141. Unlawful assembly.—An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is:

First. To overawe by criminal force, or show of criminal force, the Central or any Provincial Government or Legislature, 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, 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.

SYNOPSIS

1. Unlawful assembly.
2. Charge.
3. Unlawful assembly—Construction.
4. "Common intention".
5. "Common object".
6. Exercising right of private defence.
7. "To overawe the Government *etc.*"
8. "To resist execution of any law".
9. "Mischief and criminal trespass".
10. "Obtaining of possession by show of criminal force".
11. "Compelling a person to do what he is not legally bound to do....".
12. Explanation.
13. Proof.
14. Compounding of offence.

1. Unlawful assembly. Section 141 of the Code is the first of Chapter VIII dealing with offences against the public tranquility. Section 141 defines unlawful assembly to be a congregation of people consisting of five or more persons having a common object so as to say:

First, to overawe by criminal force or show of force a Government servant in the exercise of lawful power; 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 use of criminal force or show of force obtain illegal possession, or deprive people from right of way, use of water or other incorporated rights; or

Fifth, to compel by the use of such criminal or show of force to do what he is not legally bound to do or to omit to do what he is to entitled to do.

The essence of an offence u/s. 141 is the combination of several persons, united for the purpose of committing an offence and that consensus of purpose is itself an offence distinct from the offence which these persons agreed and intend to commit. *[AIR 1953 S.C. 364; AIR 1987 S.C. 826; 1993 Cr.L.J. 1387 (S.C.)]*

According to explanation an assembly which may not be unlawful when it was assembled, may become unlawful subsequently when it is designated to commit the offences as detailed above. But to establish such a development, it would be necessary to prove a circumstances applicable to all the persons assembled which influenced them all in some

object. The evidence to this regard must be specific, clear, informant as to existence of facts. The omni bus kind of evidence that all the inhabitants and many more were miscreants and were armed with deadly weapons, like guns, spears, *pharsas*, axes, lathis has to be very closely scrutinize in order to eliminate all chances of false or implication. The case of each individual accused has to be examined to satisfy that spectators who had not joined the assembly and were unaware of its motive had not branded as member of the unlawful assembly which committed the crime. *[PLD 1956 S.C. (Ind) 249]* Where an assembly is declared unlawful and ordered to disperse, their failure to disperse will indicate a behaviour from which it can justifiably be concluded that the assembly is unlawful. *[AIR 1960 Pun 271]* If a member of an unlawful assembly is not able to walk away and has perforce to remain on the spot he may still continue to be a member of the unlawful assembly if he shares the common object of the assembly subsequent to his being made helpless. He can, however, in such a position disavow his share in the common object by expressions, leaving no doubt that he did not share the object any more. If he is also unable to express himself in this respect, it would be fair to presume that he was incapable of both taking part and of sharing the objects of the unlawful assembly and that he had withdrawn himself from the unlawful assembly. *[AIR 1950 All 418]* Where a large number of persons assemble and some of them resort to acts of violence or otherwise misbehave, although an overt act on the part of a person is not a necessary factor bearing upon his membership of an unlawful assembly, it will be safer to look for some evidence of participation by him before holding that he is a member of an unlawful assembly. *[AIR 1961 Mys 57]* Whether an unlawful assembly was formed and what exactly was the common object of the assembly must be judged from the facts and circumstances of the case. *[AIR 1958 S.C. 1021]*

14. Compounding of offence. Section 141 of the Code only defines an unlawful assembly. This section does not create any offence. But s. 143 of the Code makes it an offence to be a member of an unlawful assembly. The following section *i.e.* section 144 also makes it an offence to any person who is armed with a deadly weapons etc. to be a member of unlawful assembly. These offences are not compoundable. *[AIR 1941 Sind 186]* However, if the main offence designated to be achieved by the common object of the unlawful assembly is compoundable in the Code, this section would too sail in the same boat because it does not itself create any offence.

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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.

SYNOPSIS

1. Summary and scope.
2. Charge.
3. "Being aware of facts, which render any assembly an unlawful assembly intentionally joins".
4. "Or continues in it".
5. Person joining it should have the common object of assembly.
6. Presumption and proof.

1. Summary and scope. Section 142 of the Code pertains to a person who intentionally joins an unlawful assembly and continue to involve himself in it. The only condition which the section envisages is that the person who joins the unlawful assembly should have been aware of the fact which renders such assembly unlawful. If he knew that unlawful assembly had been formed with a common object and if he has chosen to join it *en route* to its destination, the person joining mid way can also be fastened with the vicarious liability envisaged in s. 149 unless he drops himself out before reaching such destination. *[(2001) 5 SCC 235]* This section says that if a member of any assembly having coming to know its illegal objects, so as to conform it into an unlawful assembly, intentionally joins it or continuous to be its member will be considered to be member of unlawful assembly. There are other sections also in this Chapter the offences under which are based on the fact of the accused being a member of an

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.

SYNOPSIS

1. Summary and scope.
2. Charge.
3. Procedure.
4. Exercise of the right of private defence.

1. Summary and scope. Section 143, is very simple, it provides punishment for a person who is found members of an unlawful assembly. The essence of an offence under this section is combination of several persons united in the purpose of continuing criminal offence and such a combination in itself constituted an offence distinct from criminal offence which these persons agree to commit. What the common object was in any particular case, and whether the accused share the common object of the assembly must be decided on the evidence in the case and the inferences drawn from the facts established, the conduct of the parties and the surrounding circumstances. It is for the prosecution to prove that the accused shared the common object of the unlawful assembly. *[(1974) 1 Cut WR 149]* Before an accused can be convicted under this section there must be clear finding that he participated in the common object of the assembly. *[1971 Cri LJ 559 (Pr 5) (Goa)]* Where it was evident from record that on the day of occurrence was a *pola* day and all the villagers has gathered on the spot along with their bullocks to participate in the *pola* festival and therefore there was no question of forming an unlawful assembly by the accused and there was nothing on record to indicate that complainant was abused in the name of his caste by the accused and was restrained from keeping his bullocks at the spot, in the circumstances it could be said not there was no question of accused committing the offence u/s 143. *[(1992) 2 Mah LR 596 (Bom)]*

The essential ingredients are necessary in order to constitute an assembly an unlawful assembly, namely that the assembly should consist of five or more persons, and that the common object of the persons composing the assembly should be one or more of the objects enumerated in s. 141. *[AIR 1925 Rang 362]* Persons merely passing close to the village of their enemies cannot be said to be members of an unlawful assembly and cannot be punished under this section. *[(1912) 13 Cri LJ 476 (Lah)]* In considering whether an object of an assembly of five or more persons falls within the categories enumerated in s. 141, the words of the section should be construed as they are and where they are clear, they should not be limited by the words used in the heading of the Chapter in which the section occurs. *[AIR 1959 SC 960]* The Court should direct its inquiry as to what would be the conditions necessary to constitute an unlawful assembly in the particular case and should find whether these conditions have been satisfied.*[(1910) 11 Cri LJ 348 (DB) (Cal)]* Where a member of an unlawful assembly commits an offence in pursuance of the common object of the assembly, every person who is a member of the unlawful assembly at that time will be guilty of the offence. *[1968 BLJR 151 (Pat)]* Although the very membership of an unlawful assembly is by itself an offence under this section. No overt act by the assembly is necessary, *[AIR 1959 All 255]* yet where such overt act is committed, a different offence may result. For instance, an offence under this section may, when combined with an offence u/s 353 (assault on a public servant), become an offence u/s 147 (rioting). *[(1886) ILR 12 Cal 495 (DB)]*

2. Charge. The common object should be clearly specified it he charge. But the omission to do so will not vitiate the trial. Where the common object is specified in the complaint and the accused is not prejudiced by the omission. *[AIR 1926 Bom 314]* Where the charge under this section mentions only ten named persons as having been members of the unlawful assembly and six of them are acquitted, the remaining four cannot be said to have been members of unlawful assembly, despite the evidence that many more than ten had been members of the said assembly. *[(1958) 52 Cal WN 500]*

3. Procedure. The offence u/s 143, P.P.C., is cognizable, bailable, but not compoundable, entails imprisonment of either description for 6 moths or fine or both, triable by the Executive Magistrate.

4. Exercise of the right of private defence. An assembly exercising the right of private defence is not an unlawful assembly, but if exceeds that right it will become an unlawful assembly. *[AIR 1927 Pat 27]* Where some persons in an assembly exercising a right of private defence individually exceed the right, the other members not sharing in the object of doing anything in excess of the exercise of the right of private defence, the whole assembly will not become unlawful, nor can individuals themselves be regarded as members of an "unlawful assembly" and punished as such, though they may be liable for their individual unlawful acts. *[(1912) 13 Cri LJ 481 (DB) (Cal)]*

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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.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.

1. Scope. Section 144 of the Code provides for a case where a person joins unlawful assembly being armed with deadly weapon. It says 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. The perusal of the section makes it clear that this section deals with an aggravated form of the offence u/s 143. In order to constitute an offence under this section two ingredients must be established: *first* the existence of an unlawful assembly with a common object and *secondly* that the accused was armed with a weapon such as described in the section. A person who instigates another to join an unlawful assembly armed with a deadly weapon, and joins it afterwards is punishable under this section read with s. 144, P.P.C., even if he himself is not armed with a deadly weapon. *[(1901) 5 Cal WN 252]* Where some members of an unlawful assembly with the common object of shooting a man came to the assembly armed with deadly weapons, they committed the offence under this section in prosecution of the common object of the unlawful assembly and therefore all the members of the unlawful assembly would be guilty of an offence under this section read with s. 149 and so would be liable to the enhanced punishment under this section. *[AIR 1930 Mad 857]*

2. Charge. The charge u/s. 144 of the Penal Code should state the common object, if the charge does not do so it does vitiate a conviction if there is evidence on record to show what the common object was. *[1968 P.Cr.L.J. 972 = 20 DLR 428 = 1969 P.Cr.L.J. 359]*

3. Procedure. The offence u/s 144, P.P.C., is cognizable, bailable, but not compoundable, entails imprisonment of either description for 2 years or fine or both, triable by the Executive Magistrate.

145. Joining or continuing in unlawful assembly, knowing that it has been commanded to disperse.—Whoever joins or continues in 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.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Unlawful assembly—Construction of.

1. Scope. Section 145 of the Code provides for a case where a person insists to join or continue to be a member of the unlawful assembly inspite of the command given, in the manner prescribed by law, to disperse. The essential elements of this section are:

a) That there was an unlawful assembly;

b) That the assembly was ordered to disperse, in the manner prescribed by law;

c) That the accused joined or continued in the assembly with knowledge of the order of dispersal.

The essential ingredient of offences u/s. 145, Penal Code is that the accused is lawfully commanded to disperse after he joins or continues in an assembly of five or more persons or in an unlawful assembly as the case may be. If person was not lawfully commanded to disperse he does not come within the mischief of section 145. *[1969 P.Cr.L.J. 373]* Where the common object of an assembly of five or more persons is to resist an order of the police to disperse, they will constitute an unlawful assembly u/s 141 (Clause 2) and if they do not disperse on being lawfully commanded to disperse they will become liable to the enhanced punishment under this section. Where a person joins an assembly without being aware of the fact that the convener of the assembly had been required to take out a licence for the assembly but had not done so and such person continues after he becomes aware of the facts he would be a member of an unlawful assembly as thereby he becomes a party to the common intention. *[AIR 1923 Pat 1 (3)]* An order duly promulgated, not to hold a public meeting or take out a procession or not to do so without taking out a licence, is not the same as an "order to disperse", as the latter kind of order can only come into existence after an unlawful assembly has been formed. But a procession taken out or meeting held in violation of a lawful order prohibiting such procession or prohibiting such meeting without obtaining a licence, will be an unlawful assembly u/s 141(3) read with s. 188, and its members will be liable for punishment u/s 143 or 144, as the case may be. *[AIR 1923 Pat 1 (3)]* Where the police authorities command a procession, taken out in violation of prohibitive order to disperse and the members of the procession do not do so, they will be committing the aggravated offence under this section and not merely the lesser offence u/s 143. *[AIR 1931 Bom 520]* Where there is merely an order of the authorities not to hold a public meeting or go in a public procession, and a meeting or procession is held in violation of the order, as there is no order to disperse, the persons who hold the meeting or take out a procession will only be guilty of the minor offence of being members of an unlawful assembly, u/s 143 and not of the graver offence under this section. *[AIR 1931 Mad. 484 (DB)]* Where the order banning a meeting is not valid, a public meeting held in defiance of the order does not constitute an unlawful assembly and hence, in such a case, the failure of the members to disperse on being commanded to do so is not an offence under this section. *[AIR 1955 Manipur 41]*

2. Charge. The failure to specify the common object in a charge under this section would not be fatal to the trial if it can be shown that there is ample evidence on the record to prove what the common object of the assembly is. *[AIR 1931 Bom 520]*

3. Procedure. The offence u/s 145, P.P.C., is cognizable, bailable, but not compoundable, entails imprisonment of either description for 2 years or fine or both, triable by the Executive Magistrate.

4. Unlawful assembly—Construction of. The essential ingredient of offences u/ss 151 and 145, Penal Code is that the accused is lawfully commanded to disperse after he joins or continues in an assembly of five or more persons or in an unlawful assembly as the case may be. If a person was not lawfully commanded to disperse he does not come within the mischief of s. 151 or s. 145. In the accusation in these cases it was not stated that Police Officer commanded the petitioners to disperse. Offering resistance is distinct form commanding to disperse. Thus the accusations, as they are, do not constitute an offence u/s. 151 of the Penal Code. For the same reason they do not also constitute an offence u/s. 145. *[1969 P.Cr.L.J. 373]*

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

SYNOPSIS

1. Rioting.
2. Charge.
3. There must be an unlawful assembly.
4. Common object.
5. Abetment of rioting.
6. Mere presence in assembly.
7. Force or violence.
8. In prosecution of the common object.
9. Section 146 is subject to general exception.
10. Sudden quarrel.
11. Burden of proof.
12. Duty of the Court.
13. Procedure.

1. Rioting. The term "riot" means a public disturbance involving an act or acts of violence by one or more persons part of an unlawful. Assembly according to s. 146, whenever force or violence is used by an unlawful assembly, or by any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. Section 146 applies where an overt act is done by the assembly or by any member thereof in pursuance of the common object, and the overt act is done by the use of force or violence. It is not necessary that any overt act must be done by the accused member of the assembly. *(1970 Cri LJ 1316 (Mad))* In order, that this section may apply:-

(1) There must be an unlawful assembly as defined in s. 141, and

(2) Force or violence must have been used by the unlawful assembly or by any member thereof in pursuance of the common object.

Where the two elements exist *viz.*, there is an unlawful assembly as defined in s. 141 and force or violence has been used by the unlawful assembly or by any member thereof in pursuance of the common object, every member of the unlawful assembly will be guilty of the offence of rioting. To constitute offence under this section the prosecution has to establish that there was an unlawful assembly, that force or violence employed and that an offence was committed. *[AIR 1953 Mys. 41]* Accused persons, five in number never in possession attempting to take possession by force. The act would amount to rioting. *[PLD 1975 S.C. 556]* The basis of the law as to rioting is the definition of an unlawful assembly, a riot being merely an unlawful assembly in a particular state of activity. *[1979 All Cri R 240]* In a charge of rioting the first thing to consider is whether there was an "unlawful assembly" and whether the accused was a member thereof. If there was no unlawful assembly no conviction for rioting under this section can be maintained. *[1968 Cri LJ 1676 (Tripura)]* Where it is not proved that more than four persons were inspired by a common object referred to in s. 141 or where the assembly has no such common object as is enumerated in s. 141 there can be no unlawful assembly and no member of such assembly can be convicted of rioting. It is not, however,

basis for either recording or for sustaining the conviction. *[1995 Cri LJ 4034 (Bom)]* The first information reports to the police in riot cases are not safe guides to charge the persons mentioned therein the reason is, that friends and relations of the real culprits are more often than not promiscuously implicated. *[AIR 1931 Lah. 465]* In riot cases, the oral evidence must generally be approached with caution and carefully scrutinized. *[1966 All Cri R 330 (DB)]* Where there is a volume of evidence which is *prima facie* acceptable but which is sought to be rebutted, it is the duty of the Court to apply its mind to the evidence and analyze it to find out whether the prosecution has affirmatively and satisfactorily proved its case making use of the defence evidence for the purpose of testing whether the prosecution case is true. If there is any reasonable doubt as to the guilt of the accused, and there is no moral certainty of such guilt, the accused should be given the benefit of doubt. *[AIR 1958 Mad 127]* Where accused persons alleged to have killed deceased and his sons on account of previous enmity between the parties over the disputed land and the testimony of eye-witnesses that all accused armed with country made pistol, *lathis* and iron pipes attacked deceased was not shaken in cross-examination and the factum of injuries on person of deceased was supported by medical evidence, the conviction of accused persons u/ss. 302, 147 and 149 would be proper. *[1999 Cri LJ 3391]* When there was no evidence showing that the petitioner accused was a member of an unlawful assembly having a common object of insulting or causing annoyance or causing injuries to the complainant and that in furtherance of such common object the petitioner accused had assaulted or used force then *prima facie* no offence u/s 147 was made out against the petitioner. *[1996 Raj Cri C 375]*

12. Duty of the Court. In cases of charges u/s 147, Penal Code, the Court should discuss the evidence as against each of the accused and view the case of each accused separately. *[AIR 1956 SC 181]*

13. Procedure. A case of rioting should not be tried summarily and when a grave offence is committed, it should not be minimized in order to justify a summary trial. *[AIR 1929 All 349]* The offences u/ss. 147 and 148 are not compoundable at all and therefore no acquittal can be allowed by reason of a compromise in regard to the offences under these sections. *[1968 Cri LJ 266]* The offences u/ss. 147 and 148 are not compoundable at all and therefore no acquittal can be allowed by reason of a compromise in regard to the offences under these sections. But if circumstances require, the Court can discharge the accused in respect of the charge u/s 147. *[AIR 1925 Lah. 464]* In a conviction for rioting even where the plea of self-defence is raised for the first time in appeal the appellate Court should examine the plea. *[AIR 1925 All 664]* Where the accused are charged with theft and riot and the charges have reference to property which forms the subject-matter of a civil suit already pending it is desirable in the interests of fair administration of justice that the criminal proceedings should be stayed till the disposal of the civil suit. *[AIR 1917 Pat 621]*

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147. Punishment for rioting.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Taking of cognizance.
5. Punishment for rioting.
6. Section 147 read with s. 124-A, P.P.C.
7. Sections 147 and 148, P.P.C.
8. Sections 147, 148/34--Several accused some carrying weapon—Sentence.
9. Sections 147 read with ss. 302, 326, P.P.C.

148. Rioting armed with deadly weapon.—Whoever is guilty of rioting, being armed with deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. "Whoever . . . . . being armed with".
5. "Deadly weapon".
6. Trial.
7. Accused must be guilty of rioting.
8. Appreciation of evidence.
9. Evidence required to prove the offence.
10. Sentence.
11. Conviction.
12. Mitigating circumstance.

1. Scope. Section 148 of the Code deals with a case of an offender, found guilty of rioting (*i.e.*, s. 141) being armed with a deadly weapon or with anything which used as a weapon of offence was likely to cause death. To accomplish offence of this section the ingredients of rioting must be fulfilled. It is essential that the persons forming an unlawful assembly should be animated by a common object, *[PLD 1960 Dacca 880]* which must be common to at least five persons and must be definitely found and not merely left for conjecture or inference from other facts found in the judgment. There should also be a finding as to whether the acts complained of were done for the prosecution of the common object of the assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object or even as to when the assembly came into being. *[AIR 1956 Trav-Co 230]*

For proving charge u/s. 148, P.P.C six ingredients are essential:

(i) that five or more persons were assembled;

(ii) that they constituted an unlawful assembly;

(iii) that members of such assembly used force or violence;

(iv) that accused was a member of that unlawful assembly;

(v) that in prosecution of common object, assembly used force; and

(vi) that accused was armed with deadly weapon or anything used as a weapon for offence likely to cause death. *[PLD 2005 Kar 18]*

The requirement of s. 148 is that in order to succeed, the prosecution must prove not only that an accused was a member of unlawful assembly but also that being such a member be used criminal force or by show of criminal force had obtained possession of any property or deprived any person of the enjoyment of a right of way or the use of water. *[1971 P.Cr.L.J. 528]* Accused cannot be convicted u/s. 148 P.P.C unless he is found to be member of an unlawful assembly using force or violence in prosecution of the common object of such assembly. *[2005 P.Cr.L.J. 1442]* If the accused is found to be member of unlawful assembly, his vicarious liability cannot be minimized merely because no part has been assigned to him. *[1970 P.Cr.L.J. 1312]*

Where there is no satisfactory evidence to prove the formation of any unlawful assembly with a common object to commit crimes and the whole fight started suddenly on the spur of the moment in a heat of passion the accused though more than five in number could only be liable for the individual acts committed by them and could not be convicted u/ss. 149, 148 or 147. *[AIR 1980 S.C. 573]* Accused person cannot be convicted u/s. 148, P.P.C unless he is found to be a member of unlawful assembly using force or violence in prosecution of the common object of such assembly. *[PLD 1996 S.C. 219]* An assembly using force in enforcing their right or supposed right will be an unlawful assembly. This section will then apply if the accused is armed with a deadly weapon or with anything which, used as a weapon of offence,

mouth. Sentence reduced from seven years to four year. *[1988 MLD 2787]* Accused causing only one injury on the head of deceased with *sota* and not repeating injury to deceased even after his falling down. No intention to commit murder or knowledge that deceased would die as a result thereof. Conviction set aside. *[1987 P.Cr.L.J. 1518]* Accused or any of their companion receiving no injury at hands of complainant party. No evidence of any apprehension of death or fear of suffering grievous injury available. Right of private defence exceeded. *[1987 P.Cr.L.J. 1518]* Concurrence taking place in retaliation, which is a ground for mitigating in the matter of sentence. *[2001 P.Cr.L.J. 1987]* Where the occurrence was the outcome of sudden flare up and there was no previous enmity between the parties and intention to murder was absent, the accused was entitled to benefit of probation. *[AIR 1988 SC 2127]*

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149. **Every member of unlawful assembly guilty of offence committed in prosecution of common object.**—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

SYNOPSIS

1. Scope and application.
2. Charge.
3. Procedure.
4. "If an offence committed".
5. "Unlawful assembly".
6. "Knew to be likely".
7. "In prosecution of".
8. In prosecution of the common object.
9. Section 149 and S. 34, P.P.C.— Common object *viz a viz* common intention.
10. Section 149 and s. 148.
11. Section 149 and s. 396, P.P.C.
12. "At the time of committing the offence".
13. Right of private defence.
14. Offence committed by principal offender distinct that of his associates.
15. Burden of proof.
16. Sentence.
17. Construction.
18. Composition.

1. Scope and application. It is general principle that a person is liable for what he himself does and not for what other persons do. This section is an exception to the general rule, in that it makes a member of an unlawful assembly vicariously liable, under the circumstances mentioned in the section for an offence committed by another member of the assembly. *[AIR 1979 S.C. 1761]* Section 149 of the Penal Code is declaratory of the various liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. *[AIR 1960 S.C. 725]* This section does not create a new offence but provides for vicarious liability for offences committed by others in furtherance of the common object. *[1968 P.Cr.L.J. 263]* Section 149, P.P.C. implies that every member of an unlawful assembly is responsible for the act committed by any other member of that assembly in pursuance of object. While convicting a person under the said section it has to be seen whether he was a member of unlawful assembly an offence was committed in pursuance of common object. Necessary ingredient of common object are prior meeting of minds of accused to form a pre-arranged plan and some evidence to prove that accused were in-concert and in pursuance of pre-arranged plan had committed the criminal act. *[2007 P.Cr.L.J. 1860]* It constitutes in itself a substantive offences, *[AIR 1979 S.C. 1509]* and treats all members of assembly, whether they do or do not commit any overt act equally liable. *[PLD 1976 Lah. 21]*

In order that this section may apply the accused must be:-

i) A member of an unlawful assembly;
ii) The overt act must have been committed in prosecution of the common object; or
iii) The member of the assembly must have known that such offence was likely to be committed in

The applicability of s. 149 to a particular case will depend upon the particular facts and circumstances of that case. Each case must be decided upon its own facts. On the analysis of this section, it will be found that it is divided into two parts:

(i) an offence committed by a member of unlawful assembly in prosecution of the common object of that assembly; and

(ii) an offence such as the members of that assembly knew to be likely to be committed in prosecution of that object.

The two are separate alternative clauses. The phrase "in prosecution of" in the two clauses have different shads of meaning. The word "prosecution" is derived from a Latin word which means to follow. The ordinary meaning of the phrase "in prosecution of" is "in pursuance of", "in fulfilment of", "in execution of", "in the course of" and various other shades of meaning. In the first clause the phrase "in prosecution of" does not mean the same as the phrase during "the prosecution of" the common object of the assemblies. In other words, the act must be one which, upon the evidence, appears to have been done with a view to accomplish the common object attributed to the members of that assembly. An offence will fall within the second alternative if the members of the assembly for any reason known before hand that it was likely to be committed in the prosecution of the common object, though not knit, thereto by the nature of the object itself. *[PLD 1961 Dacca 420]* Once an assembly has become unlawful then all things done in the prosecution of the common unlawful object of the assembly are chargeable of every member thereof. To attract the constructive liability incurred under this section, it is not necessary to show that the offence committed was identical with the common object of the unlawful assembly nor it is an essential requirement for such a liability that the offence committed must in every case be directly and immediately connected with the prosecution of common object of the unlawful assembly. The second part of the section would clearly come into play where the offence was such as the members of assembly knew to be likely to be committed in prosecution of that object. When deciding the question of constructive liability, it is necessary to consider the fact of both the parts of the section, the second part being of a wider import than the first. *[PLD 1961 Lah 1]*

Two kinds of cases can arise in which the application of s. 149 is to be considered. One is the case of an offence committed in furtherance of the common object of the unlawful assembly, in which case each member of the unlawful assembly is guilty of the offence committed by anyone of them. The other is the case, where the offence committed may not have been done in prosecution of common object of the unlawful assembly. In this later case the companions of the person who committed the offence may or may not be liable for the offence; if the offence committed is not such as the member of the assembly other than those who committed is knew to be likely to be committed in the prosecution of their common object, the person who does that act would be individually liable for the act. The illustration of this type of case is where one of the members of the unlawful assembly unknown to others, carries a pistol in his pocket and kills someone with it, when the common object of the unlawful assembly did not extend beyond causing grievous hurt. In such a case, the act of the person who uses the pistol could not be considered to be know to be likely by his confederates and s. 149, P.P.C can have no application. *[PLD 1954 Lah 78; PLD 1956 Lah 854]* All accused by preconcert and in a determined manner coming armed with fire arms and indulging in dastardly firing resulting in instant death and injuries to P.Ws. Community of purpose held fully established and no room left for doubting intention of assailants. *[1980 P.Cr.L.J. 531]*

Liability. Manifestly the liability of every member extends not only to the acts contemplated by all but also to those offences which are likely to be committed in achieving the common object. It, therefore, follows that this section does not make the members liable for every offence that may be committed by any one or more of hem while the assembly is operating and carrying into effect the object of the assembly, unless the act falls within either of its two parts. Considering the effect of the section it must first be decided as to what is the common object of he assembly, and after having reached a conclusion on that question, the next question which would follow is what was the liability of the members of the assembly depending upon the intention or knowledge as regards the offence which may have been committed. These are questions of fact which are to be decided on consideration of the surrounding circumstance. *[PLD 1971 Kar 68 (DB)]* Where of the several accused who attacked the deceased some were armed and others unarmed. Held, unarmed accused at any rate cannot be fixed with common intention without any overt act on their part. *[1968 P.Cr.L.J. 645 (DB)]*

committing a riot, should he find it in his interest that such riot should be committed, and there was no evidence that an unlawful assembly, made up of elements provided in s. 141, was in the contemplation of the accused, it was held that his conviction under this section could not be sustained. *[(1902) ILR 29 Cal 214 (DB)]* Where the accused was charged for having harboured certain persons who were alleged to have formed an unlawful assembly in the past for the commission of an offence the accused cannot be convicted under this section. *[AIR 1931 Cal 712]* To support a conviction under this section it must be shown that for the purpose of an unlawful assembly the persons were hired or engaged or employed. Volunteers engaged for preparing salt cannot be said to have been hired or engaged or employed by their leader for purposes of forming an unlawful assembly. *[AIR 1931 Mad 440]*

Procedure. The offence u/s 157, P.P.C., is cognizable, bailable, but not compoundable entails imprisonment of either description for 6 months, or fine, or both, triable by Magistrate of the Second Class.

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158. Being hired to take part in unlawful assembly or riot: or to go armed.—Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

NOTES

Scope. Section 158 of the Code deals with persons who are engaged or hired to take part in an unlawful assembly or riot. It provides, whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Even in the absence of an unlawful assembly, in existence or in contemplation the offence under this section can be committed whereas the offence u/ss. 150 and 157 can only be committed in view of an unlawful assembly in existence or in contemplation. *[(1902) ILR 29 Cal 214 (217, 218) (DB)]*

Procedure. The offence u/s 158, P.P.C., is cognizable, bailable, but not compoundable entails imprisonment of either description for 6 months, or fine, or both, for the offence falling under first part and imprisonment of either description for 2 years, or fine, or both of the offence falling under second part, triable by Magistrate of the Second Class.

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159. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

SYNOPSIS

1. Affray.
2. Charge.
3. "Fight".
4. "Public place".
5. "Disturb the public peace".
6. Affray and rioting.
7. Affray and right of private defence.
8. Practice.
9. Cognizable offence.

1. Affray. "Affray" is mutual combat—a fight—of two or more persons in a public place to the terror of the people. It differs from a riot in not being premeditated. According to s. 159 Pakistan Penal Code when two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray". The word 'affray' is derived from the French '*affrayer*' meaning that which affrights or puts in fear or terrifies. To constitute an affray as defined in s. 159 here must be:

(1) a fighting,

(2) between two or more persons,

(3) in a public place, and

(4) consequent disturbance of the public peace.

The offence of affray being a joint offence, each person concerned in it taking part in the fight, the Court must be satisfied that each one of the accused took an active physical part in the process of fighting before convicting him of the offence. *[1933 Mad WN 721]* Though one cannot expect to find specific evidence as to the acts of each fighter, there may be general evidence as to the particular accused taking part in it. *[(1894) ILR 21 Cal 392 (398) (DB)]*

2. Charge. I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows:-

That you on or about the _____ day of _____ at _____ engaged (*or hired*) by _____ or offered (*or attempted to be hired or engaged*) to do or assist in doing any of the acts specified in section 141 (*specify the act*) (*under second clause add "went armed or engaged or offered to go armed"*) with a deadly weapon (*or with a thing which used as a weapon of offence was likely to cause death*); and that you thereby committed an offence punishable u/s. 159 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. "Fight". A fight is a hostile encounter, affray or altercation, be physical or verbal struggle for victory. A fight is an essential element in any affray and necessarily connotes a contest or struggle for mastery between two or more persons against one another in which each of the two sides is trying to obtain mastery over the other. *[1962 (1) Cri LJ 339 (339) (Ker)]* The offence of affray is a fight *i.e.*, a bilateral act in which two parties participate and it will not amount to an affray when the party who is assaulted submits to the assault without resistance. *[1996 Cri LJ 1472 (1473)]* 'Fight' contemplated u/s 160 is certainly different from a mere quarrel. *[1989 Mad LW (Cri) 170 (172)]* Unless there is some violence offered or threatened against one another, there would be no fight, but only an assault or a beating. *[1947 Nag LJ (Notes) 53; AIR 1938 Mad 924 (925)]* It is not necessary to use weapons, but there must be exchange of blows though they may not find their target. *[(1963) 65 Punj LR 813 (814)]* Mere abusing or quarrelling in a public street without exchanging any blows or a mere passive submission to an aggression, assault or beating is not a fight and does not constitute the offence of affray. *[1978 All Cri C 128 (129)]* Where, on hearing the cries of help from the accused, twenty persons rushed to the spot but none of them attacked the complainant nor did the complainant do anything to bring the matter to the pitch of fight, it was held that there was no affray within the meaning of s. 159. *[AIR 1952 All 788 (794)]* An answering war cry or an active non-violent resistance by one party to the violence used by the other party, is sufficient to constitute as 'fight'. *[AIR 1950 Mad 408 (409)]*

4. "Public place". A public place is a place where a general public has a right to resort irrespective of the fact that it is devoted solely to the use of the public. A public place is a place where the public goes, no matter whether they have a right to go or not. An open piece of land forming part of a compound of a press is a public place. *[(1884) 14 QBD 63 (67)]* A place, which is dedicated to the use of the public or to which the public can go as of right is of course, a public place. *[AIR 1951 Orissa 51 (52) (DB)]* A place may be a public place even though it is the private property of an individual. Where a place is owned privately and there is no dedication to the public the question whether it is a public place depends upon the character of the place itself and the use actually made of it by the public. *[(1904) 1 Cri LJ 349 (353) (DB) (Cal)]* The question whether a place is a public place or not does not necessarily depend on the right of the public as such to go to the place. The places where the public are actually in

neglected, and attention is solely directed to the question as to who struck the blow and not to the question who was in the wrong in the original subject-matter of the quarrel and that, in fact, the essence of the case should be who was the aggressor and whether the other party acted in self-defence or otherwise. *[(1965) 2 Suth WR 59 (DB)]* When two men are fighting in a street and one is able to say that the other attacked him and that he was only defending himself there is no 'fight' and consequently no affray. *[(1957) 1 All ER 577]* Two persons, *A* and *B* met and after abuse came to blows. Each one struck the other down. Others also participated in the quarrel. *B* died of the injuries. There was no evidence that *A* alone was the assailant of *B*. It was held that *A* could be convicted only u/s 160 and not under Part-II of s. 304 as there was nothing to choose between the fighters. *[(1912) 13 Cri LJ 718 (Lah)]*

8. Practice. The legislature has clearly viewed that offence against public tranquility is a matter of concern for the State having a serious impact on the law and order problem and it is not case of individual dispute between the parties to be sorted out between them with or without the intervention of the Court. That is only, even a simple offence of affray which is punishable u/s 160 with imprisonment of either description for a term which may extend to one month only has also not been made compoundable being offence against public tranquility. *[(1996) 3 Guj LR 755 (775)]* Where there was a complaint and counter complaint, the investigating officer adopted a short circuit method of filing a report against both the parties u/s. 173(2) of Cr.P.C., for offence of affray, prejudice is likely to be caused to the parties as one of the parties not being aggressors in the case and therefore not liable to be charged at all would have to face the music of being punished for an offence of affray. *[1992 Mad LW (Cri) 206 (208)]* Two persons *A* and *B*, got drunk and fought with das in a public street and wounded each other with the das. The Magistrate tried them together for affray and did not frame any charge of causing hurt. It was held that the procedure was illegal,. When the evidence had established a prima facie case of causing hurt with a das against *A*, he should have been tried for that offence as it was more serious than affray, *B* could have been separately tried afterwards u/s 324 of the Code for voluntarily causing hurt to *A*. *[(1909) 7 Cri LJ 498 (499) (Rang)]* Where an accused is being tried for an offence under this section, he cannot be convicted for an offence u/s 290 of the Code as the ingredients of the latter offence differ from those of an affray of which he was charged. *[AIR 1959 Mad 513 (514)]* Where an accused is charged with causing grievous hurt or hurt, he cannot be convicted of an offence of affray under this section without framing a fresh charge against him. *[AIR 1933 Mad 843 (844)]*

9. Cognizable offence. The test for determining the legality of the trial of a person more than one is whether the offence for which he is being tried subsequently is distinct from the offence for which he was previously tried. As the offence of causing hurt is distinct from that of affray, the trial and conviction of the accused u/s 160 of the Code is no bar to a subsequent trial u/s 323 on a complaint filed by one of the parties to the affray. *[AIR 1955 Mys 138 (139)]*

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160. Punishment for committing affray.—Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to [6][three hundred rupees], or with both.

NOTES

Scope. Section 160 provides for punishment of an accused committing affray where he is found guilty under the law. The proposed imprisonment is to the extent of one month or fine of Rs. 300/- or both. The offence is non-cognizable, bailable, triable by Judicial Magistrate.

Procedure. The offence u/s 160, P.P.C., is cognizable, bailable, but not compoundable entails imprisonment of either description for 1 month, or fine of Rs.300/-, or both, triable by any Judicial Magistrate.
