rendered unfit for consumption by long exposure, neglect or contamination.

This Section 274 of the Indian Penal Code,¹²¹ is even wider in its terms that the last section dealing only with victuals. As the purity of drugs is a sine qua non for their efficacy and as tampering with drugs may have serious

¹²⁰. Section 273— "Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹²¹. Section 274— "Whoever adultrates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with
consequence upon those to whom they are administered, it
is a matter of public concern that the purity and efficiency of drugs should be insured by the imposition of
penalty.

The Section 275 of the Indian Penal Code, 122 bears
the same analogy to the last as its predecessor bears to
Section 272. That section (Section 273) and the last,
punish the adulteration, and thus punish the purveyog of
such goods. There is however, this difference between
Section 273 and this, that while the former only punishes
a sale of noxious food or drink, this section punishes the
sale as well as its issue from any dispensary for medical
purposes as unadulterated. This was of course, necessary
for dispensaries are paid for the medicine they issue, and
the fact that the price was not set upon the drug sold could
be no defence to dispensing it in an adulterated form. The
last section and this correspond with Section 49 of the

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imprisonment of either description for a term which
may extend to six months, or with fine which may ex-
tend to six months, or with fine which may extend to
one thousand rupees, or with both.

122. Section 275— "Whoever, knowing any drug or medical
preparation to have been adulterated in such a manner
as to lessen its efficacy, to change its operation, or
to render it noxious, sells the same, or offers or
exposes it for sale, or issues it from any dispensary
for medicinal purposes as unadulterated, or causes it
to be used for medicinal purposes, by any person not

Contd...
English Sale of Food and Drugs Act the provisions of which are similar to those here enacted.

This Section 276 of the Indian Penal Code, is held to be covered by the provisions of Section 6 of the English Sale of Food and Drugs Act, 1975. For an article, which is not of the nature, substance and quality of the article demanded by the purchases, may be as much the same article of inferior quality as it may be a different altogether. Such would be the case where lard is supplied for butter, chicory for tea, or savin for saffron. The section deals specifically only with medical preparation, the case of food and drink would have probably to be dealt with under Section 290.

According to Denman, J. it is an indictable offence to render the water of a great public river corrupt, insal-

Contd...

knowing of the adulteration shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

123. Section 276— "Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

124. Section 277— "Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to Contd...
ubrious and unfit for human consumption, and he held the
director of a gas company responsible for the act of their
engineer who had conveyed the refuse of gas into river, tho-
ugh they were ignorant of this act, and indeed, though they
knew that the plan adopted for the disposal of the refuse was
different, "for if person for their own advantage employ ser-
vants to conduct works, they are answerable for what is done
by those servants.

The contamination of atmosphere is as injurious to
public health as the fouling of water punishable under the
last section. But as a contaminated atmosphere only affects
the neighbours, it is an element of the offence that the
vitiared atmosphere should be injurious to the health of the
neighbours or of those who pass along a public way. The
latter would then be those to whom the nuisance necessarily

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render it less fit for the purpose for which it is
ordinarily used, shall be punished with imprisonment
of either description for a term which may extend to
three months, or with fine which may extend to five
hundred rupees, or with both.

125. Section 278— "Whoever voluntarily vitiates the
atmosphere in any place so as to make it noxious to
the health of persons in general dwelling or carrying
on business in the neighbourhood or passing along a
public way, shall be punished with fine which may ex-
tend to five hundred rupees.
causes injury or danger which they have occasion to use the public right, within the meaning of the last clause of Section 268.

The case "not otherwise provided for" must be a case of a public nuisance as defined in Section 268. If the act is merely rash or negligent it may be punishable under Sections 336-338, but it is not then punishable under this section. In order to be so punishable, regard must be had to two things: (a) was the act a public nuisance, and (b) does it fall within the terms of any special action? If it is one and not covered by any special provision, it is then punishable under this section.

This section limits the liability to the actual nuisance feason. It does not extend it to his employer or master, though a joint owner may be liable. The proprietors and manager of a mill were convicted of this offence on the ground that the working of their mill has a nuisance. It appeared that the proprietors were not residents in the locality, and there was no allegation of any abetment by

126. Section 290- "Whoever commits a public nuisance in any case not otherwise punishable by his Code, shall be punished with fine with may extend to two hundred rupees."
whether the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of the sort may fall... It is quite certain that would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure libidinous character.

The Section 292 of the Indian Penal Code has five clauses and an act covered by any one of them constitutes the offence under it but all the clauses related to circulation of obscene matter. The section covers not only the publication or circulation of an objectionable object, but also making producing and having in possession such an object for the purpose of publication or circulation. Possession by a person for his own use is not punishable under this section. Section 293 of Indian Penal Code is related to sale of obscene objects to young persons. It has been made punishable. In the same way if any for the annoyance of other does any obscene act in any public place or sings obscene songs in or near any public place shall be punished.
Despite provisions for prevention of offences against public peace and Tranquility under Indian Penal Code, there are several very important achievements under allied laws. I would like to the relevant provision as under.

The Conservation of Foreign Exchange And Prevention of Smuggling Activities Act, 1974:

Whereas violations of foreign exchange regulations and smuggling activities are having an increasingly detrimental effect on the national economy and thereby a serious adverse effect on the security of the State.

And whereas having regard to the persons by whom and the manner in which activities or violations are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to smuggling, smuggling activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities and violations to provide for detention of persons concerned in any manner therewith. The relevant portion regarding public peace and tranquility is the following.
Power to make orders detaining certain persons:

The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary of that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purpose of this section by that Government may, if satisfied with respect to any person (including a foreigner), that with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from-

(i) smuggling goods, or
(ii) abetting the smuggling of goods, or
(iii) engaging in transporting or concealing or keeping smuggled goods, or
(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or
(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

it is necessary so to do, make an order directing that such person be detained.

When any order of detention is made by a State Government or by an officer, empowered by the State Government, the State Government shall, within ten days, forward
to the Central Government a report in respect of the order.

For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

The validity of subjective satisfaction of the detaining authority is the matter of judicial review. 129 It has been disclosed after 2 months and 10 days from the copious material from the last incident that the detenue was involved in smuggling or abetment, hence it cannot be said that the detention have been made too long after the alleged incident. 130 It is necessary that the entire material regarding detention must be placed before the Administrator for scrutiny.

129. Mangi Lal Baid Vs. Secretary Home (Spl.) Department, State of West Bengal and Others, 1975, Cr.L.J. 1790, (Cal).

130. Vasanti Vasant Bagkar (Smt.) Vs. Administrator of Goa, Daman and Dwe, 1980 Cr.L.J. 1313 (Goa).
The words "reasonable expedition" mean the delay depending on the circumstances of the particular case. There is no hard and fast rule for measuring the reasonable time, but it certainly excludes the delay due to negligence, callous in action, unavoidable redtapism and unduly protracted procrastination which directly or indirectly affect the merit of the case.  

The High Court does not function as the Court of Appeal in considering the legality of the order of detention when such order of detention was passed outside the ambit of law.

**The Prevention of Black Marketing And Maintenance of Supplies of Essential Commodities Act, 1980**

An act to provide for detention in certain cases for the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith.

**Power to make orders detaining certain persons**

The Central Government or a State Government or any officer of the Central Government, not below the rank of a


132. Smt. Chanda Rani Vs. State of Uttar Pradesh and Others, 1976 Cr.L.J. 468 (All.).
Secretary to that Government specially empowered for the purpose of this section by that Government may if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary as to do, make an order directing that such person be detained.

Explanation— For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies, of commodities essential to the community" means—

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 or under any other law for the time being in force relating to the control of the production, supply or distribution of or trade and commerce in any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955, or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a).

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.
Any of the following officers, namely:

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed may also if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.

Provided that where under Section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention this sub-section shall apply subject to the modification that for the words "twelve days" the words "fifteen days" shall be substituted.

When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government
not below the rank of Secretary to that Government specially empowered under sub-section (1), the State Government shall within seven days, report the fact to the Central Government to gather with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government have a bearing on the necessity for the order.

The Terrorist And Disruptive Activities (Prevention) Act, 1985:

Whoever with intent to overawe the Government as by law established or to strike terror in the people or any action of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause death of, or injuries to any person or persons or damage to or destruction of, property or disruption of any supplies or services essential to the life of the community, commits terrorist act.

Whoever commits a terrorist act shall,
(i) such act has resulted in the death of any person, be punishable with death;

(ii) in any case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life shall also be liable to fine.

Whoever conspires or attempts to commit, or advocates, abets advises or incites or knowingly facilitates the commission of a terrorist or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of any disruptive activity or any act preparatory to disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,

(i) which questions, disrupts, or is intened to disrupt, whether directly or indirectly, the sovereignty and territorial integrity or India; or
(ii) which is intended to bring or supports any claim, whether directly or indirectly for the cession of any part of India or the secession of any part of India from the Union.

**Explanation**— For the purposes of this section,—

(a) "cession" includes the admission of any claim of any foreign country to any part of India; and

(b) "secession" includes the assertion of any claim to determine whether a part of India with remain within the Union.

Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or any speech or through any other media or in any other manner whatsoever which—

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any persons bound by oath the Constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section.

**Power to make Rules**:

The Central Government may by notification in the Official Gazette makes such rules as appear to it necessary
or expedient for the prevention of and for coping with, terrorist acts and disruptive activities.

Without prejudice to the generally of the powers conferred by sub-section (1) the rules may provide for and may empower any authority (being the Central Government or a State Government or the Administrator of a Union Territory under Article 239 of the Constitution or an officer of the Central Government not lower in rank than that of a Joint Secretary to that Government or an Officer of a State Government not lower in rank than that of a District Magistrate or an Officer competent to exercise under any law the powers of a District Magistrate to make orders providing for, all or any of the following matter with respect to the purposes mentioned in that sub-section, namely:

(a) presenting or prohibiting anything likely to facilitate the commission of terrorist acts or disruptive activities, or prejudicate the successful conduct of operation against terrorists or disruptionists including-

(1) communication with persons (whether within or outside India) instigating or abetting terrorist acts or disruptive activities or assisting in any manner terrorists or disruptionists;

(ii) acquisition, possession or publication, without lawful authority or excuse or information likely to assist terrorists or disruptions;

(iii) rendering of any assistance, whether financial or otherwise, to terrorists or disruptions;

(b) preventing, with a view to coping with terrorist acts or disruptive activities, the spread without lawful authority or excuse, of reports or the prosecution of
any purpose likely to cause disaffection or alarm or to prejudice maintenance of peaceful conditions in any area or part of India or to promote feelings of ill-will, enmity or hatred between different sections of the people of India,

(c) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(d) requiring any person or class of persons to comply with any scheme for the prevention of, or for coping with, terrorist acts, or disruptive activities;

(e) ensuring the safety of persons and property;

(f) the demolition, destruction or rendering useless, in case of necessity of any building or other premises or any property;

(g) prohibiting or regulating in any area traffic and the use of any vehicles or vessels or signals or any apparatus whatsoever;

(h) the control of movements within India of persons arriving in India from outside India;

(i) prohibiting or regulating the use of postal, telegraphic or telephone services, including possession of such services, and the delaying, seizing, intercepting or interrupting of postal or telegraphic telephonic messages;

(j) regulating the delivery, otherwise than by postal or telegraphic or service, of postal articles and telegrams;

(k) regulating supplies and services essential to the life of the community;

(l) the requisitioning of services of persons for maintaining supplies and services essential to the life of the community;

(m) the provision, construction maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of operation against terrorists or disruptions;
(n) prohibiting or regulating the possession, use or disposal of—

(i) explosives, inflammable substances, corrosive and dangerous articles; arms and ammunitions;

(ii) vehicles and vessels;

(iii) wireless telegraphic apparatus;

(iv) photographic and signalling apparatus, or any means or recording or communicating information;

(o) presenting the disclosure of official secrets;

(p) prohibiting or regulating meetings, assemblies, fairs and processions;

(q) preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and;

(r) ensuring the accuracy of any report or declaration legally required of any person;

(s) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purported to be or resembling an official person, official document or official property;

(t) the entry into and search of any place whatsoever reasonably suspected of being used for harbouring terrorists or disruptionists or manufacturing or storing anything for use or purpose of terrorist acts or disruptive activities.

The rule made under sub-section (1) may further—

(a) provide for the arrest and trial of persons contravening any of the rules or any order issued thereunder;

(b) provide that any contravention of or any attempt to contravene, or any abetment of or any attempt to abet the contravention of any of the provisions of the rules or any order issued under any such provision shall be punishable with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;
(c) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (b) has been committed and for the adjudication of such seizure and forfeiture whether by any count or by any other authority;

(d) confer powers and impose duties as respects any matter upon the Central Government or officers and authorities of the Central Government or upon any State Government or officers and authorities of the State Government;

(e) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of or securing the observance of the rules or any order made thereunder;

(f) provided for preventing contravention, obstruction and deception or, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or any order made thereunder;

(g) prohibit attempts by any person to screen from punishment anyone, other than the husband or wife of such person, contraventing any of the rules or any order made thereunder;

(h) empower or direct any authority to take such action as may be specified in the rules or as may seem to such authority necessary for the purpose of ensuring the safety of persons and of property.

Enhanced Penalties:

If any person contravences in any area notified this behalf by a State Government any such provision of or any such rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the inflammable Substances Act, 1952, as may be notified in this behalf by the Central Government or by a State Government, he shall notwithstanding anything contained in any of the
aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to ten years or, if his intention is to aid any terrorist or disruptio-
nist, with death or imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

For the purpose of this section, any person who attempts to contravene or abets, or attempts to abet or does any act preparatory to the contravention of any pro-
vision of any law, rule or order shall be deemed to have contravened that provision.

The Terrorist Affected Areas (Special Courts) Act, 1984 -

Declaration of Terrorist Affected Area:

If the Central Government is of the opinion that

offences of the nature specified in the schedule are being committed in any area by terrorist on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Act, it may by notification,-

(a) declare such area to be a terrorist affected area; and

(b) constitute such area into a single judicial zone or in to as many judicial zones as it may deem it.
A notification issued under sub-section (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Act, be a terrorist affected area, and where the Central Government is of the opinion that terrorist had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the schedule on such a scale and in such a manner that it expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from the date:

Provided that—

(a) no period commencing from a date earlier than six months from the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed six months, but the Central Government may by notification extend such period from time to time by any period not exceeding six months at any one time if the Central Government having regard to the activities of terrorists in such area, is of the opinion that it is expedient so to do.

Explanation— For the avoidance of doubts, it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of commencement of this Act.
The Terrorist And Disruptive Activities (Prevention) Act, 1987:

The Terrorist and Disruptive Activities (Prevention) Act, 1985 was enacted in May, 1985 in the background of escalation of terrorist activities in many parts of the country at that time. It was expired then that it would be possible to control the menace within a period of two years and therefore, the life of the said Act was restricted to a period of two years from the date of the commencement. However, it was subsequently realised that on account of various factors what were stray incidents in the beginning have now become a continuing menace specially in States like Punjab. On the basis of experience it was felt that in order to combat and cope with terrorist and disruptive activities effectively, it is not only necessary to continue the said law but also to strengthen it further. The aforesaid Act of 1985 was due to expire on the 23rd May, 1987. Since both Houses of Parliament were not in session and it was necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987), on the 23rd May, 1987 which came into force with effect from the 24th May, 1987.

Received the assent of the President on September 3, 1987 and published in the Government of India, Extra Part II Section 1, dated 3rd September, 1987.
Ordinance included all the provisions of the Act of 1985 except the following changes namely—

(a) punishments for terrorist act and disruptive activities were made more deterrent;

(b) the Central Government has also been empowered to constitute Designated Courts;

(c) the exhaustive enumeration of rule making powers, as contained in Section 5 of the 1985 Act, had been dispensed with and the Central Government had been given power to make rules for carrying out the provision of the Ordinance.

Subsequent to the promulgation of the Ordinance, it was felt that the provisions and further strengthening in order to cope with the menace of terrorism. It is, therefore, proposed that persons who are in possession of certain arms and ammunition specified in the Arms Rules, 1962, or other explosive substances unauthorisedly in an area to be notified by the State Government, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and with fine. It is further proposed to provide that confession made by a person before a Police Officer not lower the rank that a Superintendent of Police and recorded by such Police Officer either in writing or any mechanical device shall be admissible in the trial of such person for an offence under the proposed legislation or any rules made thereunder. It is also proposed to provide that the Desig-
nated Court shall presume unless the contrary is proved that the accused had committed an offence where arms or explosives or any other substances specified in Section 3 were recovered from his possession, or where by the evidence of an expert the finger prints of the accused were found at the site of offence or where a confession has been made by a co-accused that the accused had committed the offence or where the accused had made a confession of the offence to any other person except a Police Officer. It is also proposed to provide that in the case of a person declared as a proclaimed offender in a terrorist case, the evidence regarding his identification by witness on the basis of his photograph shall have the same value as the evidence of a test identification parade. Further the Designated Courts are also proposed to be empowered to try certain offence in a summary way in accordance with the procedure prescribed in the Code of Criminal Procedure, 1973. The matters in respect of which rules may be made by the Central Government are also proposed to be enumerated. The said amendments included in the Bill have been explained in the Memorandum attached to the Bill.

The Bill to replace the aforesaid Ordinance and to include therein the aforesaid amendments.
Whoever with intent to everawe the Government as 
by law established or to strike terror in the people of any 
section of the people or to alienate any section of the 
people or to adversely affect the harmony amongst different 
sections of the people does any act or thing by using bombs, 
dynamite or other explosive substances or inflammable subs-
tances or fire-arms or other lethal weapons or poisons or 
nnoxious gases or other chemicals or by any other substances 
(whether biological or otherwise) of a hazardous nature in 
such a manner as to cause, or as likely to cause, death of 
or injuries to, any person or persons or loss of or damage 
to or destruction of property or disruption of any supplies 
or services essential to the life of the community, or 
detains any person and threatens to kill or injury such 
person in order to compel be Government or any other person 
to do or abstain from doing any act, commits a terrorist 
Act.

Whoever commits a terrorist act, shall—

(i) if such act has resulted in the death of any person 
be punishable with death or imprisonment for life and 
shall also be liable to fine.

(ii) in any other case, be punishable with imprisonment for 
a term which shall not be less than five years but 
which may extend to imprisonment for life and shall also 
be liable to fine.

Whoever conspires or attempts to commit, or advoca-
tes, abets advises or incites or knowingly facilitates the
commission of a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment or a term which shall not be less than five years but which may extend to imprisonment for life and also be liable to fine.

Whoever commits or compires or attempts to commit or abets, advocates, advises or knowingly facilitates the commission of any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not less than five years but which may extend to imprisonment for life and shall also be liable to fine.

For the purposes of sub-section (1) "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly the sovereignty and territorial integrity of India; or
(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

**Explanation**— For the purposes of this sub-section,—

(a) "cession includes the admission of any claim of any foreign country to any part of India; and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken whether by act or by speech or through any other media or in any other manner whatsoever, which—

(a) advocates, advises, suggests or incites, or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

Whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and
shall also be liable to fine.

The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982:

Offence of Committing Violence On Board An Aircraft In Flight Etc.

Whoever unlawfully and intentionally—

(a) commits an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of such aircraft; or

(b) destroys an aircraft in service or causes damage to such aircraft in such a manner as to render it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable to flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) communicates such information which he knows to be false so as to endanger the safety of an aircraft in flight,

shall be punished with imprisonment for life and shall also be liable to fine.

Whoever attempts to commit, or abets the commission, of any offence under sub-section (1) shall also be deemed to have committed such offence and shall be punished with the punishment provided for such offence.
Destruction of or Damage to Air Navigation Facilities:

Whoever unlawfully and intentionally destroys or damages air navigation facilities or interferes with their operation in such a manner as is likely to endanger the safety of the aircraft in flight shall be punished with imprisonment for life and shall also be liable to fine.

Whoever attempted to commit or abets the commission of any offence under subsection (1) shall also be deemed to have committed such offence and shall be punished with the punishment provided for such offence.

The Unlawful Activities (Prevention) Act, 1967:

Though the external characteristics, the acts may differ they all share some common characteristics, namely—(1) the acts are the result of or are intended to cause, a shift of allegiance, a split between the nation and its citizens; and (ii) the acts represent a preparatory or other doubt; but the connection between the visible act and the ultimate end is not always easy to discern. For example sedition usually consit of words, not action. The ultimate end is to destroy the bond between the nation as represented by the Government established by law and those whose obedience the Government is entitled to command. But the means adopted—usually, words—represents a stage preparatory
towards graver act. Similarly, an act of sabotage, undoubtedly committed with the object of impeding the defence efforts of the nation is nevertheless an indirect and therefore, not easily discoverable mode of achieving that object. The expression "subversive activities" is, we think, apt as a convenient label for describing these acts, as distinct from graver acts of 'overthrowing' the Government. And we proceed now to indicate the offence to be included in this group.

We think that the principal offence dealt with in the Unlawful Activities (Prevention) Act, 1967 (so far as relates to abetting, inciting or advising certain activities described in the Act as 'unlawful activities' could from the first section in the group of subversive activities. The definition of an 'unlawful activity' in that Act comprises three kinds of acts, concerned respectively with (i) cession of Indian territory, (ii) cession of a part of the territory from the Indian Union, and (iii) disclaiming, questioning or disrupting the sovereignty and territorial integrity of India. The first two are really illustrative of the third which is the most general, and the essence of it is disruption. A more expressive designation for this type of anti-national activity would, therefore, be "disruptive activity". It is obvious that such acts are in their essence subversive acts. As has been stated more than once, the essence of treason is destruction
of the bond between the citizen and the State. These acts are aimed at such destruction.

The provision which we propose on the subject is modelled on section 13(1) of the Act, which contains the penal provision. The gist of section 2(f) which defines "unlawful activity" and of section 2(b) and 2(d) which explain "cession" and "secession" respectively, is put in the Explanation.

The relevant section will be as follows:

"Whoever commits, or abets the commission of any disruptive activity, or advocates or advises any disruptive activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

**Explanation**— For the purpose of this section—

(a) "disruptive activity" means any action taken, whether by act or speech, or by written words, signs or visible representation, or otherwise,—

(i) which questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India, or

(ii) which is intended to bring about, or supports any claim for, the cession of any part of India, or the secession of any part of India from the Union, or

(iii) which incites any person to bring about such cession or secession;
(b) "cession" includes the admission of the claim of any foreign country to any part of India;

(c) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

**Exception**— Nothing in this section applies to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations there for carried on by any person authorised in this behalf by the Government of India.

**The Punjab Disturbed Areas Act, 1983** :

This Act may be called the Punjab Disturbed Areas Act, 1983.

It extends to the whole of the State of Punjab.

It shall be deemed to have come into force on the 7th day of October, 1983.

**Definition**— In this act, "disturbed area" means an area which is for the time being declared by notification under Section 3 to be a disturbed area.

**Powers to declare areas to be disturbed areas**—

The State Government may, by notification in the Official Gazette, declare that the whole or any part of any
district of Punjab as may specified in the notification, is a disturbed area.

**Power To Fire Upon Person Contravening Certain Orders:**

A Magistrate or Police Officer not below the rank of Sub-Inspector or Havildar in case of the Armed Branch of the Police may, he is of opinion that it is necessary to do so for the maintenance of public order after giving such due warning, as he may consider necessary, fire upon or otherwise use force, even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.

**Powers to Destroy Arms Dump Fortified Positions, Etc.:**

Any Magistrate or Police Officer not below the rank of a Sub-Inspector may, if he is of opinion that it is necessary so to do, destroy any arms dump prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence.
Protection of Persons Acting Under Section 4 and 5:

No suit prosecution or other legal proceedings shall be instituted except with the previous sanction of the State Government against any person in respect of anything done or purporting to be done or purporting to be done in exercise of the powers conferred by Sections 4 and 5.

The National Security (Amendment) Act, 1987 -

During the last few months, the activities of the extremist and terrorist elements in the State of Punjab and the Union territory of Chandigarh have been a matter of serious concern. These elements indulged in violent activities and terrorist methods, including threats to persons involved in the investigation and prosecution of cases. Although the entire state of Punjab and the whole of the Union Territory of Chandigarh had been declared as "disturbed area" under the relevant Disturbed Area Act, there had been no improvement in the effective prevention of these activities. While the deteriorating law and order situation had necessitated the imposition of the President's rule in the State of Punjab, further strong action was found necessary to prevent the terrorists from indulging in activities prejudicial to the security of the State and maintenance of public order. The State Government had also requested
the taking of suitable measures to enable it to take preventive action. Accordingly, the President promulgated on the 9th June, 1987 the National Security Amendment Ordinance, 1987 to provide for certain modification in the application of National Security Act, 1980 to the State of Punjab and the Union Territory of Chandigarh.

The Ordinance provided for the following among other things, namely—

(a) to increase from 10 days to 15 days the maximum period within which grounds of detention may, in exceptional circumstances, be communicated to the detenu and to increase from 15 days to 20 days up to which the orders made by the officers referred to in sub-section (1) of section 3 of the Act shall remain in force without the approval of the State Government;

(b) to provide in certain cases for detention of persons without obtaining the opinion of the Advisory Board for a period of more than three months but not exceeding six months from the date of their detention and to provide also in such cases for a longer maximum period of detention; and

(c) to make the necessary consequential amendments in the Act.

The Bill seeks to replace the aforesaid Ordinance.

**Insertion of New Section 14-A**

In the principal Act, after Section 14, the following section shall be inserted, namely:-
"14A circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Boards—(1) Notwithstanding anything contained in the foregoing provisions of this Act, or in any judgment, decree or order of any court or other authority, any person in respect of whom an order of detention has been made under this Act at any time before the 8th day of June, 1988 may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding six months, from the date of his detention where such person had been detained with a view to preventing him, in any disturbed area,—

(i) from interfering with the efforts of Government in coping with the terrorist and disruptive activities, and

(ii) from acting in any manner prejudicial to—

(a) the defence of India; or
(b) the security of India; or
(c) the security of the State; or
(d) the maintenance of public order; or
(e) the maintenance of supplies and services essential to the community.

Preventive Detention —

Security of a State, maintenance of public order and of supplies and services essential to the community demand effective safeguards in the larger interest of sustenance of peaceful democratic way of life, Article 22, therefore, must be construed on its plain language
consistently with the basic requirement of preventing anti-social subversive elements from imperilling the security of States or the maintenance of public order or of supplies and services therein.

In this act, unless the context otherwise requires,—

(a) "appropriate Government", means, as respects a detention order made by the Central Government, or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) "detention order" means an order made under Section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(d) "person" includes a foreigner;

(e) "State Government" in relation to a Union territory, means the administrator thereof.

Grounds of Order of Detention to be Disclosed to Persons Affected by the Order —

When a person is detained in pursuance of a detention order, the authority making the order shall as soon as may be but ordinarily not later than five years and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making
a representation against the order to the appropriate Government.

14-A

In the case of any person to whom sub-section (1) applies, (Section 10 to 14) shall have effect subject to the following modifications, namely:

(a) in Section 10, for the words 'shall within three weeks' the words 'shall within four months and two weeks' shall be substituted;

(b) in Section 11,-

(i) in sub-section (1), for the words 'seven weeks' the words 'five months and three weeks' shall be substituted.

(ii) in sub-section (2) for the words detention of the person concerned the words continued detention of the person concerned shall be substituted;

(c) in Section 12, for the words "for the detention" at both the places here they occur, the words "for the continued detention" shall be substituted;

(d) in Section 13, for the words "twelve months", the words "two years" shall be substituted.