



PREVENTIVE MEASURES UNDER CRIMINAL PROCEDURE CODE FOR MAINTAINING PUBLIC ORDER AND TRANQUILITY

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Introduction

Maintenance of peace of order is absolutely essential in any society for human beings to live peacefully and without fear of injury to their lives and property. This is possible only in states where the penal law is effective and strong enough to deal with the violators of law. Any state, whatever might be its ideology or form of government, in order to be designated as a state, should certainly have an efficient system of penal laws in order to discharge its primary functions of keeping peace in land by maintaining law and order. The law of crimes took birth along with our civilization. As soon as people grouped themselves into organized society, the need for criminal law was immediately felt. Personal safety, particularly security of life, liberty and property, is of utmost importance to any individual. The instrument by which this paramount duty of the government is maintained, is undoubtedly the penal law of land. Thus, the prime object of criminal law is the protection of the public by the maintenance of law and order.¹

Law and order are not different from the acts which affect 'public order'. Indeed a state of peace or tranquility which prevails as a result of observance or enforcement of internal laws and regulations by the government, is a feature coming to concept of "law and order" and "public order".²

Unlawful Assembly

By the nineteenth century, the term "illegal gathering" was used in English law to describe a gathering of at least three people with the intent to commit an illegal act under duress or to carry out a common task (regardless of whether it is legal or illegal) in a manner or under circumstances that, in the opinion of strong and discerning men, endanger public order or cause imminent danger to the peace of the neighbourhood. There have been many legal codes discovered and justice practices revealed among ancient civilization within southeastern Europe and Middle east. A number of legal documents have been uncovered either in original form or in later historical records that outlined intricate "Law Codes" that ruled normal life within the Persian, Jewish, Greek and Roman Empires through the start of common Era.³

The legislation recorded by Draco did have negative impact on the lower classes and severe financial penalties often placed then in economic distress. This feeling of inequality brought city of Athens to verge of civil war in 594 B.C. The newly elected chief Magistrate of Athens, Solon, revised Athenian law code solon concluded that the wealthy landowners, brought their greed, had disturbed community life solon initiated a rationale approach to the problem of the society by de-emphasizing the role of the God's in civil affairs and by holding that written law should be more in harmony with the priorities of the community

Section 144

According to the Criminal Procedure Code (CrPC) of 1973, a judge has the authority to prohibit a grouping of more than four people in a certain area. According to sections 141–149 of the Indian Penal Code (IPC), the harshest punishment for participating in repulsive behaviour is a lengthy period of solitary confinement or a potential fine. Each member of an unlawful group may be held accountable for any conduct committed on behalf of the group. Discipline may be improved by discouraging an officer from trying to disperse an illegal gathering.

¹ Pillai's *Criminal Law*, 9th edn (2007)

² AIR 1970 SC 1228

³ R.H.Lowe, *Primitive Society*, 238(1961)



CONSTITUTIONAL PROVISIONS FOR MAINTAINING LAW AND ORDER

The preamble of the Constitution promises to all citizens of the sovereign, democratic, republic of India, justice, liberty, equality and fraternity. Liberty, therefore regarded as one of the values or ends to be secured to every citizen through the constitution. In the preamble itself liberty is elaborated as the "liberty of thought, expression, belief, faith and worship". Although there is no separate chapter devoted to liberty as such, the constitution does envisage in part - III a number of rights termed as "fundamental rights"¹, certain freedoms guaranteed under:⁴ Article 19 of the Constitution guarantees to the citizens of the size fundamental freedoms which are exercisable by throughout and in all parts of the territory of India. These are:

The freedom enumerated in Article 19(1) grant the basic rights which are recognized as the natural rights inherent in the status of a citizen.' But none of these freedom is absolute or uncontrolled for each is liable to be curtailed by laws made or to be made by the state to the extent mentioned in clause (2) to(6) of Article 19. Clause (2) to (6) of Article 19 recognizes the right of thestate to make law putting reasonable restrictions in the interest of general public, security of the state, public order, decency or morality and for other reasons set out in those sub-clauses. The principle on which the power of state to impose restriction is based is that all individual rights of a person are held subject to such reasonable limitations and regulations as may be necessary or expedient for the protection of the general welfare. In the words of Das, J., "Social interest in individual liberty may well have to be subordinated to other greater social interest."⁵

Disturbance of Peace, and Riot in the Realm

To cause disturbance of peace or riot constituted an offence and was punished as such. During Akbar's expedition to Gujarat in 1572, some mischief mongers spread the false news that the Emperor had issued an order for plundering of the camp of Gujartis. The royal soldiers started plundering the camp and a great commotion ensued. When the matter was reported to Akbar, he summoned the high officers and ordered them to inflict punishment on the plunders and put to death those who were found in possession of the loot. He himself held a public court and ordered that the fierce elephants be brought there. The rioters were taken before the Emperor and trampled under the fact of the elephants. The goods were returned to the owners and order was restored⁶

The Maintenance of Order in Old Testament times

If order is taken to be the law in action within a community with its primary aim of the establishment of equity or justice, then the world old testament furnishes examples. It has been shown the primary purpose of, and consequence of the law rightly applied is justice — that element of right and peace without which no nation can flourish. 'Order' in the sense of 'right' is not distinguished from integrity, righteousness and peace' (the latter concepts relate the whole of man to all — God, his fellows and his environment). These three words are used as synonymous in Hebrean and there is no specific term for 'order' as opposed to chaos other than these which are attributed to God and this word when acted upon. 'Great peace have they who love thy word and nothing can make them stumble. Such words as may be translated 'Order' according to the context include that which is the common word of law — 'to command'. The order depicted here is one of Divine rules which govern the various controlled movements of the planets stars and tides all as unlike normal human thought as the heavens are higher than the earth.⁷

Evacuation of Public Nuisances (Section133 of CRPC)

Legitimate plans for removing public nuisances under Section 133 of the 1973 Code of Criminal Procedure. A class or group that resides in a particular area may be considered to be close to the

⁴ D.D. Basu, *Shorter Constitution of India* (2000), p.728.

⁵ *AK. Gopalan v. State of Madras*, AIR 1950 SC 27

⁶ Abul Fazl, *Akbar Noma*, III, tr, by H. Beveridge, p.717.

⁷ DJ Wiseman "Law & Order in old testament", *Vox Evangelica* 8 (1973)



phrase "open." Another that directly interferes with the typical physical comfort of human presence is "irritation." According to Section 268 of the Indian Penal Code, the harm, menace, or disruption must be directed toward the general populace, the general populace in the area, or individuals who may have occasion to exercise any open right. A "open place" also includes real estate that is owned by the State, outdoor spaces, and spaces that have been left empty for hygienic or recreational purposes. The general populace put, or a location to which the populace approaches by right, agreement, use, or another means, must be interested in people in general. the broad society evacuation system.⁸

The Unlawful Activities (Prevention) Act 1967

This Act is essentially for dealing with the effective prevention of certain unlawful activities of individuals and associations, as defined in the Act. While 'unlawful activity' under the Act is essentially concerned with territorial integrity and sovereignty of the country, the definition of 'unlawful association' to wider includes any activity punishable under Section 153A and Section 153B of IPC, 1860.

The Police Act, 1861

Subject to the orders for the maintenance of the public peace and the control of traffic, the public has a right to use of the public streets for procession with music, and no restriction on the use of a street or thoroughfares arises from the existence besides it of any place of worship. Any person or community asserting the existence of a right or custom which would limit the civil rights of others persons or communities must establish the validity of such a claim in civil court. At the same time persons actually engaged in congregational worship may ordinarily expect that they shall as far as possible be undisturbed.⁹

The Arm Act, 1959

The Arms Act, along with the rules framed there under deals with matters concerning arms and ammunition. It has provisions for the acquisition, possession, manufacture, sale, import, export and transport of arms and ammunition and the system of licenses for regulations all this. There are specific provisions laying down the powers and procedures under the Act, which discussed below.

Unlawful Assembly

By the seditious meeting Act, 1817 is an unlawful assembly i if more than fifty persons meet within a mile of Westminster Hall during settings of parliament for the purpose or not the pretext of considering or preferring a petition, complaints, remonstrance or address to the king or other house of parliament for alternation of matters in church or state. This act is relic of the legislative restraint inspired by French revolution.³⁶

Public Order Act 1936

Under this Act if any person take part in or with any association of persons organized, trained or equipped so as to be employed for the use or display of physical force in promoting any political object or in such manner as to arouse reasonable apprehension that they are so organized for that purposes.¹⁰

Position in India

In the modern context, public violence has been emerging as one of the important but complex problems of criminal jurisprudence. On the one hand there is the view point of administration, civil servants, law and order enforcement agencies and criminologists of their way of thinking that existing provisions in the Indian penal code, particularly those in this chapter are hardly adequate to deal with new forms of dissent which tend to threaten or disturb public tranquility, such as *Bandhs*, *Dharnas*, *Ghereos*, *Rallies*, *Rasta-Rokos*, etc. On other hand there is view point of the liberal

⁸ Perry, *Western Civilization A brief History*,47 VOL.1(1993)

⁹ Roth, *Crime and Punishment:A History of the criminal justice system*,24(2005)

¹⁰ DJ Wiseman "Law & Order in old testament", *Vox Evangelica* 8 (1973)



ideologues and sociologists who assert that such form of dissent and protest are of the very essence true democratic polity they point out that if the advocates of absolute law and order had their say there would have been no American Revolution, France, and England would still be ruled by absolute monarchs women would not have gained the vote, Labour would not have broken the strangle hold of industry through the injunction process etc. The truth is that the expositors of the law and order theme and exponents of the dissent and protest ideology are both right and wrong. In a state owing allegiance to the rule of law and principles of democracy, justice, Liberty equality and fraternity, dissent and protest are as vital as law and order.^{4°}

Public Order

The preservation of public order is one of the grounds for empowering restrictions on freedom of speech and expression. This ground did not occur in the constitution as framed in 1950. It was added by the constitution (First Amendment) Act 1951. The Amendment had become necessary because the Supreme Court in *Ramesh 'Taper Case'*⁴³ had refused to permit the imposition of restriction on the right to free speech in the interests of public order, when the constitution had not included that as a permissible grounds of restraint.

The expression public order is synonymous with public peace, safety and tranquility." It signifies absence of disorder involving breaches of local significance in contradiction to national up heavals such as revolution, civil strife or war, affecting the security of the state. To illustrate, the state may, in the interest of public order, prohibit and punish the causing of loud and raucous noise in streets and public places by means of sound amplifying instruments, regulate the hours and place discussions and the use of public streets for the purpose of exercising freedom, provide for expulsion of hacklers from meetings and assemblies, punish utterances tending to incite breach of peace or riot and use of threatening, abusive or insulting words or behavior in any public place or at any public meeting with intent to cause a breach of the peace is likely to be caused, and all such as would endanger public safety.⁴⁵

Prevention of Terrorism Act, 2002

The central government had earlier made the Terrorist and Destructive Activities (Prevention) Act 1987 (TADA). But this law was repealed. In 2002 the Prevention of Terrorism Act 2002 (POTA) was enacted by Parliament.

Section 3 of (POTA) gives the meaning of "terrorist act". This meaning is wide enough to cover unlawful activities and contingencies threatening the unity, integrity, security or sovereignty of India. Thus, the provisions of POTA can be used to deal with serious cases relating to disturbance of public order, specially communal disturbances. Under Section 4 of POTA, the possession of certain unauthorized arms within an area notified by the state government is a terrorist act, punishable with imprisonment for a term which may extend for life, or with fine which may extend to rupees ten lakhs or with both. POTA also deals with "terrorist organizations".

The Explosive Substances Act 1908

This Act deals with the crime committed through explosive substances which, though not defined in the Act. The word 'explosive' under the Act has wider meaning. Section 2 defined the "explosive substance" the expression 'explosive substance' shall be deemed to include any material for making any explosive substance, also any apparatus, machine, implement or material used, or intended to be used. or adapted for causing, or aiding in causing, any

Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights 1948 recognizes the inherent dignity and of the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world. Whereas disregarded and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of common people. The people of the united nations have in the charted reaffirmed their faith in the fundamental human rights, in the dignity and worth of the human



person and in the equal rights of men and women and have determined to promote social progress and better standards of life in largest freedom. The objects of declaration in respect of observance of human rights and fundamental freedoms

CONCLUSION AND SUGGESTIONS

The study on "Offences Against Public Order and Tranquility", leads to the logical conclusion that earnest endeavour are needed for maintaining secular ethos of the India society as secularism is now a basic structure of the Indian constitution which cannot be permitted to be diluted in any form. Communal harmony which is the prime need of the time cannot be allowed to be disturbed. Penal law in this respect plays a pivotal role in the maintenance of public peace among various religious and religious factions. It has been observed from the study that the provisions need to improvement both in enactment as well as enforcement.

The fundamental object of the state is to protect the society from its external and internal attack i.e. against all types of crimes affecting state security. A state performs its prime duty through its legal enforcement agencies as police force and in extreme cases by military. The primary function of criminal law is to protect society by preventing crime which is done by imposing various punishments to offenders. The modern approach of criminal justice system is reformatory and deterrent viewed in the larger and pragmatic perspective, the working of enforcement agencies, keeping in view availability of resources, is satisfactory. The first and foremost requirement for handling a legal situation is that the officers present make a prompt return of the open request. It's possible that those people are angry about a legitimacy issue, and that the issue needs to be addressed by the appropriate professionals to change the situation. In any case, that cannot be the determining factor in holding the officer accountable for a situation and requiring them to act without hesitation. The problem of equity is put on hold in the event that a Muslim horde becomes violent over a matter involving inappropriate behaviour toward Muslims since the swarm needs to be swiftly and unhinderedly subdued.

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