

THE INDIAN PENAL CODE

CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 139] Persons subject to certain Acts.

No person subject to ^{40.}[the [Army Act](#), ^{41.}[the [Army Act, 1950](#), the Naval Discipline Act, ^{42.}[^{43.}[***] the Indian Navy (Discipline) Act, 1934^{44.}], ^{45.}[the [Air Force Act](#) or ^{46.}[the [Air Force Act, 1950](#)]]], is subject to punishment under this Code for any of the offences defined in this Chapter.

COMMENT—

Persons subject to these special Acts are punishable under those Acts and not under the [Penal Code](#).

^{40.} Subs. by Act 10 of 1927, section 2 and Sch. I, for "any Article of War for the Army or Navy of the Queen, or for any part of such Army or Navy".

^{41.} Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Army Act](#), 1911" (w.e.f. 1-4-1951).

^{42.} Ins. by Act 35 of 1934, section 2 and Sch.

^{43.} The words "or that Act as modified" omitted by the A.O. 1950.

^{44.} Now see the [Navy Act, 1957](#) (62 of 1957).

^{45.} Subs. by Act 14 of 1932, section 130 and Sch., for "or the [Air Force Act](#)".

^{46.} Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Air Force Act](#), 1932" (w.e.f. 1-4-1951).

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[s 140] Wearing garb or carrying token used by soldier, sailor or airman.

Whoever, not being a soldier, ⁴⁷[sailor or airman], in the Military, ⁴⁸[Naval or Air] service of the ⁴⁹[Government of India], wears any garb or carries any token resembling any garb or token used by such a soldier, ⁵⁰[sailor or airman] with the intention that it may be believed that he is such a soldier, ⁵¹[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT—

Wearing garb or carrying token.—The gist of the offence herein made penal is the intention of the accused wearing the dress of a soldier for the purpose of inducing others to believe that he is in service at the present time. Merely wearing a soldier's garb without any specific intention is no offence. Cast-off uniforms of soldiers are worn by many men. Actors put on different military uniforms.

⁴⁷. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

⁴⁸. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

⁴⁹. Subs. by the A.O. 1950, for "Queen".

⁵⁰. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

⁵¹. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

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 141] Unlawful assembly.

An assembly of five or more¹ persons is designated an "unlawful assembly", if the common object² of the persons composing that assembly is—

***First.*—To overawe by criminal force, or show of criminal force, ¹[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or**

***Second.*—To resist the execution of any law, or of any legal process; or *Third.*—To commit any mischief or criminal trespass, or other offence; or**

***Fourth.*—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or**

***Fifth.*—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.**

***Explanation.*—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.**

1. Subs. by the A.O. 1950, for The Central or any Provincial Government or Legislature.

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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 142] Being member of unlawful assembly.

Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

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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) Harbouring 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 143] Punishment.

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT—

Unlawful assembly.—An 'assembly' is a company of persons assembled together in a place, usually for a common purpose. Court is concerned with an 'unlawful assembly'. Wherever five or more persons commit a crime with a common object and intent, then each of them would be liable for commission of such offence, in terms of [sections 141 and 149](#), [Indian Penal Code, 1860](#) (IPC, 1860). It is not possible to define the

constituents or dimensions of an offence under section 149 *simpliciter* with regard to dictionary meaning of the words 'unlawful assembly' or 'assembly'.² An assembly of five or more persons having as its common object any of the five objects enumerated under section 141 of IPC is deemed to be an unlawful assembly. Membership of an unlawful assembly is itself an offence punishable under section 143, whereas other species of the said offence are dealt with under section 143–145 of IPC. Similarly, sections 146–148 of IPC deals with the offence of rioting which is defined to be use of force or violence by any member thereof. Section 149 makes every member of an unlawful assembly liable for offence that may be committed by any member of the unlawful assembly in prosecution of the common object of that assembly or for commission of any offence that the members of the assembly knew to be likely to be committed in prosecution of the common object of the assembly.³ To bring a case within section 149 of IPC some essential features must be present. First, there must be an existence of an unlawful assembly within the meaning of section 141 of IPC. This is a mixed question of fact and law.⁴

The underlying principle of section 141 is that law discourages tumultuous assemblage of men to preserve the public peace. Section 141 defines what an 'unlawful assembly' is. Section 142 gives the connotations of 'a member of an unlawful assembly'. Section 143 punishes tumultuous assemblies as they endanger public peace. It does not require that the purpose of the unlawful assembly should have been fulfilled.

The essence of an offence under this section is the combination of five or more persons, united in the purpose of committing a criminal offence, and the consensus of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit.⁵ Unlike the Indian law contained in section 141, IPC, 1860, an unlawful assembly at common law need to have only three or more persons who must assemble together for the common purpose of committing an offence involving use of violence, or for achieving a lawful or unlawful object in such a manner so as to lead to a reasonable apprehension of a breach of peace as a direct result of their conduct.⁶ Thus, under section 141, IPC, especially under sub-section (3) thereof, use of violence or likelihood of breach of the peace is not at all a *sine qua non* for an offence of unlawful assembly but this is so under the common law. So under the common law, even if the purpose of the assembly is unlawful, the offence of being an unlawful assembly would not be committed if there is no likelihood of breach of the peace and this would be so even if the unlawful common purpose is carried out.

[s 143.1] Ingredients.—

An 'unlawful assembly' is an assembly of five or more persons if their common object is—

1. to overawe by criminal force
 - (a) the Central Government, or
 - (b) the State Government, or
 - (c) the Legislature, or
 - (d) any public servant in the exercise of lawful power;
2. to resist the execution of law or legal process;
3. to commit mischief, criminal trespass, or any other offence;
4. by criminal force—
 - (a) to take or obtain possession of any property, or

- (b) to deprive any person of any incorporeal right, or
 - (c) to enforce any right or supposed right;
5. by criminal force to compel any person—
- (a) to do what he is not legally bound to do, or
 - (b) to omit what he is legally entitled to do.

1. 'Five or more'.— The [Constitution](#) Bench in *Mohan Singh's case*⁷, held that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The Supreme Court has endorsed the view that the number of injuries caused and the number of persons who were inflicted with those injuries, (in this case, three persons were attacked and they sustained 13, 12 and 7 injuries respectively) can give a clue to the fact that more than three persons must necessarily have participated in the attack.⁸

[s 143.2] Effect of acquittal of some accused:

In *Mohan Singh v State of Punjab*,⁹ the Supreme Court considered the question of acquittal of two of the accused charged for the offence under section 302 read with section 149, on the conviction of the remaining three accused. If five or more persons are named in the charge as forming an unlawful assembly and the evidence adduced by the prosecution proves that charge against all of them that is a very clear case where section 149 could be invoked. "It is however not necessary that five or more persons must be convicted before a charge under section 149 could be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under section 302 read with section 149, if the charge is that persons before the court along with others named, constituted an unlawful assembly. Other persons so named may not be available for trial along with their companions for the reason that they have absconded. In such a case, the fact that less than five persons are before the court does not make section 149 inapplicable. Therefore, in order to bring home a charge under section 149, it is not necessary that five or more persons must necessarily be brought before the court and convicted ..." In view of the decision of the [Constitution](#) Bench in *Mohan Singh's case*,¹⁰ even after acquittal of the two accused from all the charges levelled against them, if there is any material that they were members of the unlawful assembly, the conviction under section 302 can be based with the aid of section 149.¹¹

Where two of the six accused persons were acquitted without any finding that some other known or unknown persons also were involved in the assault, the remaining four accused persons could not be said to be members of an unlawful assembly.¹² Where a group of persons, differently armed, assaulted a man with the common object of killing him and all the assailants accused except one were acquitted, it was held that the remaining sole accused could not be convicted and sentenced under section 302 with the aid of section 149. The court cannot carve out a new case.¹³ If out of an unlawful assembly consisting of seven named persons four are acquitted, the other three cannot be convicted of rioting as members of an unlawful assembly.¹⁴ They may, however, be convicted of the principal offence with the aid of [section 34, IPC, 1860](#).¹⁵ Where presence of eight persons in the course of assault was established, four of them were given benefit of doubt but there was no finding anywhere to the effect that only

four persons had taken part in the assault, conviction of the remaining four on the charge of forming unlawful assembly was not illegal.^{16.}

2. 'Common object'.— The common object of an unlawful assembly depends firstly on whether such object can be classified as one of those described in section 141; secondly, such common object need not be the product of prior concert but may form on spur of the moment, finally, nature of such common object is a question of fact to be determined by considering the nature of arms, nature of assembly, behaviour of members, etc.^{17.} Mere presence in an assembly does not make a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of the unlawful assembly or unless the case falls under section 142.^{18.} Thus, merely because some persons assembled, all of them cannot be condemned '*ipso facto*' as being members of that unlawful assembly.^{19.} At the same time it cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of section 141.^{20.} Further the prosecution has to prove that the commission of the offence was by any member of an unlawful assembly and such offence must have been committed in prosecution of the common object of the unlawful assembly or such that the members of the assembly knew that it was likely to be committed.^{21.} The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage.^{22.}

Section 142 postulates that whoever, being aware of facts which render any assembly an unlawful one, intentionally joins the same would be a member thereof. Whether an assembly is unlawful one or not, would depend on various factors, the principal amongst them being a common object formed by the members thereof to commit an offence specified in one or the other clauses contained in section 141.^{23.} In a free fight between two groups resulting in death of one person and injuries to several others on both the sides, it was held that the formation of an unlawful assembly was not impossible but the common object of such an assembly cannot be determined on the basis of serious injury by one of them.^{24.} The accused along with about six–eight others forcibly entered into the office of a union leader and assaulted him but the victim did not receive any serious injury inside the union office and managed to escape. Later on in the open space some members of the crowd surrounded and attacked him and dealt fatal blows. It was held that the accused who entered the union office did not share the common object of committing murder of the deceased. They were convicted under sections 326/149.^{25.} Where the accused forming an unlawful assembly assaulted the deceased but the injury caused by only one accused proved to be fatal and the injuries caused by the others were found to be simple, it was held that the common object of the unlawful assembly was only to cause grievous hurt and only the accused who caused fatal injury was liable to be convicted for murder and others under section 326/149.^{26.}

The Supreme Court observed on the facts of a case that given the circumstances in which the assembly came together and given that all parties were aware that among them, certain members carried weapons like guns and spear, even if it was held that common object of assembly was not to cause death, it would not be an unreasonable inference that all accused knew that the offence of culpable homicide was likely to be

committed in prosecution of such an armed assault on another group which was not prepared to withstand such an attack, bringing about application of second portion of section 149. Therefore, it was held, that any of the accused found to have participated in the assault should be held guilty under section 141 and 149.²⁷

[s 143.3] Determination of Common object:

Determination of the common object of an unlawful assembly or the determination of the question whether a member of the unlawful assembly knew that the offence that was committed was likely to be committed is essentially a question of fact that has to be made keeping in view the nature of the assembly, the arms carried by the members and the behaviour of the members at or near the scene and a host of similar or connected facts and circumstances that cannot be entrapped by any attempt at an exhaustive enumeration.²⁸ It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime.²⁹

[s 143.4] Second clause—Resisting Law or Legal Process.—

Resistance to some law, or legal process, connotes some overt act, and mere words, when there is no intention of carrying them into effect, are not sufficient to prove an intention to resist.³⁰ When an order is lawfully made under the provisions of a statute, that order is law, and resistance to the execution of that law is an offence.³¹

Under this clause the act resisted must be a legal act. Where a number of persons resisted an attempt to search a house which was being made by officers, who had not the written order investing them with the power to do so, it was held that the persons resisting the attempted search were not guilty of this offence.³² Assembling together for the common object of rescuing a friend from unlawful police detention has been held by the Supreme Court as not constituting an unlawful assembly.³³

[s 143.5] Third clause.—Committing Criminal Trespass, Mischief, other offence.—

This clause specifies only two offences, viz., mischief and criminal trespass, but the words 'or other offence' seem to denote that all offences are included though only two are enumerated in a haphazard way. In *Manga @ Man Singh v State of Uttarakhand*, the Supreme Court while considering the application of principle of 'ejusdem generis' to section 141 'third' clause, observed that:

We fail to appreciate as to how simply because the offences mischief or criminal trespass are used preceding the expression "other offence" in Section 141 'third', it should be taken that such offence would only relate to a minor offence of mischief or trespass and that the expression "other offence" should be restricted only to that extent. As pointed out by us above, the offence of mischief and trespass could also be as grave as that of an offence of murder, for which the punishment of life imprisonment can be imposed as provided for under Sections 438, 449, 450 etc. Therefore, we straight away hold that the argument of learned senior counsel for the Appellants to import the principle of 'ejusdem generis' to Section 141 'third', cannot be accepted.³⁴