

## **“Review of forgotten Section 510 of IPC- Its Effectiveness and Relevance in today’s Scenario”**

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### **Abstract**

This paper tries to highlight the untouched and unnoticed provision of the Indian Penal Code which is placed as the second last section of the Code and needs a consideration. This is just an insinuation of the neglected amendments in the Penal Code. Section 510 of the code deals with the misconduct in public by a drunken person. This paper is an exclusive piece of writing explicitly contemplating the various aspects of the section. The author has tried to discuss the aspects first by analysing the jurisprudence i.e the elements or those theories which constitutes an offence. Then the plain and simple explanation of the section. The third part is the most important since it highlights the shortcomings of the said section. The main objective of this paper is to analyse the undiscovered section covering misconduct by a drunken person and to accentuate the drawbacks of section 510 with regard to the contemporary scenario. The research is based on the secondary source of data and includes the existing literature, journals, law reviews. After contemplating the issues, the author reaches the conclusion that the consequential annoyance to the public by a drunken person is the perfect example for line of demarcation between the declaratory and preventive function. Though the provision is justifiable for society and individual, it should ameliorate with the dynamic society.

### **Jurisprudence**

Human beings by virtue of their social contract and their inherent tendency of not surviving in vacuum. This leads to the creation of a society and such society needs to be maintained. The peace in a society can be maintained by law and order. In fact, there is no society which is not confronted with the problem of criminality. Crime is eternal as society itself. Thus, it becomes essential for the establishment of criminal law. The ultimate aim of law is crime-free society by protecting and promoting the welfare and well-being of the citizens. With this, comes the concept of welfare state. It is a concept of government where the state has a key role in the protection and promotion of the well-being of citizens. The main focus under this type of system is the welfare of its citizens. Under our Constitution, the Directive Principles of State Policy reflects that India is a welfare state and rule of law prevails in the country.<sup>1</sup> However, when the rule of law collapses, it is replaced by matsya nyaya, which means the law of jungle prevails.<sup>2</sup> Therefore, criminal law ensures the maintenance in the society. In India, The Indian Penal Code is followed which is a comprehensive and substantive law covering each and every kind of offence towards everybody. It has a total of

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<sup>1</sup>A. Robson, “India as a welfare state” 25 *TPQ*116-131 (1954).

<sup>2</sup> Justice Markandey Katju “*Individual Liberty and Criminal Law*” 45 *Cri LJ Journal* (2010).

511 sections. One of the section titles 'Misconduct in public by a drunken person'.<sup>3</sup> Every offence has some reason for its categorisation as crime. It is generally seen that any provision or offence to which punishment of any kind whether stringent or flexible is followed has some reason for its categorisation. In the case where a person, who under a state of intoxication is present in public place and acts in such a manner which causes annoyance is liable under law to be penalised and punished for such behaviour. The reason for the origin of this offence can be viewed from various lenses. Firstly, from the societal lens, the sociological school of jurisprudence comes into picture. According to this theory, the jurists emphasize their attention on social purpose and interest rather on individuals and their rights. The school treats the law as an instrument of social progress.<sup>4</sup> Rudolf von Inhering was of the view that individual's welfare was itself not an end but was recognized only insofar as it aided in the securing of the larger social welfare.<sup>5</sup> In simple language, the societal interest is of paramount importance than individual interest. The social interests involve the following claims in social life in civilized society and social group as such. The classification comprises of the general security that is peace, safety, health and order of the community; the general morals; the conservation of social resources; the general progress; political progress; and the social interest in the individual life.<sup>6</sup>

Further, from the legal perspective such misconduct can be seen as nuisance and a threat to public order. According to William Prosser, a famous American legal scholar, once stated, "*there is perhaps no more impenetrable jungle in the entire law than that which surrounds the word 'nuisance.'*" Looking to the verbatim, such misconduct could cause public as well as private nuisance in society. In a common law country like India, public nuisance is properly regarded as a public action - an action by public authorities to charge criminally or abate (that is, to order an end to) a condition that is deemed to be inimical to interests shared by the public as a whole.<sup>7</sup> Besides, nuisance there is a threat to public order. Any disorderly behaviour by a person, in public, is bound to affect the peace and tranquillity in the locality. Public order lies not in the gravity of the act but how it has disturbed the tempo of the life of community.

Therefore, to secure societal interest, maintenance of public order and to reduce nuisance of both kinds, the misconduct in public by a person under intoxication has been considered as an offence by the welfare state.

### **Explanation**

Section 510 covers the offence of Misconduct in public by a drunken person- "*Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him*

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<sup>3</sup> Section 510 Indian Penal Code

<sup>4</sup> Sociological School of Law, available at Legal Services India <http://www.legalservicesindia.com/article/2190/Sociological-Jurisprudence.html>

<sup>5</sup> R. Inhering "Law as A Means To An End" (1913). This translation of his *Der Zweck Im Recht* is his best known work in the United States

<sup>6</sup> R. Pound "A Survey of Social Interests" 57 Harv. L. Rev. 1 (1943)

<sup>7</sup> T. Merrill "Is public nuisance a tort?" 4 JTL (2011).

*to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.”* To understand the meaning of this verbatim we need to understand the elements present in this section.

The first is the presence of a **person under the state of intoxication**, second: which causes **annoyance to the general public** and third: due to his **appearance in public** or his **refusal to leave a place** where he has no right to stay without owner’s lawful permission. The second part of the definition states the punishment for such misconduct.

The basic explanation to this section is that whosoever under the state of intoxication causes annoyance to the public at large will be punished with an imprisonment extending to twenty-four hours or a fine of ten rupees or both. It is a **non-cognizable** offence meaning a police officer has no authority to arrest any person without warrant. Also, it is **bailable** and **non-compoundable** meaning bail is a right of the arrested person and the person must be released after depositing the bail with the police and the accused cannot enter into compromise with the state. Such an offence can be tried by any magistrate. An important point which needs to be taken into account is that section 510 of IPC is different from section 34 of Police Act.<sup>8</sup> Under Section 34 of the Police Act the fine can be extended to Rs. 50/- and imprisonment for eight days, under the latter Section the fine can be only up to Rs. 10A and the maximum imprisonment can be of 24 hours. Then Section 34 of the Police Act categorically lays down that the police can arrest a person challaned under that Section without warrant whereas in the case of an offence under Section 510 IPC there is no such power.<sup>9</sup>

Such a kind of behaviour finds its place under the penal code because it involves protection of societal interest and it is the duty of such a penal law to balance between individual interest and social interest, The behaviour by a drunken person without regard to whether it was voluntarily or involuntarily, if conducts his action in such a way that tantamount to a kind of disturbance or nuisance to general public poses a threat to authorities as a danger on the public peace in the society. Though such a kind does not involve any sought of mens rea since the person is under the influence of intoxication. But, preservation of peace becomes of utmost importance.

The punishment as prescribed by the statute is a simple imprisonment for a term of twenty-four hours or fine which may extend to ten rupees. If compared with the crimes of grievous and serious crimes, such a punishment is not rigorous and is flexible which can be moulded according to the situation. The seriousness depends upon the gravity of crime but the objective of imposing punishments is not to fit the offence rather it should fit the offender. The reason is because he was the one whose behaviour caused disturbance and interference in the normal working of society. In the words of Westermarck, punishment is "Such suffering

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<sup>8</sup>Sh. Padam Dev And Anr. vs State of Himachal Pradesh And Ors. AIR 1989 CriLJ 383

<sup>9</sup> Ibid (Indian kanoon)

as is inflicted upon the offender in a definite way by, or in the name of the society of which he is permanent or temporary member."<sup>10</sup>Therefore, in this case the primary objective is deterrence. The idea behind the deterrent punishment is to prevent the crime by inflicting exemplary punishment on the offender. The state tries to create fear in the minds of the offender as well as the members of society, deterring them from committing such crime. But, with the passage of time, the reformatory theory was born out of the positive theory that the focal point of crime is positive thinking. The idea behind reformatory punishment considers punishment to be curative which performs the function of a medicine. Charging a person because of his misconduct in a public place in a state of intoxication and levying a fine shows the nexus between the deterrent and reformatory theory. As, in the words of Salmond "a perfect system of criminal justice is based neither entirely on reformatory nor the deterrent principle exclusively, but is the result of a compromise between them. Further, in the present-day acceptance of reformatory theory is a reaction to the conservative approach of punishment."<sup>11</sup> In regard to section 510 of IPC, one school of thought is that such an offence is overcriminalisation keeping in mind the grievous nature of other crimes while the second school of thought considers it to be reformatory theory calling for more attention on public intoxication laws.

### **Research Questions**

Keeping in mind the jurisprudential background for the creation of this offence and its punishment, there are certain strings which need to be critically analysed in regard to this public intoxication law.

1. Does the quantum of punishment prescribed in the provision is justifiable in contemporary times?

As a matter of fact, it has been observed that section 510 is punishable with simple imprisonment for a term which may extend to 24 hours or a fine which may extend to Rs. 10/- or both is in fact the least punishment in the entire code. This makes the said provision eligible for re-examination. The quantum can be measured from positive and negative lens. Since Lord Macaulay has drafted the Indian Penal Code, the society has undergone a drastic change in the fabric of rule of law and the quantum of punishment to be equalised with the dynamic society. The present framework of the code may not incite people to unearth the truth.<sup>12</sup> In the case where a misconduct is done in public by a drunken thereby causing annoyance and disturbance to the people a mere fine of Rs. 10/- or a simple imprisonment which may extend to 24 hours does not fit the present-day scenario. The amount is so meagre that it does not coincide with the seriousness of offence. Ironically the substance of intoxication costs more than the penalty imposed. It is not proportionate to the offence. Any person who is capable of owning such a substance is also capable of giving such a meagre

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<sup>10</sup>V. Singh "Crimes & Theory of punishment" 4 ILR, 117-135 (2001).

<sup>11</sup> Ibid.

<sup>12</sup>G. Chandra "Analysis of punishments mentioned in Indian Penal Code with the other penal codes of selected countries" 4 IITK 222-363 (1993).

amount and it would be no burden upon him. This leads to a loss of the sanctity of the penalisation. The deterrent theory of punishment stands weakened because such an amount or imprisonment may not prevent the offender. However, it was justified in the days when code was drafted but it has lost its significance now. An imprisonment might have a slight effect but not so deep as to prevent someone from doing it in future. Therefore, it is the need of the hour to revisit this provision and amend the quantum as to provide a certain degree of seriousness to public intoxication law.

2. Does the position of such an offence is valid in penal laws or in torts?

The Indian Penal Code incorporates all crimes which have certain essentials being subject to some exceptions. The crimes generally contain mental element accompanying a wrong doing affecting the members of the society which falls under the laws of state or federal government. Whereas a tort is a civil wrong interfering with another person or their property. A misconduct in public by a drunken person causes disturbance to the society or a group of public in his vicinity but it can also cause annoyance to a private individually supposing trespassing on an individual's land and refusing to leave thereby giving him a specific reason for invoking the provision of nuisance. However, public nuisance finds its place in IPC is just to punish the guilty in order to prevent the repetition of such act.<sup>13</sup> The ingredients of section 510 it can be categorised in tort and in crime as well but they have been placed in criminal law not because of the gravity of offence but as a preventive measure for future.<sup>14</sup> The peace of the society though not at higher risk still it cannot be ignored and as the role of welfare citizen it needs to be penalised but it should be in accordance to the proportion of gravity and the contemporary times. Therefore, the position of this offence is acceptable in IPC but the ingredients must match the societal changes.

3. Is there a need for a more stringent public intoxication law in India and whether it leads to overcriminalisation?

Public intoxication means a wrong doing done by a person under the influence of drugs in public. The law which prevents such act and removes the individuals is called public intoxication law. The trouble arises out of using such laws against the drunkenness of public to deal with the dull drunk people who are in public streets and constitutes danger to him as well as inconvenience to others. The stringent application of law for the misconduct in public under the state of intoxication becomes difficult because the major proportion belongs to the class of poverty, rootlessness and personal inadequacy forming the bottom of alcoholism. However, this law is a powerful weapon in the hands of police policing the day-to-day activities of urban communities. The public intoxication law should be made reasonable instead of stringent because the defendants are usually from the lowest economic and social levels<sup>15</sup> involved could scarcely be deferrable by the threat of criminal conviction. The need for such stringent laws does not arise for the disorderly conduct in public but it should be set

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<sup>13</sup> Nuisance, Law Times Journal available at <https://lawtimesjournal.in/nuisance/>

<sup>14</sup> Ibid. 13

<sup>15</sup> Model Penal Code in *People v. Tylkoff*, 212 N.Y

up in consonance to the contemporary scenario.<sup>16</sup> According to Andrew Ashworth, “the concept of overcriminalization occurs when criminal law goes beyond its legitimate functions, and also when the proper lines between criminal law and regulatory laws are not observed”.<sup>17</sup> If the laws of public intoxication are made stringent, then there is a chance that the line between criminality and regulation will be crossed. Therefore, in order to balance the criminal action and the regulatory action, section 510 besides its loopholes assures the members of society through the police power that anyone who interferes with their peace will be penalised in proportion of the gravity. Thus, keeping the law as moderate and adaptable it proves to be beneficial for both the society and the offender.

### Conclusion

The section 510 of IPC is based on two important concepts. The first is the **Public intoxication law** and second is the **disorderly conduct**. Going through the jurisprudential background, the act was categorised as offence for the preservation of public order and societal interest, with the aim to deterrent and reform the offenders. The section, as already, discussed lacks on the front of its punishment and henceforth give a call to the law makers to revisit and consonant with the change in society. Further, a research question pertains to the position of this provision makes the place justifiable in criminal law. The criminal law is a highly specialized tool of social control, useful for certain purposes but not for others but if improperly used it is capable of producing more evil than good.<sup>18</sup> Not only its improper use but also its overuse is capable doing harm to the rights of both parties. The criminal law not only diverts the substantial law enforcement-resources away but also denigrate the whole criminal-justice system by the need to process massive numbers of pathetic and impoverished people through clumsy and inappropriate procedures. The third research question concluded that the law of public intoxication must be flexible and reasonable rather to be directed towards being stringent. Such an application would be in the best interest for future efforts. Section 510 as we already know deals with the misconduct in public by a drunken person and its consequential annoyance to the public is the perfect example for line of demarcation between the declaratory and preventive function. The offence does not require the presence of Mens rea. Overall, it can be concluded that the provision has made a justifiable place for itself benefitting both the society and the offender. Nevertheless, it is the duty of state to care and protect every person under its cover irrespective whether they are the offender or the society. But the societal interest need not to be bargained for an individual interest. A person under intoxication in the normal parlance can take the defence of involuntary intoxication is an exception of individual interest over societal.

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<sup>16</sup>E D Aaronson “Changing the Public Drunkenness Law” 12, Law & Society, 405-438 (1978).

<sup>17</sup>A. Ashworth “Conceptions of overcriminalization” 5, OSJCL 407-425 (2008).

<sup>18</sup>Sanford H. Khadish “The Crisis of Overcriminalization; More on Overcriminalization” in Essays in the Criminal Law, 21-16 (1987).