

The mere assembling  
for any preparation is



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The punishment prescribed is quite severe and this shows that this offence is viewed as a serious offence. It is also important to note that this section makes no provision for imposition of simple imprisonment. Merely assembling at a particular place for the purpose of committing dacoity is not making preparation for committing dacoity; these are two different stages. The former has been made specifically punishable under section 402 while the latter is punishable under section 399. Devising or arranging for the means necessary for the commission of dacoity is making preparation for committing dacoity.

This thus is going farther than merely assembling for the purpose of committing dacoity. The Supreme Court has held that merely because eight persons had assembled in school compound near a market place at around 1 o'clock in the night, and a gun and some cartridges were also recovered from them, does not mean that they had committed an offence under section 399 or section 402 of the Code. The Patna High Court has followed this ruling and held that where certain accused persons were found sitting in a lonely house under construction at night and some firearms, bombs and a bhujali were recovered from them, they could not be held guilty, on the basis of this evidence alone, under section 399 of the Code. In *Sukhlal v. State?* the Madhya Pradesh High Court held that mere assembling for any preparation is sufficient for an offence under section 402 whereas for an offence under section 399 it must be proved that some additional steps were taken in course of the preparation to commit dacoity.

The offence under section 399 is cognizable, non-bailable and non-compoundable and is triable by court of session.