

[s 143.6] Suleman Bakery Case:

It is a case related to the communal riots of Mumbai in early 1993. Government imposed curfew and the Special Operation Squad (SOS) was called to control the communal riots on information of stone pelting, throwing of glass bottles, acid bulbs and firing from the terrace of Suleman Bakery. It was argued that at any rate SOS was an unlawful assembly on account of the **third clause of section 141 of IPC, 1860**, and hence, all the discharged accused persons were members of the unlawful assembly and had to be at least charged and inquired into by the courts below. It was argued that the assembly of the police at least till the time they broke open the door was a lawful move, as it was their duty but they should not have broken open the door and trespassed the Suleman bakery; and all those who entered Suleman bakery formulated an unlawful assembly as they illegally trespassed into the Suleman bakery. Since A-1, *Shri Tyagi*, had ordered them to break open the doors and he was a part of that unlawful assembly who had the common object. The Supreme Court held that they were all the members of the SOS and had the duty to quell the riots. They were not doing anything illegal in coming out and trying to control the riots. Court rejected the argument by holding that a trespass becomes a criminal trespass if it is with an intention to annoy or to do something illegal which is not the case here. There was no question of the so-called entry amounting to criminal trespass.³⁵

[s 143.7] Fourth clause—Application of Criminal Force.—

The act falling within the purview of this clause is made punishable owing to the injurious consequences which it is likely to cause to the public peace. This clause does not take away the right of private defence of property. It does not affect clause 2 of section 105, which allows a person to recover the property carried away by theft. It is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim.³⁶

Where five or more persons assemble for maintaining by force or show of force a right which they *bona fide* believe they possess, and not for enforcing by such force or show of force a right or supposed right of theirs, they do not constitute an unlawful assembly.³⁷ An assembly of five or more persons cannot be designated as an unlawful assembly under this section if its object is to defend property by the use of force within the limits prescribed by law.³⁸ But when a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate, by unlawful force, their rights or supposed rights, no question of self-defence arises. Neither side is trying to protect itself, but each side is trying to get the better of the other.³⁹

[s 143.8] Fifth clause—Compelling persons to act or omission.—

This clause is very comprehensive and applies to all the rights a man can possess, whether they concern the enjoyment of property or not. There is no reference to 'any right or supposed right' as in the preceding clause.

[s 143.9] Explanation.—

An assembly which is lawful in its inception may become unlawful by the subsequent act of its members.⁴⁰ It may turn unlawful all of a sudden and without previous concert among its members.⁴¹ But illegal acts of one or two members, not acquiesced in by the others, do not change the character of the assembly.⁴² The law on the point as stated above is approved by the Supreme Court in *Moti Das*.⁴³

[s 143.10] Being member of unlawful assembly.—

Section 142 shows that it is sufficient for the offence of riot to be proved against an individual that the individual should remain in an unlawful assembly as soon as he is aware that the assembly is unlawful. The word "continues" in the section means physical presence as a member of the unlawful assembly, that is, to be physically present in the crowd.⁴⁴ This, however, should not be interpreted to mean that mere presence as a curious onlooker or bystander at the scene of the unlawful assembly without sharing its common object would make a person liable under [section 142, IPC, 1860](#), for being a member of an unlawful assembly.⁴⁵ Thus common object cannot be attributed to a person from his mere presence at the scene of the occurrence. There must be some other direct or circumstantial evidence to justify that inference.⁴⁶

For being a member of unlawful assembly it is not necessary that a person must commit some overt act towards the commission of the crime. The test is whether he knows of its common object and continues to keep its company due to his own free will.⁴⁷ Thus, where a large procession of *Kannadigas*, taken out to voice protest against Maharashtrians, turned violent, started pelting stones and attacking police officers; the procession turned into an unlawful assembly the moment it developed the common object of causing damage to property and injuries to police officers. Thereafter, every person who continued as a member of the assembly became liable for the offence committed by the processionists by virtue of [section 149 of IPC, 1860](#).⁴⁸ If some unidentified members of an unlawful assembly behaved in an unruly manner, the other members in the procession cannot be held guilty of the offence by foisting vicarious liability, merely because they were in the procession.⁴⁹

[s 143.11] CASES.—Enforcement of right by use of criminal force.—Dispute regarding possession of land.—

Where there was a dispute of long standing between the accused and certain other parties regarding possession of certain land, and the accused went to sow the land with indigo, accompanied by a body of men armed with sticks who kept off the opposite party by brandishing their weapons while the land was sowed, it was held that they were guilty of this offence.⁵⁰ Where the accused, who were in possession of the disputed land, went upon it in a large body armed with sticks, prepared in anticipation of a fight, and were reaping the paddy grown by them, when the complainant's party came up and attempted to cut the same, whereupon a fight ensued and one man was seriously wounded and died subsequently, it was held that the common object was not to enforce a right but to maintain undisturbed the actual enjoyment of a right and that the assembly was not therefore unlawful.⁵¹

2. *State of Haryana v Shakuntla*, (2012) 5 SCC 171 [LNIND 2012 SC 1259] : JT 2012 (4) SC 287 : AIR 2012 (SCW) 2952 : 2012 Cr LJ 2850 .
3. *Bharat Soni v State of Chhattisgarh*, 2013 Cr LJ 486 (SC) : 2013 (1) Mad LJ (Cr) 94 : 2013 (1) Crimes 66 .
4. *Gurmail Singh v State of Punjab*, 2013 (4) SCC 228 [LNIND 2012 SC 864] : 2013 (2) SCC (Cr) 369.
5. *Matti Venkanna*, (1922) 46 Mad 257.
6. Stephen, *Digest of Criminal Law*, Article 90.
7. *Mohan Singh's case*, AIR 1963 SC 174 [LNIND 1962 SC 118] : (1963) 1 Cr LJ 100 .
8. *Suresh Pal v State of UP*, AIR 1981 SC 1161 : 1981 Cr LJ 624 : 1981 All LJ 562 : 1981 Supp SCC 6 .
9. *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] : 1963 (1) Cr LJ 100
10. *Supra*.
11. *Shaji v State*, (2011) 5 SCC 423 [LNIND 2011 SC 481] : AIR 2011 SC 1825 [LNIND 2011 SC 481] : 2011 Cr LJ 2935 (SC). See also *Roy Fernandes v State of Goa*, (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 (SC).
12. *Subran v State of Kerala*, 1993 Cr LJ 1387 (SC) : AIR 1993 SCW 1014 : (1993) 3 SCC 32 [LNIND 1993 SC 162] , 39.
13. *Ram Chandra Chaudhary v State of UP*, 1992 Cr LJ 1488 (All). Over a dozen persons prosecuted, others acquitted, only two convicted of whom one died, the remaining one convict entitled to acquittal on the same grounds, see *Malkiat Singh v State of Punjab*, 1994 Cr LJ 623 : AIR 1993 SCW 4071 .
14. *Motiram*, (1960) 62 Bom LR 514 ; *Kartar Singh*, AIR 1961 SC 1787 [LNIND 1961 SC 210] : 1961 (2) Cr LJ 853 .
15. *Ram Tahal*, 1972 Cr LJ 227 (SC); *Amir Hussain*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 ; *Methala Potturaju v State of AP*, (1992) 1 SCC 49 [LNIND 1991 SC 448] : AIR 1991 SC 2214 [LNIND 1991 SC 448] : 1991 Cr LJ 3133 : AIR 1991 SC 2214 [LNIND 1991 SC 448] .
16. *Sahebrao Kisan Jadhav v State of Maharashtra*, 1992 Cr LJ 339 (Bom) : 1992 (1) Bom CR 423 [LNIND 1991 BOM 410] .
17. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 .
18. *KM Ravi v State of Karnataka*, (2009) 16 SC 337 ; *Baladin*, AIR 1956 SC 181 : 1956 Cr LJ 345 . See also *Masalti v State of UP*, AIR 1965 SC 202 [LNIND 1964 SC 173] : (1965) 1 Cr LJ 226 ; and *Bishambar*, AIR 1971 SC 2381 : 1971 Cr LJ 1700 ; **followed** in *Babu Hamidkhan Mestry v State of Maharashtra*, (1995) 2 Cr LJ 2355 (Bom) **cited** in *Binay Kumar Singh v State of Bihar*, AIR 1997 SC 322 [LNIND 1996 SC 2707] : 1997 AIR SCW 78 : (1997) 1 SCC 283 [LNIND 1996 SC 2707] : 1997 Cr LJ 362 , to the effect that where a larger number of persons are accused of committing a crime and are charged with the aid of section 149, the court should be extremely careful in scrutinising the evidence and there should be two, three or more witness who should be consistent. This ruling was **applied** in *Kamaksha Rai v State of UP*, AIR 2000 SC 53 [LNIND 1999 SC 885] : 2000 Cr LJ 178 . See also *Thankappan Mohanan v State of Kerala*, 1990 Cr LJ 1477 ; *Chinu Patel v State of Orissa*, 1990 Cr LJ 248 (Ori).
19. *Uday Singh v State of MP*, AIR 2017 SC 393 .
20. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] ; (2009) 2 SCC (Cr) 289.
21. *Uday Singh v State of MP*, AIR 2017 SC 393 .

22. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] : (2009) 2 SCC (Cr) 289.
23. *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431.
24. *Amrik Singh v State of Punjab*, 1993 AIR SCW 2482 : 1993 Cr LJ 2857 : 1994 Supp (1) SCC 320 .
25. *SP Sinha v State of Maharashtra*, AIR 1992 SC 1791 : 1992 Cr LJ 2754 : 1993 Supp (1) SCC 658 .
26. *Thakore Dolji Vanvirji v State of Gujarat*, AIR 1992 SC 209 : 1992 Cr LJ 3953 .
27. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 . There was no right of private defence in the circumstances, the accused persons were aggressors and such persons cannot claim benefit of private defence.
28. *Bharat Soni v State of Chhattisgarh*, 2013 Cr LJ 486 (SC) 2013 (1) Mad LJ (Cr) 94 : 2013 (1) Crimes 66 .
29. *Rajendra Shantaram Todankar v State of Maharashtra*, AIR 2003 SC 1110 [LNIND 2003 SC 4] : 2003 (2) SCC 257 [LNIND 2003 SC 4] .
30. *Abdul Hamid*, (1922) 2 Pat 134 (SB).
31. *Ramendrachandra Ray*, (1931) 58 Cal 1303 .
32. *Narain*, (1875) 7 NWP 209.
33. *State of UP v Niyamat*, (1987) 1 SCC 434 : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1987 Cr LJ 1881 .
34. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 .
35. *Noorul Huda Maqbool Ahmed v Ram Deo Tyagi*, (2011) 7 SCC 95 [LNIND 2011 SC 570] : 2011 Cr LJ 4264 : (2011) 3 SCC (Cr) 31.
36. *Gulam Hoosein*, (1909) 11 Bom LR 849 .
37. *Veerabadra Pillai v State*, (1927) 51 Mad 91.
38. *Mathu Pandey*, (1970) 1 SCR 358 [LNIND 1969 SC 516] : AIR 1970 SC 27 [LNIND 1969 SC 516] .
39. *Prag Dat*, (1898) 20 All 459 ; *Kabiruddin*, (1908) 35 Cal 368 ; *Maniruddin*, (1908) 35 Cal 384 . See also *Onkarnath*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] ; *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] .
40. *Khemee Singh*, (1864) 1 WR (Cr) 18; *Lokenath Kar*, (1872) 18 WR (Cr) 2.
41. *Ragho Singh*, (1902) 6 Cal WN 507.
42. *Dinobundo Rai*, (1868) 9 WR (Cr) 19.
43. *Moti Das*, AIR 1954 SC 657 at p 659.
44. *Sheo Dayal v State*, (1933) 55 All 689 .
45. *Baladin*, 1956 Cr LJ 345 : AIR 1956 SC 181 ; *Hanuman Singh*, 1969 Cr LJ 359 (All); *Md Shariff*, 1969 Cr LJ 1351 (Bom); *Musakhan*, 1976 Cr LJ 1987 : AIR 1976 SC 2566 ; *Muthu Naicker v State of WB*, 1978 Cr LJ 1713 (SC). To the same effect, *State of Karnataka v Mallu Kallappa Patil*, 1994 Cr LJ 952 : AIR 1994 SC 784 : 1994 Supp (3) SCC 352 .
46. R Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, p 862. See also *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431; *Rattiram v State of MP, through Inspector of Police*, 2013 Cr LJ 2353 (SC) : 2013 AIR (SCW) 2456.

47. *Apren Joseph*, 1972 Cr LJ 1162 (Ker); See also *Balwant Singh*, 1972 Cr LJ 645 : AIR 1972 SC 860 [LNIND 1972 SC 94] .
48. *Kutubuddin Hasansab Mahat*, 1977 Cr LJ NOC 155 (Kant); See also *Moti Das*, 1954 Cr LJ 1708 : AIR 1954 SC 657 ; *Sukha*, 1956 Cr LJ 923 : AIR 1956 SC 513 [LNIND 1956 SC 30] ; *Chandrika Prasad*, 1972 Cr LJ 22 : AIR 1972 SC 109 [LNIND 1971 SC 453] .
49. *Jayendra Shantaram Dighe v State of Maharashtra*, 1992 Cr LJ 2796 (Bom).
50. *Peary Mohun Sircar*, (1883) 9 Cal 639 .
51. *Silajit Mahto*, (1909) 36 Cal 865 .

THE INDIAN PENAL CODE

CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

[s 144] Joining unlawful assembly armed with deadly weapon.

Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

Armed with deadly weapons.—This is an aggravated form of the offence mentioned in the last section. The risk to public tranquillity is aggravated by the intention of using force evinced by carrying arms. The enhanced punishment under this section can only

be inflicted on that member of an unlawful assembly who is armed with a weapon of offence.

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- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

[s 145] Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

Whoever joins or continues in an 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 term which may extend to two years, or with fine, or with both.

COMMENT—

Joining or continuing with unlawful assembly.—

This section is connected with section 151, *infra*. [Section 188 of IPC, 1860](#) provides for the disobedience of any lawful order promulgated by a public servant. Sections 145 and 151 deal with special cases as the disobedience may cause serious breach of the peace. As to the powers of the police to disperse an unlawful assembly, see [section 129, Criminal Procedure Code](#).

[s 145.1] CASES.—

Where an assembly did not by its own conduct become an unlawful assembly by developing common object within the meaning of [section 141, IPC, 1860](#), its members could not be convicted under [section 145, IPC](#), by merely joining or continuing as its members.⁵² It may, however, be added here that members of such an assembly, even though not unlawful, could be prosecuted under [section 151, IPC](#), if the order of dispersal had been lawfully given in the *bona fide* exercise of police powers under [section 129, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), with a view to preventing a breach of the peace.⁵³

⁵². *Jagmohan*, [1977 Cr LJ 1394](#) (Ori).

⁵³. *R Deb, Op Cit*, vol II, pp 834–835; See also *Duncan, supra*.

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- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

III. Promoting enmity between different classes (section 153A).

IV. Affray (sections 159, 160).

[s 146] Rioting.

Whenever force or violence is used by an unlawful assembly,¹ or by any member thereof, in prosecution of the common object² of such assembly, every member of such assembly is guilty of the offence of rioting.