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# **“MASALTI V. STATE OF U.P. (1964)”: A CRITICAL REVIEWAL OF THE DOCTRINE OF CONSTRUCTIVE CRIMINAL LIABILITY**

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& SAHASHRICHIA PANDEY<sup>2</sup>

## **ABSTRACT**

The landmark judgment in *Masalti v. State of Uttar Pradesh* (AIR 1965 SC 202) is a foundational authority on constructive criminal liability under Section 149 read with Section 302 of the Indian Penal Code, 1860. Grounded in the maxim *actus non facit reum nisi mens sit rea* — an act does not constitute guilt without a guilty mind — the case clarified that liability in unlawful assemblies arises not from individual acts but from participation in a common object, which is a question of fact inferred from conduct, language, weapons, and surrounding circumstances. The Supreme Court held that mere presence in an unlawful assembly, coupled with awareness and concurrence with its unlawful object, is sufficient for vicarious liability. It rejected the mechanical exclusion of partisan witnesses, asserting that their testimony, if credible and corroborated, cannot be discarded merely due to affiliation. Similarly, non-examination of witnesses allegedly “won over” or terrorised does not vitiate criminal proceedings if the remaining evidence meets the standard of proof. On sentencing, the Court upheld the death penalty for principal offenders who acted in furtherance of the common object while recognising coercion and familial influence as mitigating factors for others, thus commuting certain sentences to life imprisonment. This approach underscores proportionality and judicial discretion in capital sentencing.

Beyond doctrinal clarity, *Masalti* informs contemporary policing and crowd control protocols, including CCTV surveillance, city monitoring, and adherence to the Model Rules on the Use of Force (IGP Conference, 1964), later endorsed by the Commonwealth Human Rights Initiative. These measures reflect the judgment’s enduring relevance in balancing public order with constitutional safeguards.

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**Keywords:** Masalti v. State of U.P., Section 149 IPC, Common Object, Constructive Liability, Unlawful Assembly, Partisan Witness, Death Penalty, Vicarious Liability, Mens Rea, Public Order, Rule of Law.

## INTRODUCTION

*‘Actus non- facit reum nisi means sit rea’<sup>3</sup>*

(A criminal act would not render a person liable unless conjoined with a guilty mind)

A person is held criminally liable under the Indian Penal Law (IPC) for his personal acts or omissions, contrary to the provision of the IPC. However, an exception to the said rule is provided through the imposition of constructive criminal liability on the cooperative criminal acts of certain individuals and they all are held conjointly liable for such commission or omission, if their intention and act are congruent in nature and intention.

The maintenance of Public Order and to ensure tranquillity in the public discourse is the primary objective of any government. For a country to grow, develop and reach new heights of good governance, it is of utmost importance that its government should be able to give its citizens a peaceful and egalitarian environment. In a situation of failure to provide the above, the consequences can be dire and unpleasant.”

Such identification of an assembly of personnel’s that poses a danger to the public order and its underlying interest could herein, be sought and identified through Section 141 of the Indian Penal Code.<sup>4</sup> Section 141 provides the definition of an unlawful assembly of such individuals who are-

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<sup>3</sup> Oxford Reference, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095349253> (10.09.2020)

<sup>4</sup> Section 141, Indian Penal Code, 1860,

*“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, 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.”*

INGREDIENTS  
OF SECTION 141,  
IPC.

- An assembly of five or more persons
- They possess a common object
- Common Object amongst one of the five specified in the section.

Along with this, Section 149 of the IPC<sup>5</sup> also provides such considerations that “if an offence is committed by any member of an unlawful assembly in furtherance 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”.

In such cases, vicarious criminal liability shall be imposed on the members of the said assembly because they voluntarily with consent decided to be so with awareness and concurrence. Moreover, in such incidents, constructive guilt is levied and hence, all such members of that unlawful assembly are held jointly and severally liable; for the act of all or any its constituent member.

However, such Common Object of an unlawful assembly, which incriminates their act; cannot be ascertained directly because of the reason that it is a mental attitude of the members.<sup>6</sup> Thus, owing to the said, it remains to be a question of fact. The common object is to be hence, affixed by the facts and circumstances of individual cases (the arms which they carry, the language which they use, manner of assembly, etc)<sup>7</sup> but common object shall be always *sina qua non* to an unlawful assembly.<sup>8</sup>

Thus, the paper herein, is in light to the afore-mentioned discussion. The researcher reviews and analyses the case of *Masalti v. State of UP*,<sup>9</sup> which is a landmark judgement by the Supreme Court of India concerning the affixing of liability under Section 149, read with Section 302 of the Indian Penal Code, 1860.

The Case Comment also goes on to discuss about the contemporary times as well wherein, in such circumstances of assembly characterised to be ‘unlawful’, the Police Department responds to the said, on the pretext of the establishment of CCTV Surveillance and City Monitoring

<sup>5</sup> Section 149, Indian Penal Code, 1860

<sup>6</sup> *Ram Dular Rai v. State of Bihar*, AIR 2004 SC 1043

<sup>7</sup> *Lalji v. State of UP*, AIR 1989 SC 754

<sup>8</sup> *Muthuramalingam v. State*, AIR 2017 SC 50

<sup>9</sup> 1964 SCR (8) 133

Centres. Additionally, the Case Comment also goes on to shed light on the Model Rules of Crowd Control and the Standard of Procedure to be followed by the Police, as decided in the IGP Conference, 1964; endorsed by the Commonwealth Human Rights Initiative in the year 2005.

### **AIM & OBJECTIVE OF THE STUDY**

- To critically analyze the case law of *Masalti v. State of UP (1964)*, the relatives concerning death penalty, membership to an unlawful assembly under force and coercion, along with a brief study of Section 149 read with Section 302 of the Indian Penal Code.
- To pound over the modern policing methods characterized by the institutionalization of CCTV Surveillance and City monitoring for emergent response and elastic situations.
- To highlight the Standard of Procedure of Crowd Control and Management, adopted in the 1964 Inspector General's Conference, endorsed by Commonwealth Human Rights Initiative in the year 2005.

### **RESEARCH METHODOLOGY**

- ❖ **RESEARCH DESIGN:** The researcher follows the premise of the Exploratory Research Design and primarily focusses on the socio-legal and policing means of administrative bodies. The study '*in-toto*' is qualitative, descriptive and analytical in its nature.
- ❖ **METHOD OF DATA COLLECTION:** The researcher follows Doctrinal method of research requiring the gathering of relevant data from the specified documents and compiling databases in order to analyze the material and arrive at a more complete understanding of the concept of Common Object and unlawful assembly under Section 149 of the Indian Penal Code read with Section 302, in furtherance to the case of *Masalti v. State of UP (1964)*.

An analysis of case law, reports, documents, journals and other available resources within online databases were referred to.

- ❖ **TOOLS OF ANALYSIS:** The researcher has pounded over the issue of Common Object under Section 149 of the Indian Penal Code to be '*sina qua non*' to an unlawful assembly, read with Section 302, in relation to the case of *Masalti v. State of UP*. The researcher imputes multiple case laws along with modern policing means read in

conjunction with the SOP concerning crowd control and management, adopted in the IGP Conference, 1964.

- ❖ **SCOPE:** The research paper, in its very essence, is of an extensive nature, however, for the purpose of the study, relatives concerning the case of *Masalti v. State of UP* (1964) are referred and analysed herein.

## FACTS OF THE CASE

The unfortunate incident took place on the morning of the 29th November, 1961 at about 8 a.m. in the village Bilati Khet (District: Jhansi). There exists keen rivalry and enmity between two factions of people in the said village. One of the faction was led by Mr. Gayadin who and four other members of his family were murdered on the said date. Herein, the murders were believed to be committed by the appellants himself. The opponent group was led by Mr. Laxmi Prasad aka Laxmi Narain, one of the appellants in this Court. Mr. Laxmi Prasad succeeded as the Pradhan of the village and defeated the candidate set up by Gayadin in the last Panchayat Elections. On the 28th November, 1961, a boundary dispute related to two fields one of which belonged to Gayadin and the other to Laxmi Prasad broke out amongst the two groups. Attempts were made to settle this dispute by arbitration, but they failed because of the fact that Mr. Laxmi Prasad and the members of his group did not consent to submit the dispute to any arbitration proceedings and left the meeting called for the very same purpose; threatening that they would settle the dispute between them to be settled the very next day. It is on this grey incident that 28th November ended.

In the early morning of 29th November, Bahoran, one of the sons of Gayadin, had gone out to ease himself in the village fields, carrying a pharsa with himself. Subsequently, he was attacked by Laxmi Prasad with a lathi in the field itself. Bahoran retaliated with his own pharsa and injured the nose of Laxmi Prasad. Enraged by this injury, Laxmi Prasad went to his house and collected the crowd belonging to his faction. In the meantime, Bahoran eased himself and returned to his house.

Subsequent to this, Bahoran went to the north of his house where his father, brothers and other relations were warming themselves by fire. At that stage, Ram Prasad and Dayaram hurried to the scene and informed them that Laxmi Prasad and his companions were all armed with guns, spears, swords, gandasas and lathis and were proceeding to the house of Gayadin determined to kill all the members of Gayadin's family. On receiving such alarm, Gavadin and his friends

and relatives thought of proceeding towards the house of Gayadin and locking themselves-in.

About that time, Laxmi Prasad and his companions reached the house of Gayadin wherein Laxmi Prasad fired a gun. Bhagwati was carrying a large quantity of cartridges in the folds of his dhoti and was instigating Laxmi Prasad to fire at everyone and to exterminate the entire family of Gayadin. On hearing this, every one of the group sitting near the fire rushed into the house and closed the doors.

The assailants then broke open the doors of the house of Gayadin and entered. Inside the house, the assailants killed Gayadin on the upper storey. Brindaban, Radha Saran and Dayaram were hiding in different rooms of the house; the doors of these rooms were broken open and all the three of them were shot dead. Bahoran and Shiroman Singh, both sons of Gayadin, bolted through the tiled roof into the cattleshed of Harbans, situated close to the Gayadin's house. Shiroman concealed himself in the go-down while Bahoran concealed himself in the room in the upper storey where chaff had been stored. After killing Gayadin, Brindaban, Radha Saran and Dayaram, the assailants ruthlessly dragged the bodies of the victims out of the house of Gayadin and began their search for Bahoran and other male inmates of the house. When the dead bodies were being dragged, Gori Dulaiya wife of Gayadin rushed after the assailants and pleaded them not to take the dead bodies away. One of the assailants, however, struck her with a stick and she was forced to retrace her steps. The dead bodies were then dragged towards the east of the house. On reaching the cattleshed of Harbans, the assailants broke open the outer door of the house and entered into it. They then injured Harbans and managed to discover Shiroman Singh who was promptly killed. The five dead bodies were then taken into the field of Bhagwati. In the field two big piles of cow-dung cakes were prepared. On one of the piles the bodies of Gayadin, Brindaban, Radha Saran and Davaram were placed and on the other Shiroman Singh's body was put. Kerosene oil was sprinkled on the bodies and fire was set to them.

When the assailants left the house of Gayadin, Bahoran came out and rushed to the Police Station and lodged the First Information Report at about 11 o'clock. In this report, he gave all the material details in regard to the commission of the offence and named 35 persons as assailants. Subsequently, the police party rushed to the scene of occurrence on cycles, put off the burning fire, took out the half burnt bodies of the five murdered persons which were identified and sent for post mortem examination. The injured persons Harbans, Ram Prasad,

Mansa Ram and Smt. Gori Dulaiya were also sent for medical examination. Post-mortem examinations accompanied by the recording of the statements of witnesses were carried out in the course of investigation.

## PROCEDURAL HISTORY

### TRIAL COURT

Forty persons were charged for having committed several offences of which one was under section 302<sup>10</sup> read with S. 149<sup>11</sup> of the Indian Penal Code. The case against these personnel's was tried by the first Additional Sessions judge at Jhansi. The other charges framed against such individuals were unfortunately, not proved against any of them. However, the Court found 35 out of 40 accused persons to be guilty of being part of unlawful assembly and vicariously held them liable for murder. For the major offence charged under s. 302/149, the Court thus, sentenced 10 accused persons to death and 25 others to imprisonment for life.

### HIGH COURT

After the trial court pronounced his judgment on the 31st December 1962, the 35 convicted persons preferred three appeals before the Allahabad High Court. The sentences of death imposed on 10 accused persons were submitted to the said High Court for confirmation. The High Court held that 7 out of the 35 appellants were not proved to have committed any of the offences, and so, they were ordered to be acquitted because of evidentiary relative of witness being declared partisan. In regard to the remaining 28 appellants, the High Court has confirmed the orders of conviction and sentence imposed on them by the trial Court; since they all formed members of the unlawful assembly whose common object was to exterminate the male members of the family of Gayadin, they were all equally guilty of murder under s.302 and 149 of the I.P.C. Moreover, the High Court upheld the confirmation of the sentences of death imposed on the 10 accused persons by the trial Court under Section 374 of the Code of Criminal Procedure,<sup>12</sup> on the pretext that they carried gun at the incident site and did fire it on the victims,

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<sup>10</sup> Section 302, The Indian Penal Code

*"Punishment for murder.—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine."*

<sup>11</sup> Section 149, The Indian Penal Code

*"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."*

<sup>12</sup> Section 374, The Code Of Criminal Procedure, 1973

*"Appeals from convictions."*

causing death.

Herein, the appellants have invoked Article 136<sup>13</sup> of the Indian Constitution and through a Special Leave to Appeal that the matter came before the 'Court of Law'.

## **ARGUMENTS OF APPELLANTS (MR. SAWHNEY)**

### **ADMISSION OF WITNESSES AND MATERIAL FACT OR LAW UNDER ARTICLE 136**

The appellants based their argument on the failure of the prosecution to tender three material witnesses to the court which were: Ram Prasad, Mansa Ram and Rani Dulhan. This contention was raised by the defence before the Trial Court that such may cause prejudice to the defence however, the Court rejected such contention. The prosecution had made an application to the trial Court expressing his inability to examine the three witnesses for the reason that Ram Prasad and Mansa Ram had been won over by the defence and Rani Dulhan, the widow of one of the victims, was suffering from such mental shock that she was unable to depose logically. After this, application were made under s.540, Cr. P.C<sup>14</sup> to the trial Judge who in-turn rejected these applications, and so, the case concluded without the said three witnesses giving evidence before the trial Court.

But, such plea was not raised in in the High Court by the appellants. However, the SC still ruled that in criminal proceedings wherein, sentence of death is imposed, the Court is permitted to consider material pleas of fact and law even when they were not urged before the High Court, herein.

The Supreme Court, in matter concerning the admissibility of the witnesses ruled that attempts are usually made in serious criminal trials like the one at hand, either to terrorise or win over prosecution witnesses, and if the prosecutor honestly believes that some of his witnesses have been won over, it would be unreasonable to insist that he shall tender such witnesses before the Court. The Court even went on to mention that it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised.

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*(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court."*

<sup>13</sup> Article 136, The Constitution Of India 1949.

<sup>14</sup> Section 354, The Code Of Criminal Procedure, 1973

Moreover, the Court validated the decision of the trial court in not admitting the witnesses because the trial court did not consider it to be an essential element for a just decision. The SC said that if the matter of erroneous statements given to the investigating authority was not raised in the HC, then it would be not sound to consider it in the court herein. The Supreme Court thus, did not allow the appellants to argue on the said matter of the admissibility of the three witnesses because of the fact that they were either won over or terrorized and as regards to Mrs. Rani, no evidence on her mental condition was presented.

### **ADMISSIBILITY OF A PARTISAN WITNESS**

The appellants herein, argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve other innocent members of the rival faction out of enmity and partisan feeling.

The Court herein ruled that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be with utmost care and caution in weighing such evidence.

Remarks of the  
Supreme Court

- “Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account.”

The apex court mentioned that it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, Criminal Courts deals with evidence of a partisan nature and the mechanical rejection of such evidence might invariably lead to failure of justice. Thus, the Court ruled that no hard and fast rule can be laid down as to how much evidence should be appreciated. Thus, the plea of the appellants that such evidence should be rejected because it is partisan was not admitted by the SC.

### **LIABILITY ARISING OUT OF COMMON OBJECT**

The appellants subsequently argued that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted.

The Court deliberated that the participation of all the members of a large crowd of persons who are armed with weapons to assault the intended victims, is not particularly required. In the present case, several weapons were carried by different members of the unlawful assembly, but the guns were used to kill. In such a case, conjoint liability is to be construed wherein; all such cooperating individuals would be held jointly liable.

The Supreme Court upheld the mechanical test applied by the High Court to convict or to acquit the various persons concerned; based upon the supporting evidence by two or three or more witnesses through their consistent account of the incident. The SC believed such accounting to be mechanical but also reasonable wherein, the quality of the witness determines the liability.

### **PRESENCE V. PARTICIPATION IN AN UNLAWFUL ASSEMBLY**

The appellants relied on the case of *Baladwin v. State of UP*,<sup>15</sup> wherein the Court ruled that mere presence in an unlawful assembly would not make a person who is present, a member of an unlawful assembly unless and until it is proved that he had done something or omitted to do something which would make him a member of an unlawful assembly. On the said ground, that Mr. Sawhney prayed for the acquittal of certain appellants from the SC.

The Supreme Court stated that the facts and circumstances of the *Baladwin* case were distinct and different from the given case. In the present case, the High Court has carefully examined the evidence and has made a finding that the whole group of persons who constituted the assembly were members of the faction of Laxmi Prasad and they assembled together, armed with several weapons, because they possessed a common object in pursuance of which the five murders were committed. Thus, the Court invalidated such argument of the appellant as well.

### **DEATH PENALTY**

The appellants urged before the Supreme Court that the High Court has adopted a mechanical rule on the imposition of death penalty on the ground that such persons carried fire-arms and were associated with the murders and that such observation of the Court must not hold ground owing to the fact that unless and until it is proved that the offenders themselves committed the murders, they shall not be sentenced for death.

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<sup>15</sup> A.I.R. 1956 S.C. 181

Dalip Singh v.  
State of Punjab  
(1953 AIR 364)

- Mr. Sawhney contended through the said case wherein, Justice Bose held that only in exceptional circumstances that the punishment of death shall be imposed. Moreover, the Court also said that the discretion is vested only with the trial court in the infliction of punishment and not with the appellate court.

The Apex Court ruled that such observations have no relevance in the case at hand because the Court is not dealing with a case wherein, the High Court did enhance the sentence imposed by the trial Judge. However, herein, both the trial Court and the High Court have approved of the sentences of death imposed on 10 persons as to be justified through the facts and circumstances of the case and by the requirements of justice.

The Court stated that the validation of the imposition of the death penalty on the members of an unlawful assembly owing to the fact that they performed a criminal act of homicide in furtherance to the common object of the said would be imputed through the facts and circumstances of individual cases.

In the present case, the whole group of persons belonged to Laxmi Prasad's faction who joined together; armed with deadly weapons, inspired by the common object of exterminating the male members in the family of Gayadin. Ten of such persons were armed with fire-arms and the others with several other deadly weapons, and evidence shows that five murders were committed by the members of this unlawful assembly through a shooting. Thus, keeping into light the conduct of the members of the unlawful assembly before and after the commission of murders and to suppress such acts that the Supreme Court validated the trial Court and the High Court in the imposition of death sentence through the effective of exercise of discretion. Subsequently, the Supreme Court rejected the contention of Mr. Sawhney regarding the mechanical imposition of the death penalty by the subordinate courts.

However, the Supreme Court has modified the death sentence of three of the accused who are Ram Saran, Asha Ram and Deo Prasad to sentence of life imprisonment. Ram Saran and Asha Ram are the sons of Bhagwati who is an accused in the given case. The Supreme Court stated that these individuals must have joined the unlawful assembly under pressure and influence of the elders of their respective families, keeping into light the familial functioning and operability in the rural countryside and hence, the court believed that the ends of justice would be better served if the death sentence of such persons to have to be converted into life imprisonment and

hence, subsequently ruled in the same, while confirming the death sentence and life imprisonment of the rest of the accused appellants.

### **CRITICAL ANALYSIS**

The Apex Court interpreted the notions of common object as provided in Section 149 of the Indian Penal Code in a critical and objective manner yet depending and varying through the individual cases. The Court very appropriately ruled that if the common object of an unlawful assembly is to commit an illegal and criminal act, then such conjoint participation of multiple members would in-turn attract joint liability flowing across such individuals as well. The Court's judgement in considering to not mechanically reject the evidence and testimony presented by the partisan or interested witness but to ascertain the validity of the said through effective judicial approach depending on the facts and circumstances of individual cases; also deserves commendation. Moreover, Court's observation in matters relating to the fact that the appellants are free to raise relevant and substantial matters of law and fact, even when weren't raised in the High Court, in front of the Supreme Court also secures the means of justice. Further, the Court also provided that in serious criminal trials, there are heavy attempts to win over or terrorise the witnesses, hence, a mechanical rule cannot be laid out that all such enlisted and empanelled witnesses are to be compulsorily reviewed in front of the Court; is also an effective and sensitive take by the Superior Court. Additionally, the Court also deserves a laud wherein, it held that if certain members of an unlawful assembly becomes a party to the said under force, manipulation and coercion; then though they shall not be exonerated from the liability that is construed upon them through the acts of other members of the said unlawful assembly, however, to secure the ends of justice they might take such ground to be mitigating factors and the punishment could be converted as the court deems fit.

### **CONCLUSION: CASE SYNOPSIS AND KEY TAKE AWAYS**

The case of *Masalti v. State of UP* is one of the landmark judgements of the Supreme Court in matters concerning Section 149/302 of the IPC. The Court in the given case observed certain distinctive interpretations of law and fact amongst which the affixing of liability to all and every personnel associated with an unlawful assembly possessing a criminal common object shall be held responsible and constructive liability will be construed to determine the liability of the members of the said assembly. The SC ruled that in criminal proceedings wherein, sentence of death is imposed, the Court is permitted to consider material plea of fact and law even when they were not urged before the High Court. The Court even went on to mention that

it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or if it is known that he/she has been won over or terrorised. The mechanical rejection of such evidence collected from and through the partisan witnesses might invariably lead to failure of justice and hence, it would depend on the discretion of the trial judge and facts and circumstances of individual cases. The Court stated that the validation of the imposition of the death penalty on the members of an unlawful assembly in furtherance to the said criminal and common object of the said would be ascertained through the facts and circumstances of individual cases.

#### ANNEXURE –I (COMMONWEALTH HUMAN RIGHTS INITIATIVE, JULY 2005)

Model Rules on the Use of Force by the Police against Unlawful Crowds (Adopted by the **Inspectors General of Police Conference, 1964**) Minimum necessary force should be used to achieve the desired object. Force should be regulated according to the circumstances of each case. The object of such use of force is to disperse the assembly and no punitive or repressive considerations should be operative while such force is being used

The procedure regulating the use of force is outlined in the police manuals of different states. The Kerala Police Manual, 1970 for instance lays down a step-by-step procedure to deal with unlawful assemblies:

- The police must invariably secure the presence of a magistrate where it anticipates a breach of peace.
- The decision to use force and the type of force to be used is to be taken by the magistrate, while the extent of force to be used will be determined by the senior-most police officer, which must be subject to the principle of minimum use of force.
- Use of force should be progressive ñ i.e firearms must be used as a last resort if tear smoke and lathi charge fail to disperse the crowd.
- Lathi charge can only begin if the crowd refuses to disperse after suitable warning
- Clear warning of the intention to carry out a lathi charge should be given through a bugle or whistle call in a language understood by the crowd. If available, a riot flag must be raised. If the police officer in-charge is satisfied it is not practical to give a warning, s/he may order a lathi charge without warning.
- Lathi blows should be aimed at soft portions of the body and contact with the head or collarbone should be avoided as far as practicable
- The fullest warning in a clear and distinct manner must be given to the crowd to inform them that the firing will be effective
- If after the warning, the crowd refuses to disperse the order to fire may be given
- A warning shot in the air or firing over the heads of the crowd is not permitted
- All help should be rendered to convey the wounded to the hospital
- Police officers must not leave the scene of disturbance before satisfying themselves beyond reasonable doubt about the restoration of tranquillity.
- An accurate diary of all incidents, orders and action along with the time of occurrence should be maintained by the police. This will include an individual report by all officers involved.<sup>1</sup>

**Source:** Commonwealth Human Rights Initiative, “Standards and Procedure for Crowd Control”, 2005, [https://www.humanrightsinitiative.org/programs/aj/police/papers/standard\\_procedure\\_for\\_crowd\\_control.pdf](https://www.humanrightsinitiative.org/programs/aj/police/papers/standard_procedure_for_crowd_control.pdf)

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