

**THE CONCEPT OF BREACH OF THE PEACE AND
PUBLIC ORDER IN ENGLISH LAW**

by

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The concept of breach of the peace originated from lay concepts and commonsense, which was identical with common Law concepts. The recent dimensions of this offence of breach of the peace embrace within their fold trespass, riot, etc. Apart from this, there are several offences in modern law which have resulted from the idea of wrong doing, are traceable in common assault, affray, riot, rout, sedition and unlawful assembly. These are treated as manifestations of the public order offence. The feudal tradition of the Council, Star Chamber and the King's Bench had witnessed considerable changes and transitions and the common law principles lying at the root of modern concept of breach of the peace are mostly incompatible and fluid in relation to the modern views. Although the concept of breach of the peace could be established² the Public Order Act, 1936 appeared with greater sophistry and precision. The definition of a breach of the peace suffered considerable dilution as it could not be traced out in a writ of breach of the peace. Professor Glanville Williams remarked on the "Surprising lack of authoritative definition of what one would suppose to be a fundamental concept in criminal law."³ Nevertheless, the offences specified in section 5 of the Public Order

2. See Brownlie and D. G. T. Williams 42 Can. B. R. 561-605. (1964).

See Sayles (ed). Select cases in the court of King's Bench under Edward 11. Vol. IV (1955); 74 Selden Society. Roll No. 2 at p.6; Cf. The generic offences of conspiracy to corrupt public morals and public mischief.

3. (1962) Crim. L. R. 578. Cf. the same authors' Criminal Law, the General Part (2nd Edn). pp. 714-715. See also Lagarde, Droit Penal Canadien (1962) paras, 3049 and 82.

Act⁴ and by-laws testify to the precise meanings of unlawful assembly and the law relating to binding over in a situation occasioning a breach of the peace. The English law of arrest provides that when any one gives a threat of criminal force he is said to have committed a breach of the peace.⁵ Therefore, the concept has multi-dimensional relations with many other acts which arouse public violence, for example, the offence of affray which is indetical with the meaning and scope of breach of the peace.⁶ In *Ferguson v. Carnochan*⁷ it was held that an alarm is sufficient to be construed as breach of the peace if it causes others to believe that the act will create disturbance and thereby break peace of the neighborhood.

Although in many cases English Courts have carried this concept to the extent of any disturbance in a large gathering,⁸ it was also viewed that a superficial or self-contained disorder does not reflect real danger to others⁹ and as such signalizes no breach of the peace. Section 5 of the Public Order Act, 1936 as substituted by Section 7 of the Race Relations Act, 1965 pin-pointed the scope of a breach of the peace. This provides that any person at any public meeting using threat, abusive words or distributing or displaying any writing with intent to provoke breach of the peace shall be guilty of an offence.¹⁰ The maximum penalty for such an offence under the Public Order Act, 1936 is three months imprisonment or fine and

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4. See the Burgh Police (Scotland) Act, 1892, S. 380 (12). Indian Criminal Code S 504. See Ratanlal Ranchhoddas and D.K. Thakore's Law of Crimes (20th Edn. 1957, S. 28 (Ceylone Police Ordinance (1956, Edn), 579 (2); Victoria Police Offences Act, 1958, S. 26(b).
 5. Glanville Williams, op. Cit. pp 578,579. See Foster V. R. (1961) E.A.1.
 6. *R v. Hunt* (1845) 1 Cox. C. C. 177.
 7. (1889), 2 White 278, per Lord Justice Clerk Macdonald, p. 281. See also Lord Mc. Laren p. 282.
 8. *Campbell v Adair*, 1945, S. C. (j) 29 29; Encyclopaedia of the Laws of Scotland, Vol. V, p. 84.
 9. *Wooding v Oxleye* (1839), I. C. & P. 1.
 10. The Burgh Police (Scotland) Act, 1892. S, 380 (12).

twelve months imprisonment or fine and twelve months imprisonment or fine of £ 500 on indictment.¹¹

The Actus reus of a breach of the peace mentions the place of offence as S.9 of the Act of 1936 has laid emphasis on any open space having public access and it also embraces public meeting within its purview.¹²

The scope of this offence extends further to using of words on private premises being audible like public place which is also attracted with the Act.¹³

In *Wilson V Shock*, Lord Goddard opined that because of the political source of the dispute and not being aimed between neighbours the Act could not apply. In explaining the type of the disorder to describe it within the meaning of breach of the peace in another case it was contended in a Divisional Court that the intention of the Parliament could be well interpreted from the Preamble of the Act, that the idea behind the whole Act was to deep public order and obviously so, the question of controlling private disputes in a public place does not appear to be logical in context.¹⁴

However, Section 5 of the Public Order Act, 1936 has emphasised words or behaviour intended to cause or likely to occasion a breach of the peace. In explaining the character of behavior it was a criteria that it must be threatening and the words being abusive or insulting so that a person of ordinary maturity could apprehend physical harm to his person or property.¹⁵

11. Brownlie, *The Law relating to Public Order*, 1968, London, Butter worths, p. 6.

12. *Wilson. V. Sheock* (1949), 113 J. P. 294.

13. Cf. *Smith V. Hughes* (1960); 2 All E. R. 859.

14. *Ward V. Holman* (1964)2. B. 580 Cf. *Thurley V. Hayes* (1920), 27 C. L. R. 548, H. C. Aust; *Ferguson V. Carnochan* (1889) 16R. (ct. of Sess), 933 *Purveys V. Inglis* (1915), 34 NZLR 1051 S. C. N. Z.

15. *R. V. Button and Swain*, (1966) A. C. 591, p. 598; (1965) 1All E. R. 964 at p. 967 and in the speech of Lord GARDINER, L. C. in the House of Lords on the appeal from the C. C. A. (1966 A. C. atp. 512 (1965), 3 All E. R. 587.

Intention of the accused or his recklessness is also considered to be an ingredient to provoke a breach of the peace. It is further provided in the second arm of the section that the word or behaviour should be such as would likely to occasion a breach of the peace and in such a case the accused is guilty of an offence.¹⁶

The breach of the peace is also enumerated in Race Relation Act, 1965. Section 6 of the Act has mentioned a new offence of racial incitement which could result in a breach of the peace without being "threatening, abusive or insulting". The Race Relations Act, 1965 makes a person guilty if he intends to stir up hatred against section of public in Great Britain distinguished by colour, race, or ethnic or national origins by publishing or distributing written matter which is threatening, abusive or insulting.¹⁷

In this Act greater emphasis has been given on grounds of colour, race or ethnic or national origins and the words or behaviour likely to stir up hatred are sufficient to prove the offence. The expression, "public meeting" and "public place" are also attributed with some meanings as in the Public Order Act, 1936 and 1986. Metropolitan Police Act, 1939 provides in Section 54(13)¹⁸ that a person using any threatening, abusive or insulting words or behaviour with intent to provide a breach of the peace, or whereby a breach of the peace may be occasioned, shall be liable to pay a penalty not exceeding 40 shillings.¹⁹

There are several local Acts provided by by-laws, for example, Liver Pool Corporation Act, 1921, which provides for offences similar to those provided for in the provision of the Metropolitan Police Act.

The Public Meeting Act 1980 has made provision for penalty on an attempt to break up public meeting as it provides that any person

16. *Jordan V. Burgoyne* (1963) 2. Q. B. 744; (1963) 2All E. R. 225, D. C.

17. Op. cit.

18. 24 Halsbury's Statutes, p. 817. New maximum penalty, £20.

19. Criminal Justice Act, 1967.

who, at a lawful public meeting, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence²⁰ and on summary conviction shall be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

The concept of Public Order is also strictly adhered to when it is found that disturbances are created in election meetings. When any constable suspects any person committing any offence under sub-Section 1 of Section 84 of the Act, may require him to declare his name and address and in case, gives a false the name, the constable may arrest him without warrant.

The English law has given a considerable weightage on the consequences of threatening, abusive or insulting words or behaviour towards the position of various offences, specially in occasioning a breach of the peace, behaviour becomes threatening.

It was held that when two groups of people became equally provoked and threw out threats, their behaviour became threatening to each other and both the groups were found guilty of the offence.²¹ In case of political demonstrations same ingredient can be attributed and the element of threat can be identified when the demonstrators plan to interfere with lawful activities of others by physical intimidations. The threat becomes more poignant and intensified when the demonstrators take recourse to the threats of force to make any obstruction effective and it turns into an unlawful assembly or riotous mob. It was further held that even a hectic form of practical joking may constitute threatening behaviour.²²

The ingredients of "Abusive" words can be traced even in any verbal hostility. The conduct of a person may become abusive provided it provokes others but if the ordinary man is not expected to be

20. The words omitted were repealed by the Representation of the People Act 1949, S. 175 Sched. 9.

21. (1965) Crim. L. R. D. C.

22. Southend Magistrates Court, Times, 30 August 1949.

provoked by, what was said, the conduct is not said to have involved any offence or abusive words or behaviour.²³

In explaining insulting word or behaviour Lord Parker, C.J., in *Jordan V. Burgoyne* gave a definition of "insult" to the extent that it was used in the public Order Act in the sense of "Hit by words" and it has a nature quite distinct from a strong expression of one's views and criticism of his opponent.²⁴ A clear example of insulting word has been provided in *Jordan V. Burgoyne* stating that nothing can be more offensive than to assert to an audience including Jews that Nazi policies of murdering Jews were correct. The definition of insult may be viewed from two standpoints. The narrow approach gives an emphasis on the possibilities of causing a breach of the peace as a real not a hypothetical contingency and that insulting words must be directed to person within hearing. The Supreme court of New South Wales had put reliance on the condition of using insulting words directly to concerned persons within hearing.²⁵

There is, however, a broader approach to the definition of insult in as much as the wider aspect of the meaning does not require evidence of hostile reaction from any other person. It also views insult synonymously with "abuse" or "contemptuous" speech or action.²⁶ Nevertheless, since variations are rampant on the nature of a demonstration prosecution policy also varies according to the nature of the insult, for example, when a group of people holding American

23. See *R. v. Jwisker* (1938), 1 DLR 461; Cf. *Banks v. M. Lernas* (1876), 4R (Cf. of Sess) 8; County Court in Nova Scotia) where profanity to a police officer did not amount to "Provoke a breach of the peace" in as much as a police officer is expected to be tolerant and forbearing; *R. v. Carroll* (1959), 23 DLR (2edn.) 271. Ontario CA.

24. Op. cit. 4 Note 16.

25. *Gumley v. Breen* (1918), 24 C. L. R. 453, See *Egan v Townley* (1872) 2 Q. S. C. R. 204.

26. See *Thurley v. Hayes* (1920), 27 C. L. R. 548 H. C. Aust. *Annett V. Brickell*, (1940) V.L.R. 312; *Gebert V. Innocenzi*, (1946) S. A. S. R. 172, of. *Marlborough Street Magistrateslt Court*. Times 30, May 1967; *ibid.* Times, 4 July 1967.

flag outside the United States embassy were convicted of insulting behaviour as the Magistrate apprehended that this might provoke the Americans to intervene, although this was a symbolic protest against American policy in Vietnam.²⁷

The Public Order Act, 1986 has provided many offences by replacing the four common law offences of riot, rout, unlawful assembly and affray with three statutory offences of riot, violent disorder and affray. The 1986 Act also makes extensive provisions relating to threatening, abusive, insulting or disorderly conduct, to public processions and meetings, to incitement to racial hatred and to aggravated trespass.²⁸

Section 1(1) of the Public Order Act deals with riot. Riot is said to have taken place when 12 or more persons present together use or threaten unlawful violence causing a person of reasonable firmness to fear for his personal security. The offence triable on indictment provides for ten years imprisonment.²⁹

Violence has been defined by section 8 of the 1986 Act meaning any 'violent conduct' and such conduct has multifarious dimensions. The Act goes on to say that the one or more of the assembly of 12 or more persons notwithstanding their lacking of criminal responsibility or mental state can, nevertheless, be connoted in determining whether there were 12 or more persons in the assembly, although they may not be convicted as accomplices. The principles of self-defence are also aptly applied in controverting charge of riot under this Act. In case of self-induced intoxication at the time of committing the prohibited conduct, a person cannot avoid the scope of the Act if he did not intend to use the violence.³⁰ Self-intoxication has, therefore, been discarded as an irrelevant defence and, intoxication

27. Marlborough Street Magistrates Court, 27 Times, 26 July 1966.

28. See Richard Card, Introduction to Criminal Law, London, Butter Worth, 440 (1988).

29. Public Order Act, 1986, S. 1(6).

30. D. P. P. V. Majesewski (1977) A. C. 443 (1976) 2 All E. R. 142 H. L.; Para 9-50.

under provisions of the Act means any intoxication whether caused by drink, drugs or other means, or by a combination of means.³¹ Defences are available when he proves that the intoxication was not self-induced or that it was due to taking of a substance in course of medical treatment.

Section 2(1) of the Public Order Act has provided the definition and ingredients of violent disorder. This section provides that when three or more people present together use or threaten unlawful violence and their conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of such persons using or threatening unlawful violence is guilty of violent disorder. The maximum punishment on conviction on indictment is five years imprisonment.³²

The offence of affray has been defined by Section 3(1) of the Act where it provided that a person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such that would cause a person of reasonable firmness present at the scene to fear for his personal safety, maximum punishment on conviction on indictment being three years imprisonment.³³

Section 4 and 5 of the Public Order Act, 1986 have replaced some of the statutory offences like threatening, abusive words under section 5 of the Public Order Act, 1936. Section 4 (1) of the Public Order Act, 1986 provides that a person who uses threatening, abusive or insulting words or behaviour or distributes or displays to another person any writing, sign, or other visible representation which is threatening, abusive or insulting, is guilty of an offence, the maximum punishment being imprisonment for six months or a fine not exceeding level five on the standard scale or both.³⁴

The graver offences of violent disorder, sedition or affray are also sometimes constituted as offence under section 4 of the Act. It did

31. Public Order Act 1986. S. 6(6).

32. Public Order Act, 1986, S. 2(5).

33. Public Order Act, S. 3(7).

34. Public Order Act, 1986, section 4(4).

not, however, prevent a charge under section 5 of the Public Order Act 1936³⁵ and the same must be true in relation to Section 4.

As regards 'harassment, alarm or distress' these are some what vague terms and incapable of wide interpretation by Magistrates' Courts as they involve question of fact.³⁶ An offence under section 5 may be committed in a public or a private place. The provisions in section 6(5) concerning intoxication apply equally under Section 5 of the Act.

There is a mention of six offences relating to racial hatred in Part III (ss17-29) of the Public Order Act, 1986 which replaces and extends provisions dating back to 1965. All offences under Part III of the 1986 Act require that the material, words or behaviour are, 'threatening, abusive or insulting: Section 18(1) of the 1986 Act also provides that the act of threatening, abusive or insulting words of behaviour with intention to stir up racial hatred are also punishable offences. Part II of the Public Order Act, 1986 (ss 11-16) provides various controls over the holding and conduct of public processions and public assemblies.

As regards public processions, section 11 of the Act requires a notice in advance and failure thereof makes each of the organisers guilty of a summary offence. Persons taking part in public processions and inciting others to commit the offence are also guilty of summary offence.³⁷

The 1986 Act provides in section 14 (1) certain conditions on a 'public assembly' defining it as an assembly of twenty or more in a public place. It is also provided that if a senior police officer has reasons to believe that the assembly may result in serious public disorder, damage to property or serious disruption to the life of the community or intimidation of others, he may impose conditions. Disorderly conduct at a public or private meeting may result in criminal liability causing serious offences against public order. This may be in the form of riot or obstructing a constable. Moreover, there are

35. Oakwell (1978) 1 All E. R. 1223, (1978) 1W. L. R. 32. C. A.

36. A. T. H. Smith, *Public Law* 537-538 (1985)

37. S. 12 (6) & (10) of the Public Order Act 1986.

provisions for disorderly behaviour at public meetings in the Public Meeting Act, 1908. Section 1(1) of this Act makes a person guilty of summary offence if he acts in a disorderly manner to prevent the transaction of the business of the meeting. Although the act applies to lawful meetings only, yet a meeting held on a highway does not render it unlawful merely because it is so held.³⁸

There are a few more legislations such as the Police Act, 1982, Prevention of Crime Act 1953, Criminal Law Act 1977 where there are adequate provisions and powers given to the Police to combat situations which may result in a breach of the peace and public order.

38. *Burden V. Rigler* (1911)1 K. B. 337. D. C.