

Illustration: tacit
condition that as they
rely upon



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Illustration: A joins an insurrection against the Government of India. A has committed the offence defined in this Section. In Section 121 of the code the term ' whoever' applies to Indian citizens as well as foreigners. A citizen owes allegiance by birth or naturalization, and a foreigner by his residence.

The State, in accordance with the de jure gentium, admits the right of the foreigners to enter the country only upon the tacit condition that as they rely upon its protection they also subject themselves to its laws. The expression ' Waging War' means and can only mean, waging war in the manner usual in war. It imports a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, having gained footing in the realm. The waging of war is the attempt to accomplish by violence any purpose of a public nature.

A deliberate and organised attack upon the Government forces and Government offices amounts to a waging war. There are three stages of waging war against the Government: (i) abetment, (ii) attempt and (iii) the actual war. Section 121 of the code places at par all the three stages of waging war. For all the three types of offences the section imposes the same punishment. The words ' wages war' naturally import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, having gained footing within the realm. There must be an insurrection and there must be force accompanying that insurrection and it must be for an object of a general nature. When a multitude rises and assembles to attain by force and violence any object of a general public nature, it amounts to levying war against the Government.

Every citizen is free to have his own political theory and also to propagate and work for its establishment so long as he does not seek to do so by force or violence. An offence under Section 121 is cognizable, non-bailable, non-compoundable, and exclusively triable by the Court of Session. It is an offence in which the Judge may issue warrant in the first instance. In *Venu Nair v. Travancore – Cochin State* [AIR 1955 Tra-Co 33], it has been held : (i) that it was open to the members of the society to achieve the object of the end of capitalism and private ownership and establishment of a socialist State by all peaceful means, ceaselessly fighting public opinion that might be against them and opposing those who desired the continuance of the existing order of society and the present Government; (ii) that it would also be legitimate to presume that they desired a change in the existing Government so that they could carry out their programme and policy. But from these it did not follow that the society desired to bring about the change by force and violence; (iii) that the mere use of the words ‘fight’ and ‘war’ in their pledge, did not necessarily mean that the society planned to achieve its object by force and violence. In *Maganlal Radha Krishan v. Emperor* [AIR 1946 Nag.

126], the following characteristics of the offence of waging war were pointed out: i) No specific number of persons is necessary to constitute the offence of waging war; ii) The number of persons concerned and the manner in which they are equipped is immaterial; iii) The true criterion is ‘Quo Animo’, did the gathering assemble; iv) The object of the gathering must be to attain by force and violence an object of a general public nature there by striking directly against the state authority. v) There is no distinction between

principal and accessory and everyone who takes part in the unlawful act incurs the same guilt. In *Mir Hasan Khan v. State* [AIR 1951 Pat. 50], it was observed that it would not be enough to show that the persons charged have connived to obtain possession of an armory and have when called upon to surrender it used the rifles and ammunition so obtained against the state troops.

It must also be shown that the seizure of the armory was part and parcel of a planned operation and that their intention in resisting the troops of the State was to over helm and defeat the troops and then to go on and crush any further opposition with which they might meet until either the leader of the movement succeed in obtaining possession of the machinery of Government or until those in possession of it yield to the demands of their leaders. Abets the waging of such war: Abetment of waging war is made a special offence. In *Maganlal v. King Emperor* [1946 MLJ 139] it was observed that it is not essential that as a result of the abetment, the war should in fact be waged. The main purpose of the instigation should be ' the waging of war'. It should not be merely a remote and incidental purpose but the thing principally aimed at by the instigation. There must be active suggestion or stimulation to the use of violence.

In *Ganesh D Savarkar* [(1909) 12 Ban LR 105], it was observed that so long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. One is guilty of instigating and thereby abetting the waging of war only when he definitely and clearly incites to action. It was held that the poems published by Ganesh D Savarkar conveyed to the readers an instigation to wage war and the accused was

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guilty of abetting the waging of war. Intention and attempting of waging war: Intention to wage war against the Government is the most essential ingredient under Section 121 of the code. In *State (NCT of Delhi) v.*

Navjot Sandhu [2005 Cro LJ 3050 (SC)], when terrorists entered Parliament House with sophisticated arms and powerful explosives when parliamentary business was being conducted, it was held that the undoubted objective and determination of deceased terrorists was to impinge on sovereign authority of nation and its Government. It amounts to waging war or attempting to wage war against Government of India. It was also held that to constitute offence of waging war under Section 121 IPC, the intention and purpose of the warlike operations directed against the Government machinery is an important criterion.

The Court further held that the criminal acts done by the deceased terrorists in order to capture the Parliament House amount to waging or attempting to wage war. To constitute offence of waging war, military or other forces need not be the direct target of attack. It was further held that foreign nationals entering Indian Territory with a view to subverting functions of Government and destabilising society can be held guilty of waging war under Section 121 of the IPC.

In *Nazir Khan and others v. State of Delhi* [AIR 2003 SC 4427] it was observed that a pledge to overthrow capitalism and private ownership and to work for the establishment of a socialist state does not amount to waging war against the State, because every person is entitled to propagate the political faith of his choice.