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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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SECTION 149 AND ITS CLASH BETWEEN ARTICLE 19

AUTHORED BY - SHRI SUDHARSAN

Abstract :

The paper aims to study, analyse and review the section of 149 and its relevance with criminal law and constitutional law. Unlawful assembly was inserted into the ipc generally to prohibit groups from engaging in activities that pose a threat to public safety or property. The primary objective of such laws is to prevent the outbreak of violence and protect the public from harm. Unlawful assembly sections are often used by law enforcement officers to disperse groups that are deemed to be a threat to public safety. When such an assembly is declared unlawful, participants may be arrested, charged, and prosecuted for their involvement in the event. And the paper aims to question the scope of the grounds on which such an assembly could be held unlawful by law as there is no clear grounds mentioned under directly. The paper's central focus is on section 149 and the main aim is to show by this paper that the section is vague and needs more interpretation

Keywords : *arrested, charged, public, interpretation, unlawful assembly.*

Research question:

Is the definition under section 149 satisfactory?

Introduction :

This research paper majorly focuses on Section 149 which deals with unlawful assembly and under offences against the public Tranquillity, chapter VIII of the Indian penal code. The section has been the subject of much analysis and criticism, particularly in the context of its potential misuse by law enforcement agencies. And the objective is to provide an in-depth analysis of section 149 IPC and its criticisms, with relevant case laws. Unlawful assembly is defined under section 141 of the IPC which states that any assembly which has five or more persons is under law designated to be unlawful assembly where and if the common object of such persons designated to compose of the assembly is to either overawe by criminal force or showing criminal force against state or public servant who is in exercise of lawful power and also anyone who is trying to resist against the execution of any laws or legal process or commits any mischief or criminal trespass, by use of Criminal force or with the show of criminal force tries to take or obtain possession of property or to do deprive a person of enjoyment of any his right guaranteed by law is in accordance with the act has committed the offence of an unlawful assembly which is against the public Tranquillity.

Analysis:

Anyone who is being a member of an unlawful assembly after knowing that the assembly in such a way gathered is against law according to section 141 intentionally and continues to be in that assembly is said to be a member of the unlawful assembly as per section 142 of the IPC, And they will be treated in the same manner as the person committing the offence in the unlawful assembly even though they were just part of the assembly and didn't have any physical or mental element such as that of the person committing the offence. For such offence they can be sentenced to imprisonment which may extend to 6 months or with fine or even both according to section 143 and if they have any deadly weapon with them they will most likely be awarded with imprisonment for a term which may extend up to 2 years or with fine or both. The actual conflict of laws occur under section 149 “every member of an unlawful assembly guilty of an offence committed in prosecution of common object” The explanation is as follows, when an offence is committed by any member of an unlawful assembly and if there was a common object, where any of such members of the assembly knew that such an offence can be committed in prosecution of that object, everyone who were there at the time

of committing of that SM is a member of the unlawful assembly and is guilty of that away¹.

The way the section has been drafted has been involved in constant arguments and criticism because in general unlawful assemblies include people who gather for a common cause in a very large groups which in most of the cases would either be labourers protesting against unfair labour practices nor the general public who would protest against any particular new law passed by the Parliament which they think is either unconstitutional in nature or would have a negative effect in their daily lives, and making the whole assembly liable even if a single person in the assembly commits an offence is both against the constitution and the the basic principles of criminal law as anyone can enter a public assembly if the public is protesting against a particular new act, amendment or whatsoever, and the way the act is interpreted it can be conferred that any person who is in disagreement with public protesting in peaceful means according to article 19 (1) (a), 19(1)(b) against any law or judgement (the jallikattu case for instance) can not only prevent the whole protest by causing any unlawful act which is infringing their fundamental rights but can also make the innocent people who had no mens rea nor actus reus be guilty for the offence which they hadnt committed².

Actus Reus and Mens Rea:

The actus reus of a crime refers to the physical or external component of an offense, while the mens rea refers to the mental component if any present during the crime. The actus reus and mens rea are the basic elements and requirements which constitutes a crime. However, Section 149 does not make it clear what the actus reus and mens rea requirements are for an individual to be held responsible for the offense committed by an unlawful assembly. In other words, it does not define the specific act or omission of an individual to be held responsible for the offense. There may not be everyone in an unlawful assembly who show any actus reus but the law is drafted in such a way that they can be liable even if they didn't have any mens rea which against both the principles of democracy and the criminal law. The causation principle which in layman's terms means any criminal act or civil act would necessarily and requires a direct causal link between the actus reus and the mens rea with the harm caused. However, in the case of an unlawful assembly, it is often difficult to establish this causal link. This is because the individual members of the assembly may have differing levels of

¹ <https://www.indiacode.nic.in/bitstream/123456789/2263/1/A1860-45.pdf>

² <https://legislative.gov.in/constitution-of-india/>

involvement in the commission of the crime and some people may even be completely innocent. Even if some members might have participated in any unlawful act or committed any crime, while others may have merely been present but not involved in the commission of the offense, everyone would be held liable under the section. The concurrence principle requires that the actus reus and mens rea must occur simultaneously.

Violation of Principle of Individual Responsibility:

The principle of individual responsibility is a fundamental principle of criminal law which includes the mens rea and actus reus part, which states that an individual can only be held responsible for the offence committed by him. However under Section 149, this principle is again being violated by holding every member of the assembly responsible for the offence committed by the assembly. This means that an individual who did not actively participate in the offence can still be held responsible for it, merely by virtue of their membership in the assembly. The section has not defined what constitutes an "unlawful assembly," which can lead to confusion and misuse of the provision. It is up to the discretion of the law enforcement officers to determine whether an assembly is unlawful or not, which can lead to arbitrary and discriminatory application of the provision as most of these assemblies occur in order to protest against any government provision which the general public any particular section of the society might feel is against the laws of democracy. Collective responsibility under Section 149 can also violate an individual's right to a fair trial. The provision can be used to prosecute individuals who were not involved in the commission of the offense just because they were part of the assembly. This can result in a violation of the individual's right to a fair trial, as they may be held responsible for an offense they did not commit.

The major criticism of the act is that the concept of common object is so vaguely defined that the court or the government can use it and interpret it as it deems fit and not through any proper standard interpretation which might disrupt the way laws are supposed to be functioning from a positive school of thought. And the words "in prosecution of the common object" creates more confusion as it can be interpreted that any person in a lawful assembly before it turns unlawful by his particular unlawful act which was for the prosecution of the common object would make the assembly unlawful and also make the other people in the lawful assembly who gave their consent only to protest in a peaceful way be liable for the acts of that one person who acted unlawfully and this is against the fundamental

right of right to freedom of speech and expression. The right to protest is an essential part of the right to freedom of speech and expression, which is a fundamental right guaranteed by the Indian Constitution. In the case of Ramlila Maidan Incident v. Home Secretary, Union of India³, the Supreme Court of India held that the right to protest is a fundamental right of citizens under the Indian Constitution. The court observed that the right to protest is an essential ingredient of a democratic society and cannot be curtailed unless it turns violent or leads to public disorder, which is where again in prosecution of a common object is deeply criticised under section 149 where even sections like 34 ipc only deals with the principle of common intention where people can be prosecuted for an offence where only if they share the common intention which includes the mental element of committing a crime and there is also the need to prove the involvement of the common intention before or during or after committing the offence whereas no such thing is required for section 149 which again makes it unconstitutional.

Case laws:

Even in the case of Himat Lal K. Shah v. Commissioner of Police, the Bombay High Court held that the right to protest is not only a fundamental right but also a constitutional duty where the social activist was arrested for conducting various public meetings on the grounds that his act could cause public nuisance and disorder where he argued that the Bombay Police Act did not have any provisions which states that there had to be any prior permission obtained for such and that the commissioner had not enough powers vested with him to arrest the accused and that it was violative of article 22 of the constitution. The court observed that citizens have a right to express their grievances and opinions in a peaceful manner, and the government has a duty to facilitate such expression and fundamental rights preside over any other laws. However just like any fundamental right even these rights are not absolute and are subjected to some reasonable restrictions.

In the case of Srikantiah & Ors State of Mysore, 1958 The court's primary intention was to charge everyone with the common object for the murder of deceased Anne Gowda where the court stated that the common object of the unlawful assembly was to murder Anne Gowda and sentenced all the appellants to transportation for life in the district court but the appellants proceeded to the High

³ <https://privacylibrary.ccgmlud.org/case/in-re-ramlila-maidan-incident>

Court and they pleaded it was one of the serious injuries caused by the appellant number five Sanjeeva Rao and their common intention in the unlawful assembly was not to kill the individual. Photo also found that none of the members of the unlawful assembly had the common intention to kill Putte Gowda. Action for murder under section 302 was unsustainable and there was no less concrete evidence to prove the common intention and the appeal was dismissed. This is one example where the judiciary couldn't prove the proper connection of common object in the unlawful assembly, but taking another example for instance in the case of M/s Sterlite Industries (India) Ltd v/s Tamil Nadu Pollution Control Board is yet another case of violation of section 149 and an important landmark environmental law case. The Sterlite industry which was a copper smelting factory which was located in Tuticorin and was belonging to the Vedanta group, a multinational corporate, in this unit was alone responsible for the 20% copper production in India⁴.

There were various political criticisms which included that the particular project was denied by both Maharashtra and Goa governments but surprisingly found some refugees in the south and was set up in Tamil Nadu. There were reports of large emissions of SO₂ both in the atmosphere and in the groundwater which affected thousands of residents of Tuticorin. There are verified reports of polluted groundwater levels, increasing cancer patients and also common asthma complaints and other several health and skin diseases after the emergence of this Sterlite factory. They violated various provisions of the Air Act, Water Act and the National Green Tribunal Act. But the most important sections were section 21 of the Air Act which granted the power to grant consent to establish or operate certain industrial plants and vice versa and section 31 of the Air Act which granted the power to give directions for such industries and Section 19 (4)(e) of the National Green Tribunal Act which issues commissions for examination of witnesses or documents even section 31 along with section 18 of the Water Act. When things got tense even the government became serious in dealing with this issue. The respondent board gave instructions to the super acting engineer of the Tamil Nadu electricity board to discontinue the supply for the particular smelting company after this. When during the manufacturing process a certain amount of sulphur dioxide is released this process was actually regulated using an analysis supported by software which the respondent Board has recommended S for using it as a tamper proof system and they crossed the limit which was set by the government. Graph which showed the trend of sulphur dioxide to ambient air quality indicated that the emission of the gas has suddenly rising from

⁴ <https://vlex.in/vid/appeal-crl-120-of-852318269>

20 g to 62 g per M3 and that the sulphur dioxide monitor was not connected with the air centre of respondent board.

The case Tamil Nadu pollution control board vs Sterlite Industries Limited limited is a Supreme Court case which was led by justice Chandrachud and various other senior advocates like Rohini Musa and Aryayama Sundaram who argued for the plant vigorously .But in the end due to the gas leaks which was during the month of march and all other claims put forth the Honourable Supreme Court imposed a fine of rupees hundred crores to the plant and Vedanta groups for polluting the environment and dumping wastes in various places .the company at first tried denying the fine stating it was unfair ,but the court asked them to pay it within a period of 5 years.the plant was finally shut down after months of protesting and many lives at stake being lost. The actual issue relating to the paper was where the people were protesting peacefully the law enforcement department were given certain instructions and they started firing against the citizens due to some unlawful activities of certain individuals during the protest against the regular protocols which led to the death of 13 individuals by the police in the ambit of unlawful assembly , this is one of the major reasons why the section is being criticised as the those 13 deceased had no common intention of protesting through any unlawful means and the common intention of the group too was to protest peacefully using lawful means⁵

Conclusion:

Unlawful assembly as seen in the paper is a complex issue that requires careful consideration from lawmakers and law enforcement agencies. On the one hand, the right to peaceful assembly is a fundamental human right that is enshrined in many national and international legal frameworks. On the other hand, the potential for unlawful assembly to escalate into violent or destructive behaviour is a serious concern that cannot be ignored. While there are some general guidelines that can be used to determine whether a gathering is legal or not, such as whether it poses a threat to public safety or property, there is often a great deal of subjectivity involved in these assessments. And this again shows the need for a wider application of this law .While it is important for police to maintain public safety and prevent criminal activity, there is also a risk that their actions may be perceived as heavy-handed or infringing on individuals' rights to peaceful assembly It is important for lawmakers and

⁵ <https://www.sconline.com/blog/post/2019/02/18/sc-refuses-to-order-reopening-of-vedantas-tuticorin-sterlite-plant/>

law enforcement agencies to strike a balance between protecting public safety and upholding the right to peaceful assembly. Hence we saw how the application of unlawful assembly works under the indian penal court and the need for a more detailed description of the section is evident as you have read the paper , unlike other section where the judge applies the law and interprets the law and decides the judgement , here it much like the judge interpreting his own interpretations on the case with the ambit of the section rather than the laws deciding the judgement.From a positive school thought of view the interpretation of this section would come into deep criticism as their prime objective is that laws are meant to applied as they are and not what they ought to be .we would like to conclude that the prime aim of the paper is to make the readers understand the need for better interpretation with better and clear definition of this section of ipc ass the current one lacks clarity and is conflict of many laws and also that it's vagueness can lead to unclear interpretation of law.

