

"when the persons participating in the transaction.



**ASSIGN
BUSTER**

“ When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more every person so committing, attempting or aiding, is said to commit “ dacoity”.” Essential ingredients of Section 391 are: 1.

Five or more persons must act in association, 2. Such act must be robbery or attempt to commit robbery, 3. The five persons must consist of those who themselves commit or attempt to commit robbery or those who are present and aid the principal actors in the commission or attempt of such robbery. The commission of robbery in association by five or more persons is an essential ingredient of the offence under Section 391. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number. Five or more persons must either conjointly commit or attempt to commit robbery.

The word ‘ conjointly’ refers to united or concerted action of the persons participating in the transaction. When their individual action can be properly referred to their concerted action only then the offence under Section 391 is committed. For application of Section 391 it is necessary that all the persons should share the common intention of committing robbery. The accused must be shown to have committed robbery or aided in the commission of it and that they must be among the body of persons who extorted money or aided them in extorting money.

In *Dhanpat v. State* [AIR 1960 Pat 582], it was observed that dacoity is perhaps the only offence which the code has made punishable at four stages. When five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under Section 402 merely on the ground of joining the assembly.

Another stage is that of preparation and if any one makes preparation to commit a dacoity, he is punishable under Section 399. The definition of 'dacoity' in Section 391 shows that the other two stages, namely, the stage of attempting to commit and the stage of actual commission of robbery, have been treated alike, and come within the definition. In other words, attempt to commit dacoity is also dacoity. A person present and aiding the commission or attempt to commit robbery stands on the same footing for the purposes of Section 391.

Though Section 391 does not use the term 'intentionally' aid, the requirement of intention can be imported into the section, as an essential element of dacoity and robbery is an aggravated form of theft and extortion and dishonest intention is an essential element of both theft and extortion. Thus, there cannot be an offence of dacoity under Section 391, unless an element of 'dishonest intention' on the part of the offender is present.