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# **COMMON INTENTION AND COMMON OBJECT: A COMPARATIVE LEGAL ANALYSIS**

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## **Introduction**

The criminal law of India, primarily codified in the Indian Penal Code, 1860 (IPC), recognizes that individuals may not always act in isolation. When multiple persons act in concert towards a shared goal that results in a crime, the doctrine of joint liability becomes applicable. The principles of common intention (Section 34 IPC) and common object (Section 149 IPC) are two pivotal legal constructs that address such group culpability. These doctrines serve the twin goals of deterrence and effective justice administration, ensuring that those who encourage or aid a crime are not allowed to escape liability merely because they did not execute the final act.

This article explores the conceptual distinction and legal significance of common intention and common object, their applicability in criminal cases, and their interpretation through judicial precedents. The study seeks to analyze their doctrinal roots, operational scope, and interplay in ensuring collective liability within criminal jurisprudence.

## **Concept of Joint Liability in Criminal Law**

Joint liability in criminal law refers to the situation where two or more individuals are held liable for a criminal act committed in furtherance of a shared plan or design. The rationale is to prevent individuals from escaping liability merely by delegating the execution of criminal acts. The IPC incorporates joint liability through two distinct mechanisms.

“Penal Code incorporates provisions imposing criminal responsibility on certain parties, other than those centrally responsible, depending upon their role in the perpetration of the crime”.

1. Section 34-38 of the Penal Code impose responsibility on accomplices on the basis of a showing of a common intention shared by the parties in the commission of a crime.  
Section 34 IPC. Sec.3(5)BNS – Acts done by several persons in furtherance of common intention-When a criminal act is done by several persons in furtherance of the common intention of all each of such person is liable for that act in the same manner as if it were done by him alone.

Section 35 IPC, Section. 3(6) BNS—When such an act is criminal by reason of its being done with criminal knowledge or intention- Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by a several persons, each of such persons who join in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with the knowledge or intention.

Section 36 IPC, Section 3(7) BNS—Effect caused partly by act and partly by omission—Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

2. The offence must be committed in prosecution of the common object of that same offence.

Section 37 IPC, Section 3(8) BNS—Co-operation by doing one of several acts constituting an offence—When an offence is committed by means of several acts whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Section 38 IPC, Section 3(9) BNS—Person concerned in criminal act may be guilty of different offences—Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act..

## **Section 34 IPC [section 3(5) BNS]: Common Intention**

### **1. Legal Provision**

Section 34 IPC [S. 3(5) BNS] states:

“When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

### **2. Essential Ingredients**

1. Criminal act must be done by several persons;
2. There must be a pre-arranged plan or common intention;
3. The act must be done in furtherance of that common intention.

It is quite apparent that just as the term act in the section refers to series of acts as a single act, so also the coverage of the provision is attracted only when there are more than one person involved in committing the criminal act. This is based on the common sense principle that when

several persons are alleged to have committed a criminal act, then there is every possibility that different members would have actively given encouragement, help, protection and support, as also actively participated or otherwise engaged in the commission of the criminal act itself. Thus even though a particular act may have been committed by an individual, where common intention exists, and they had all acted in furtherance of that common intention, then all of them are held liable for the offence.

One of the earliest of cases where the scope of Section 34 was considered at length was the case of *Barendra Kumar Ghosh v. King Emperor* (1925). In this case the accused was the only person apprehended for the murder of the postmaster of Shankaritola Post Office on 3 August 1923. On that day, several persons appeared at the door of the backroom of the post office where the postmaster was counting his money, and demanded the money. Immediately they fired pistols at him and he died almost immediately. While all the accused fled the place without taking any money, the accused alone was chased and caught with a pistol in his hand. It was his defense that he was only standing guard outside the post office, and that he was actually compelled to stand so by the other accused and thus he did not have the intention to kill the postmaster. His conviction for murder u/s 302 r/w Section 34. IPC was confirmed by the High Court. In the appeal before the Privy Council, Lord Sumner, while dismissing the appeal against the conviction held:

Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself; for 'that act' and 'the act' in the latter part of the section must include the whole section covered by the criminal act 'in the first part because they refer to it.

### **SCOPE OF COMMON INTENTION**

There must be a general intention shared by all the persons concerned. A furtherance of the common design is a condition precedent for convicting each one of the persons who take part in the commission of the crime, in the absence of the common intention, is not sufficient to convict them of that crime. This principle came to be enunciated in what has come to be known as the 'Indus River Cases' or the case of *Mahaboob Shah v. Emperor* AIR 1945 PC 118. In this case, the deceased Allah Dad and few others were going in a native boat down the river Indus to cut and collect reeds growing on the bank of the river. A mile from the place where they started, they were warned by Mohammed Shah father of Wali Shah (who absconded and was never apprehended), not to cut reeds from the land belonging to him. However, when they

continued to cut and load reeds into their boat, they were accosted by Quasim Shah, nephew of Mohammed Shah, who tried to remove the reeds from them and prevent them from moving. When he pushed Allah Dad, the latter struck him with a 10 feet long and six inches thick bamboo pole used for rowing and steering the boat. This made Quasim Shah cry out for help. Hearing this, Wali Shah and Mohaboob Shah appeared on the scene carrying loaded guns. On seeing them, Allah Dad and his friend Hamidullah tried to escape by fleeing from the place. They were prevented from running by Wali Shah and Mahaboob Shah who stood in front of them obstructing their path. Wali Shah shot at Allah Dad killing him instantaneously. Mahaboob Shah fired at Hamidullah causing him slight injuries. Wali Shah was never caught thereafter. The trial court sentenced Mahaboob Shah to seven years rigorous imprisonment for attempt to commit murder. The Lahore High Court, however, convicted him for u/s 302 r/w s.34, IPC and sentenced him to death. Mahaboob Shah went on appeal to the Privy Council against the conviction for murder and the death sentence awarded to him.

Very interestingly, the Privy Council set aside his conviction for murder and allowed Mahaboob Shah's appeal on the ground that there were no evidence to prove that there was a common intention between Mahaboob Shah and the absconding Wali Shah. It is worth quoting the judgment of SIR Madhavan Nair, who delivered the judgment, as it very succinctly expounds on the scope of the operation of s.34.

Under Section 34 of the Penal Code, the essence of liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of s.34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all; if this is shown, the liability for the crime may be imposed on anyone of the persons in the same manner as if the act was done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual, in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

Concluding that at best the evidence showed that there was only a common intention to protect

Quasim Shah when Mahaboob Shah and Wali Shah, heard his shouts for help and appeared at the site carrying their guns. They were probably ready to use the same to defend Quasim Shah. In this context, Mehaboob Shah accosted, held, and shot at Hamidullah, whereas Wali Shah confronted Allah Dad and shot at him, killing him instantly. The Judges of the Privy Council, however concluded that there was no evidence to show that they shared a common intention to commit the criminal act that resulted in Allah Dad's death. As the Judges declared:

Evidence falls short of showing that the appellant and Wali Shah ever entered into a premeditated concert to bring about the murder of Allah Dad in carrying out their intention to rescue Quasim Shah. Care must be taken not to confuse same or similar intention with common intention.; the partition which divides 'their bonds' is often very thin; nevertheless, the distinction is real and substantial, and if overlooked, will result in miscarriage of justice. In their Lordship's view, the inference of common intention within the meaning of the term in s.34 should never be reached unless it is necessary inference deducible from the circumstances of the case.

There are several dimensions to the discussions on the nature of common intention. These are:

1. The common intention should be shown to be premeditated; ie it must be shown that there was a prior meeting of minds which activated the common intention leading to the commission of the criminal act. However, there may be incidents in which common intention may develop on the spot, after the offenders have gathered;
2. Proof of common intention will rarely be available directly. It has to be culled out from the facts and circumstances of the case;
3. There is a difference between 'common intention' and 'same or similar' intention. Depending on the nature of the intention, not only will liability differ, but also the nature of conviction and sentence to be awarded. Section 34 can be invoked only when the accused shares a common intention and not when they share a similar intention. ( [State of UP v. Rohan Singh 1996 Cri.LJ (SC) at page 2885,
4. Unless common intention is proved, individual offenders will be liable only for their individual acts. The mode of proving common intention should be such as to exclude doubts about the prevalence of the common intention mobilizing the offenders into action. However, if there is any doubt, then the benefit of doubt should be given to the accused. (Brijlala Prasad Sinha v. State of Bihar AIR 1998 SC 2443)

## What Is Common Intention? Guiding Principles

(1) Section 34 is Only a Rule of Evidence and Does Not Create a Substantive Offence.

If two or more persons intentionally do a thing jointly, it is just as the same as if each of them had done individually. As noticed in Barendra Kumar Ghosh case(1925), the section deals' with the doing of separate acts, similar or diverse, by several persons, if all are done in furtherance of a common intention, each person is liable for the result of them all , as if he had done them himself

This principle that the provision only lays down the rule or principle of joint liability and does not create a separate offence, was considered by the Supreme Court in Gurdatta Mal v. State UP (AIR 1965 SC 257 at para 9,p 260). In this case, the question that arose was over the operation of s.34 in the context of the right to private defence as provided in s.96, IPC. In this case, the accused persons were alleged to have attacked the deceased person's party in the agricultural fields of latter party in village Azadnagar of Nainital District, UP, as they were harvesting the crop. Earlier in the day, the deceased Gurcharan Lal had given a written complaint of threat of breach of at the local police station at Kiccha, resulting in two police constables being sent along with them. The complaint side had also taken a photographer with them. As harvesting was proceeding, the accused party armed with guns, spears and lathis entered the field despite the warning of the police constables, and shot at the complainant party killing three persons including the photographer. The defence of the accused was that there was a dispute existing over possession of land, and that it was the complainant party which had attacked them, and that they had exercised their right to private defense of property. It was also their stand that they did not have any intention to kill the deceased. It was in this context the Supreme Court observed:

It is well settled that s.34 of the IPC does not create a distinct offence, it only lays down the principle of joint criminal liability. The necessary condition for application of s.34 of the code are common intention to commit an offence and participation by all the accused in doing act or acts in furtherance of that common intention. If these two ingredients are established, all the accused would be liable for the said offence; that is to say that if two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of that common intention, all of them would be guilty of murder. The Supreme Court upheld the conviction of the appellants for murder, dismissing their appeal. The judgment clarified the limitations of the right to private defense, emphasizing that it cannot be used to justify acts of aggression or an intent to cause more harm than necessary.

(2) The Common Intention Should Be Prior Or Antecedent to the Occurrence.

The general principle is that common intention as defined in s.34 implies a pre-arranged plan and to convict an accused, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. This was emphasized by the Supreme Court in *Pandurang v. State of Hyderabad*, in which it was elaborated as follows:

Now in the case of s.34, we think it well-established that a common intention pre-supposes a prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must be done in furtherance of the common intention of all. Accordingly, there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill and can individually inflict a separate fatal blow and yet none would have the common intention required by the specific section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none would be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder, however clearly an intention to kill could be proved in this case.. the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case.

(3) Common Intention May Develop During the Course of the Occurrence and Could Develop on the Spot.

In such a case, however, there should be cogent material available on the basis of which the court can arrive at a finding and conclusion that the accused are vicariously liable for the act of the other accused.

This principle was explained succinctly by Bose J in the *Pandurang* case cited above. According to him, the plan need not be elaborated nor is it necessary that a long interval of time is required. It could arise and be formed suddenly. For example, if a man shouts at bystanders asking them to help him to kill a particular person, and they through their acts or speech, extend their support to him and also actually joins him; in such a case, there has been a necessary meeting of minds. However hastily formed or rudely conceived, a pre-arranged plan has come into existence. Since pre-arrangement and pre-meditated concert are essential ingredients to the offence of joint liability, in such a situation, the acts of the various persons will be liable for coverage under the provisions of s.34, IPC.

On the issue of common intention, arising suddenly the Supreme Court in *Kripal v. State of UP* (AIR 1954 SC 706) Ruled:

The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Whether in a proved situation all the individuals concerned therein have developed only simultaneous and independent intentions or whether a simultaneous consensus of their minds to bring about a particular result can be said to have developed and thereby intended by all of them, is a question that has to be determined on the facts.

(4) Common Intention is different from Same or Similar Intention

Again, common intention that developed on the spur of the moment, has to be viewed against the specific circumstances of the case.

This principle came to be considered in *Dukmochan Pandey v. State of Bihar* (AIR 1998 SC 40). In this case, on 25 July 1974, the complainant had sent about 20 labourers to his field for transplanting paddy. At about noon of that day, the accused party numbering about 200 people, assembled as a mob, armed with various deadly weapons came to the field and asked the labourers to stop the work. When Kapileshwar Pandey, the complainant, objected to this, two accused Uttam Pandey and Upendra Pandey directed the mob to kill the labourers. Soon thereafter, Dukmochan Pandey and Sarbnarain Mishra fired from their respective guns into the group of labourers. Thereafter, the mob also started assaulting the labourers with their weapons. The village which had been tense for some time had an executive magistrate and a police party stationed in a different part of the village. As the official and the police party came to the spot on hearing about the incident, the accused fled from the spot. Two persons, Ahmed Shah and Razaullah, died in the accident. The death was established to have been caused by shock and haemorrhage caused by injuries inflicted with sharp pointed weapons.

The question raised before the Supreme Court was whether the mob which had the common object to prevent the labourers from working in the field, had developed, on the spot, the common intention to commit murder. As the Court noticed, intention could be formed previously or on the spot during the progress of the crime. Generally, such situation will involve a prearranged plan, which in turn pre-supposes a prior meeting of mind. But in a specific case, the intention may develop at the spur of the moment. It was emphasized that a crucial distinction needed to be noticed to be noted in this context.

Such common intention which developed at the spur of the moment is different from a similar intention actuated a number of persons at the same time, and therefore, the said distinction must be borne in mind which would be relevant in deciding whether s.34 of the IPC will apply to all those who might have made some overt act on the spur of the moment.. The distinction between a common intention and a similar intention may be fine, but is nonetheless a real one and if overlooked, may lead to miscarriage of justice.

In the above case, the Court held that the mere fact that the accused persons were armed with some weapons would not be sufficient to attribute common intention to all of them to commit the murder. The evidence on record, it was held, showed that while the common object was to prevent the labourers, on the spur of the moment because of a lalkara (shout) being given, the mob assaulted the labourers. The Court sifted through the evidence to distinguish those acts which could be considered as that flowing out of a 'common intention' arising from a 'meeting of minds and fusion of ideas' in prosecution of which the overt acts flowed out.

The implication of a finding that the accused only entertained similar intention and not common intention was discussed in State of UP V. Rohan Singh. In this case, four persons were accused of having gone to the house of the complainant. Two of them, Rohan Singh and Dulare to kill two persons Mashooq Khan and Naqi Raza present in the complainant's house. The shot fired by Dulare killed Naqi Raza while the shot fired by Rohan Singh injured Mashooq Khan. Rohan Singh was convicted for offence u/s 302/34,IPC and awarded life sentence, and u/s 307, IPC and awarded five years rigorous imprisonment; Dulare was convicted and sentenced to life u/s 302,IPC as also to five years RI for offence u/s 307/34, IPC. The other two accused were acquitted by the trial court itself. On appeal, High Court acquitted Rohan of offence u/s 302/34, IPC for murder of Naqi but maintained the conviction under s.307, IPC. Similarly, the conviction of Dulare for the murder of Naqi Raza u/s 302 was maintained, while the conviction for charge u/s 307 r/w 34, IPC was set aside.

The Supreme refused to interfere with the judgment of the High court, when the matter was taken up on appeal by the state government noting that the evidence on record indicated that at best the two respondents shared a 'similar intention' to shoot at the victims, but was not sufficient to draw an inference to show that they shared common intention. It was held further that, 'mere presence together is not sufficient to hold that they both shared the common intention to murder Naqi Raza and injure Mashooq Khan.' Since common intention was a sine

qua non for attracting the provisions of s.34, and because only similar intention was seen to prevail, the Supreme Court maintained the conviction simpliciter (u/s 302, IPC against Dulare and u/s 307 against Rohan Singh) as ordered by the High Court.

#### 5. Joint Liability in Context of Free Fight.

The issue of the liability of different members of a group of people divided into mutually antagonistic or hostile groups, especially when there is a free fight between them, is one of the most difficult aspects of the law of joint liability. This is so, as apart from the difficulty of assessing the specific role of each individual member of the assaulting party, the court will also have to assess whether common intention can be proved. In *Balaur Singh v State of Punjab*, a similar question was raised. There were four persons, each belonging to two groups who attacked each other. One person who sustained grievous injuries died six days after the incident. Both the trial court and the High court had held there was a free fight between the parties and therefore each and every assailant was accountable for their own individual acts committed. Based on the nature of injuries inflicted and the type of weapon used, the court sentenced the assailants variously to one to two years of rigorous imprisonment. However, with regard to the conviction u/s 302, and life sentence on one accused, the court held that in a free fight, there was a movement of body of the victims and assailants, who are themselves participants or expected participants in the cross assault on each other. In such a situation, it will be difficult to specifically ascribe to one accused the intention to cause injuries sufficient to cause death. Hence under the circumstances, the conviction was altered from ss 302 to 304 IPC, and the sentence altered from life to seven years rigorous imprisonment. (AIR 1995 SC 1956, para 5, p.1957)

**PARTICIPATION IN THE CRIMINAL ACT:** - The second and the important limb for the operation of the principle of joint criminal liability is the necessity of participation in the criminal act by all those who are charged with the offence. Participation is thus a necessary element or condition precedent to a finding of joint liability. Interestingly, a question arose in the context of conviction u/s 409 r/w 34, IPC for misappropriation by a public servant. The question was whether the direction of the trial judge to the jury that despite the non presence of the accused when the offence is actually committed. If the accused remained behind the scene, he can be convicted under section 34 was proper and legal. The Supreme Court in *Shree Kantia Ramayya Munipally v. State of Bombay* (AIR 1955 SC 287 at para 23, p.293) elaborated thus:

In the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or the other at the time the crime is actually committed. The antithesis is between the preliminary stages, the agreement, the preparation, the planning, which is covered by s.109, and the stage of commission when the plans are put into effect and carried out. Section 34 is concerned with the latter.

In *Jayakrishnadas Manohardas Desai v. State of Bombay* (AIR 1960 SC 889) it was explained that in offences involving physical violence, presence of the accused, apart from participation, was essential. However, in other cases involving non-physical violence, like in cases of misappropriation, cheating and the like, physical presence could not be a condition precedent to come to a finding of joint liability. This is particularly so when the offence consists of diverse acts, which may be done in different places and times.

It is thus clear that in cases involving physical violence to individuals and property, once participation is proved, then the accused persons would be jointly liable for the criminal acts, even, when it is not clear who among the accused had actually inflicted the fatal blows. Thus, in a crime involving an unlawful assembly, which had a common object and intention to kill one Tarlok Singh, the question raised was whether the court could convict the appellants even when a number of other accused had been acquitted.

**Absence of Overt Act- No Proof of Common Intention:** - In *Rengaswamy v. State of Tamil Nadu* (AIR 1989 SC 1137) A-3, who was convicted by the trial court for offences u/s 302/34 as also 307/34 and 506, IPC, came before the Supreme Court with the plea that in so far as he was in friendly terms with A-1 and A-2, he did not share the common intention with them to kill the deceased or to attack the deceased companion, and that it was by chance that he happened to be in the spot of occurrence and had not participated in the offence otherwise. In this case, A-1 and A-2 had prior enmity with the deceased, who was accused of murdering the brother of A-1, and had actually been only recently released on bail. The occurrence took place in the bazaar after the deceased and his friend Jayaraman, were returning from the Judicial Magistrate's Court in Aranthangi. On detailed consideration of the evidence, the court held

that while presence of A-3 was established, there was no evidence to show that he shared common intention with the other accused to do away with the deceased or that he knew about the plan to attack the deceased when he was returning from the court. Except that he was on friendly terms with A-1 and A-2, he had no source to settle with the accused or his friend, had not assisted in the attack made by them on the deceased and had actually not even uttered a word of instigation to the other accused. A-3 was therefore acquitted of all charges.

### **Proof of Common Intention: Rule for Evaluating Evidence**

The simplest method of proving common intention is through direct evidence of conspiracy. However, not only is this hard to come by, but most often, the evidence is by way of the evidence of approvers or accomplices which courts consider unsafe to rely upon unless it is corroborated in material particulars. Failing this evidence or its material corroboration, resort must be had to other facts and circumstances of the case to examine community of interest and the existence of common intention between and amongst the various participants in the crime. (Hari Singh Gour, penal Law Of India, vol.1, 11th edn. 1998, p.316.)

### **Conduct of Parties as Evidence for Proving Common Intention**

One of the most important aspects of evidence is the conduct of the parties subsequent to the formation and execution of common intention, even in cases where the intention was formed on the spur of the moment. In such circumstances, the Supreme Court said: It is true prior concert and arrangement can, and indeed often must, be determined from subsequent conduct as, for example, by a systematic plan of campaign unfolding itself during the course of action which could only be referable to prior concert and pre-arrangement, or a running away together in a body or a meeting together subsequently. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. All that is necessary to have is direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or as we prefer to put it in the time-honoured way, 'the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis'. (Pandurang v. State of Hyderabad AIR 1955 SC 216 at para 34, p.222)

## **Circumstantial Evidence as Proof of Common Intention**

In *Badrudin v. State of UP*, the Supreme Court held that though establishing the common intention is a difficult task:

..yet, however difficult it may be, the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of mind of all the assailants to commit the offence, be it prearranged or on the spur of the moment, but it necessarily must be before the commission of the crime. Where direct evidence is not available, it has to be inferred from circumstantial evidence.

Based on this rule for evaluating evidence in a case involving charge of s.34, the court held that there was no evidence of shared common intention to sustain conviction for offence u/s 302/34, IPC. Instead, the conviction for offence u/s 323/34, IPC was confirmed. In *Rajesh Govind Jagesh v. State of Maharashtra*, the Supreme Court held that no direct evidence for common intention is necessary. It can be inferred from attendant circumstances of the case and conduct of parties.

## **Necessity of Overt Act for Proving Common Intention**

The question of whether the absence of proving overt act would prohibit fastening guilt through the provision of s.34 came to be considered by the Supreme Court in *Krishnan v. State of Kerala*. On the question of whether it was obligatory for the prosecution to establish overt act to invoke s.34 IPC, Hansaria J of the Supreme Court held:

“It is no doubt true that court likes to know about overt act to decide whether the concerned person had shared the common intention in question. Question is whether overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow s.34 to operate in as much as this section gets attracted when ‘a criminal act is done by several persons in furtherance of a common intention of all. What has to be, therefore, established by the prosecution is that all the concerned persons had shared the common intention. Court’s mind regarding the sharing of common intention gets satisfied when overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention: *res ispa loquitur* (ibid para 15 at p 388)

Based on the above reasoning, the court held that accused shared the common intention of killing the victim and the criminal act had been done in furtherance of the intention. As the

Judge put it, 'Section 34 did not require anything more to get attracted'.

Appreciation of Evidence- Benefit of Doubt to be Given to Accused: In *Brijlala Prasad Sinha v. State of Bihar*, the court had to consider the case of a number of policemen who were accused of staging an encounter killing and actually killing in cold blood three innocent persons. In this case three police officers were convicted of offence u/s 302 r/w 34, IPC and while SHO, Dudh Nath was sentenced to death, the other two police officers were sentenced to life imprisonment. Similarly, three police constables who actually fired from rifles which killed the three occupants were convicted for murder and sentenced to life imprisonment.

It was the case of appellant Brijlala Prasad Sinha that he was not part of the police party which had chased the Maruti van and that he had left the station separately and had actually reached the occurrence spot half an hour later. The Supreme Court therefore had to consider the issue of whether all the police personnel could be held guilty by taking recourse to s. 34, IPC. The Court noted that a common intention can only be inferred from the acts of the parties. For an inference of common intention to be drawn:

.... The evidence and circumstances should establish without any room for doubt that a meeting of minds and fusion of ideas had taken place amongst different accused and in prosecution of it, the overt acts of the accused flowed out as if in obedience to the command of a single mind. If on the evidence there is doubt as to the involvement of a particular accused in the common intention, the benefit of doubt should be given to the said accused persons.

On the above mentioned criterion for consideration of the evidence on record and the circumstances of the case, accused Brijlala Prasad was acquitted, while the conviction and sentence of other accused under s.302/34, IPC were confirmed. The death sentence of Dudh Nath was modified to life imprisonment.

Effect of Acquittal of Co- Accused in Conviction Using Section 34: The consensus of judicial opinion regarding the effect of acquittal of co-accused on the other accused, is to the effect that if the facts proved or circumstances established do not disprove the inference of common intention, then the remaining accused are liable to conviction using the principle of joint liability contained in s.34. However, if the very basis of inferring common intention is shaken, then the individual accused will be liable only for their respective acts.

A case arising from trade union rivalry in which a leader was murdered, and in which out of

the six accused persons only two were convicted u/s 302, 34 IPC and the rest were acquitted by the High Court, came to be considered in *Nadodi Jayaraman v. State of TN*. The Supreme Court held that in cases where a large number of persons are involved and in the commotion, injuries were caused to the prosecution witnesses, it becomes the duty of the court to determine the common intention which could be attributed to those accused who stand convicted, where some of the co-accused are acquitted. In this regard, the nature of the weapon used, the nature of incident, the background to the incident should be properly considered to help determine common intention. In this case, the court held that common intention had not been properly established beyond doubt and five of the co-accused had been acquitted, the prosecution needed to establish the specific injuries caused by the accused in order to convict them for the same. While the two remaining accused certainly did not cause all the injuries to the deceased, he (the deceased) nevertheless did succumb to the injuries caused collectively. Hence, the accused can be held to be liable for causing culpable homicide not amounting to murder u/s 304(II), IPC, and sentenced to the period already undergone amounting to more than five years.

The principle, however, is that if the acquitted co-accused reduce the number of accused to that below which a common intention cannot exist, ie only one accused, then conviction using s.34 cannot be resorted to. However, if after acquittal, the number of accused remaining are more than two and are proved to have entertained the common intention, then they will still be liable. Thus in the case of *Bharwad Mepa Dana v. State of Bombay* (AIR 1960 SC 289), four accused along with others were accused of having the common intention of causing the murder of three brothers. After the acquittal, four accused remained. When it was argued that s.34 could not be pressed, the court observed after considering other case laws on the subject, that after acquittal four co-accused remained, who shared the common intention with others whose identity was not established. They also shared the common intention. Therefore, it was held that they would be liable for conviction for murder using s.34, IPC.

### **Effect of Charge Against Accused Under Section 149, IPC**

#### **And Not Section 34, IPC.**

It has been repeatedly held that the effect of wrongly charging a person u/s 149, IPC and later substitution of s.34, does not fatally affect the prosecution case as the substitution must be held to be a formal matter, and unless prejudice has been caused to the accused, does not materially affect the prosecution case. This has been held in *Amar Singh v. State of Haryana* which the

conviction for offence u/s 302 r/w s.34, IPC, though charged u/s 302, r/w s.149, IPC, was held to be not illegal when the facts proved and evidence adduced would have been the same if the accused had been charged u/s 302 r/w s.34, IPC. In such a case, failure to charge the accused would not result in a prejudice.

### **Scope and Limitations**

While Section 34 does not create a substantive offence, it lays down the principle of constructive liability. However, mere presence at the scene of crime without proof of common intention is not sufficient to establish liability.

### **Common Object**

Section 141 and Section 149; Defining and Punishing Unlawful Assembly

The two terms which run throughout Chapter VIII, IPC, from SS 141-148, are 'unlawful assembly' and common object. Section 149 provides for vicarious liability of those who are proved to have shared the common object of the unlawful assembly. To understand the entire scope of the law, it will be more fruitful to study the general principles underlying the law regarding liabilities of persons who are alleged to be members of an unlawful assembly. The section is extracted below followed by a summary of the essential characteristics of ss 141 and 149, IPC.

Section 149 of the Penal Code, Section 190 BNS imputes responsibility on the basis of common object, it enacts:- "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 committing of that offence, is a member of the same assembly, is guilty of that offence"

### **Essential Ingredients of Common Object**

An offence that is committed by the members of the unlawful assembly.

The offence committed must be in the prosecution of the common object.

The members must know that the offence is likely to be committed.

The offence must be committed by five or more persons.

What is the common object of Unlawful Assembly?

1. The emphasis of the offence of unlawful assembly is the common object of the members of the assembly being unlawful. Thus, in *Bhudeo Mandal v. State of Bihar*, the Supreme

Court held that before convicting any person with aid of s. 149, IPC, the evidence must clearly establish not only the common object, but also show that the common object was unlawful.

2. In *Allauddin Mian v. State of Bihar*, the court considered the six accused persons forming an unlawful assembly with the common object of killing the father of the deceased girls, and since they couldn't achieve this, two of the accused killed the young daughters of the person, the accused originally wanted to kill. The court sought to examine whether all members shared the same common object. The court said:

What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object, every member of the assembly will become liable for the same.

It was clarified that since s. 149 fastened vicarious responsibility on persons, it ought to be strictly construed. Even if acts incidental to the common object, it must be within the knowledge of other members as one likely to be committed in prosecution of the common object.

3. Common object has to be essentially inferred from the facts and circumstances of each case, the nature and number of injuries inflicted, manner of executing the common object and so on. Based on these criteria, the Supreme Court in *Madru Singh v. State of MP*, stated that the deceased was chased across a field, then assaulted with weapons and as many as 14 incised wounds were inflicted on him. All this clearly revealed that the accused had formed an unlawful assembly and the common object was to murder the deceased, Peera Singh.
4. Unlawful object can be developed on the spot, and it could be that initially the persons gathered together for a lawful object. In *Sukha v. State Of Rajasthan (AIR 1956 SC 513; 1956 Cri LJ 923)*, the court found that initially fearing marauders, the accused and others rushed to the spot. Some of the persons were armed and their rushing could be considered to be for a lawful purpose. But when that object is exceeded, and the persons begin to beat up the suspects, the act of beating becomes unlawful, for private persons are no more entitled to beat and ill-treat thieves than the police, especially at a time when there is no more than suspicion against them.

### **Acts in Prosecution of Common Object: Test for Inferring Common Object**

1. In *Muthu Naicken v. State of TN* (1978 Cri LJ 1713(SC); 1978(4) SCC 385, Supreme Court evolved what is called the workable test of finding out the role of each accused. In that case, there was a melee involving large number of assailants and witnesses in a village where everyone knew each other. In such a situation, it was inevitable that many witnesses would be partisan in character. However, the entire evidence could not be discarded on this score. Similarly, the other tendency would be to involve as many people as possible by merely naming them as having been in the melee. Therefore, the evidence has to be examined with utmost care and caution. In the instant case, the High Court convicted eight persons for offence u/s 302/34, IPC, and the rest u/s 326/34, IPC. This clearly revealed that the High Court did not accept the prosecution case that the common object of the unlawful assembly was to cause the murder. In such a situation, the court ought to have analysed the evidence so that participation by overt act is established as against each accused.
2. The principle elucidated in *Masalti v. State of UP* is that the court should carefully sift the evidence and decide which part of it is true and which is not, in cases involving many accused as part of the unlawful assembly and evidence of witnesses do not assign specific part or role to the accused.
3. It is not necessary that any specific act be attributed to each one of the accused persons. It was held that it is sufficient if the evidence established that all the members of the unlawful assembly shared the common object of the unlawful assembly. (*Bhe Ram v. State of Haryana*)
4. In *Fatte v. State of UP*, the Supreme Court declared that lack of overt act being ascribed to anyone of the accused may not by itself be used to disprove the charge u/s 149, IPC. But the question of whether the members shared common object is something which has to be examined on the facts and circumstances of the case.
5. In *Swaran Singh v, State of Punjab*, the court considered the issue of apportionment of liability. The prosecution case was that the death was caused due to inflicting injuries sufficient in the ordinary course to cause death. When death had resulted, the question was whether the injuries were cumulatively sufficient to cause death. However, more primary was to ascertain if the common object was to cause death or whether the members knew that it was likely that an offence under s.302 would be committed in prosecution of the common object. In the instant case, the nature of injuries caused made it clear that the object was to cause bodily injury as is likely to cause death.

### Determination of Common Object- Summary

- (i) Determination may be made from the number and nature of injuries on the body of the victim (*Gokul v. State of Rajasthan*)
- (ii) The nature of weapons used (*Madru Singh v. State of MP*)
- (iii) Before convicting, the court must give clear finding regarding the nature of common object and that the object was unlawful (*Bhudeo Mandal v. State of Bihar*)
- (iv) Exact sequence of events important in deriving of refuting inference of common object (*Bharwad Bhikaji Nata v. State of Gujarat*,

### Important Case Laws

*Kartar Singh v. State of Punjab*, is an important decision in this respect. The judgment was delivered by Justice Reghubar Dayal.

Raghubar Dayal, J:- This appeal, by special leave, is against the judgment of the Punjab High Court dismissing the appellant's appeal and confirming his conviction under Section 302 and Section 307 read with Section 149 of the Penal Code.

The case for the prosecution was that the appellant and twelve other persons who were tried with him, had, on account of a dispute about the possession of a plot of land, assaulted Darshan, deceased, and his companions, when they were returning from their fields and that Darshan Singh and his companions also struck the appellant's party in self-defence. In the incident, Darshan and Nand Lal received injuries on the one side while Daya Ram, Hamela NS Kartar Singh the appellant, received injuries on the appellant's side. Darshan Singh dies on account of the injuries received.

Daya Ram stated that when he, Kartar Singh, Hamela and a few other persons were going near about their field, Darshan, Nand Lal and others, who happened to be sitting on well, challenged them and Nand Lal remarked that he would not let him (Daya Ram) escape.

At this fight ensued between both the parties in which injuries were inflicted on each other. Daya Ram said that he did not know who speared Darshan, deceased.

Kartar Singh stated that a member of Nand Lal's party caused spear blow in his abdomen and that he then ran away. He stated that he did not cause any injury to anybody.

Hamela stated that Darshan and others assaulted his party when they were going to plough the land in dispute and that they caused them injuries in self-defence.

The learned Sessions Judge, after noting the allegations of the parties and the admitted facts about the dispute with respect to the plot of land, came to the conclusion that the three accused, viz. Daya Ram, Hamela and Kartar Singh, who had admitted their presence in the incident and had received injuries, were proved to have taken part in that free fight, and that the participation of the other ten accused in the case was not established beyond doubt. He, however, said: “Although I feel that Daya Ram, Hamela and Kartar accused were accompanied by at least 9 or 10 persons, but it is difficult to say who those 9 or 10 persons were”

He therefore acquitted those ten persons giving them the benefit of doubt.

The three convicted persons preferred an appeal to the High Court.

The High Court held that the appellant’s party formed an unlawful assembly and its common object was to cause injuries to the opposite side which could result in the ordinary course of nature in death and, consequently, the conviction of the three appellants, whose participation could not be doubted, under Section 302 and 307 read with Section 149 of the Penal Code, was well based and must be upheld.

“In any event, on the finding of the Court of first instance and of the High Court that both the parties had prepared themselves for a free fight and had armed themselves for that purpose, the question as to who attacks and who defends is wholly immaterial”.

And confirmed the conviction under section 307 read with Section 149 of the Penal Code. It may, however, be noted that it does not appear to have been urged in that case that each appellant could be convicted for the individual act committed by him. When it is held that the appellant’s party was prepared for a fight and to have had no right of private defence, it must follow that their intention to fight and cause injury to the other party amounted to their having a common object to commit the offence and, therefore, constituted them into an unlawful assembly. The injuries they caused to other party are caused in furtherance of their common object. There is no good reason why they be not held liable, constructively, for the acts of other person of the unlawful assembly, in circumstances which make Section 149 of the Penal Code, applicable to them.

Even if the finding that there were more than five persons in the appellant's party be wrong, we are of opinion that the facts found that the appellant and his companions who were convicted had gone from the village armed and determined to fight, amply justified the conclusion that they had the common intention to attack the other party and to cause such injuries which may result in death. Darshan had two incised wounds and one punctured and two abrasions. The mere fact that Kartar Singh was not connected with the dispute about the plot of land is not sufficient to hold that he could not have formed a common intention with the others, when he went with them armed. The conviction under Sections 302 and 307 read with Section 149, can be converted into one under Sections and 302 and 307 read with section 34 of the Penal Code.

We, therefore, see no force in this appeal and accordingly dismiss it. Appeal dismissed  
Dhanna V. State of M.P is also a notable case in this respect. In this case a young man was murdered. Five persons were tried for this murder. A1 and A2 were convicted and others were acquitted by the Sessions Judge. The Sessions Judge concluded that there was no unlawful assembly though the accused were charged for offences under Sections 302 and 148 read with Section 149 of the Penal Code. On appeal, the High Court convicted A5 also.

High Court convicted the three under Section 302 read with Section 34. On appeal the Supreme Court ruled that the Courts could record a conviction under Section 34 of the Penal Code even if there is no evidence of unlawful assembly to book them with the help of Section 149. The Court explained: "The High Court found that there was no unlawful assembly as the strength of assembly was insufficient to constitute it into "unlawful assembly". But if the court enters upon a finding that any of the remaining persons who participated in the crime had shared common intention with the main perpetrators of the crime, the court is not helpless in seeking the aid of Section 34 of the Penal Code to enter a conviction against such person arraigned as the accused. This is despite the difference between the scope of Section 34 and 149. Yet, they have some resemblance between each other and are to some extent overlapping."

In the present case, Dhanna's name was not mentioned by the prosecution witness under Section 161. But in the Court the witness had implicated Dhanna. When confronted during cross-examination the prosecution witness failed to explain. So the Supreme Court held that the High Court was not right to convict the appellant ignoring this position. Dhanna was therefore acquitted by the Supreme Court.

## **Mehbub Samsuddin Malek v. State of Gujarat**

The appellant was working as a bus driver. During a communal riot he stopped the bus near a mob of persons armed with weapons to facilitate their attacking the passengers. In spite of a requests by passengers to start off the bus he refused till the mob could approach them. The appellant got down from the bus, went to the mob and had discussions with some persons in the mob. It was held by the Supreme Court that in the circumstances of the case, an agreement between the accused and the said unlawful assembly was established. His conviction under Section 120-B of the Penal Code was upheld.

Lalji v. State of U.P: The Court held that once the existence of an unlawful assembly and common object is established, individual participation becomes irrelevant to fix liability.

Masalti v. State of U.P., AIR 1965 SC 202: The SC clarified that actual overt act by each member is not necessary if the crime is committed in furtherance of the common object.

### **Nature of Liability**

Unlike Section 34, Section 149 creates a specific substantive offence. Membership of the unlawful assembly is sufficient to attract liability if the offence committed was within the scope of the common object.

### **Comparative Analysis: Common Intention vs. Common Object**

Both Sections 34 and 149, IPC, deal with issue of constructive liability. In other words, a situation when criminal liability attaches to persons for acts not necessarily done by them. There are however differences in the scope and nature of operation of the two offences which needs to be understood. As stated earlier , the difference becomes crucial when a charge u/s 149, IPC is sought to be substituted at a later stage for a charge u/s 34 of the Code, especially when some accused are acquitted and the number of accused falls below five. In such contexts, the court would have to carefully examine the evidence to see whether some element of common intention exists which makes the accused person criminally liable. We consider the main difference below:

Section 34 only lays down a principle of joint criminal liability and does not create a separate offence. On the other hand, s.149, creates a specific offence being located in chapter VIII, 'Offences Against Public Tranquility'. Thus, membership in an unlawful assembly itself is specifically made liable to punishment. While s.34 creates joint criminal liability, in which if

individuals share a common intention and do acts furthering the same, then all of them are held liable for all acts committed. On the other hand, s.149 creates 'constructive criminal liability' for acts done in prosecution of the common object of the assembly, provided the essential conditions for being a unlawful assembly are fulfilled.

The crucial difference between common intention and common object is that while common intention requires prior meeting of mind and unity of intention, common object may be formed without these ingredients. It is quite possible to consider a situation when the common object of members of the unlawful assembly is one, but the intention of the participants may differ. Thus u/s 149, if any member of the unlawful assembly commits an offence, others are also liable, although they may not have had the same intention, but only shared in common object. This is of course if two conditions are satisfied, namely (i) the offence was committed in prosecution of the common object of the assembly; or (ii) that the offence committed is of such nature that other members knew it likely be committed in prosecution of the common object.

While in s.34, the crucial factor is that of 'participation', in S.149, membership of the unlawful assembly is a sufficient pre-condition. Thus in s.149, there is no need for active participation or contribution for attaining the common intention.

For invoking s.34, it is sufficient if there are more than two persons involved; however, in s.149, there have to be a minimum of five persons and more to attract coverage of the provision. For offence u/s 34, some overt act, however small, is a pre-requisite for being made liable. However, in s.149, the mere fact of being an unlawful assembly itself is sufficient to fix liability.

Regarding type of assembly offence u/s 34 requires only two or more persons. But in case of section 149, at least five persons are required.

The legal nature of common intension (section 34) is rule of evidence and that of common object (section 149) creates a substantive offence.

And with regard to mental element, for offence under section 34, prior meeting of mind (mens rea) is required. But in offence under section 149, common object can form spontaneously.

The scope of liability of the offence u/s 34 is narrower and requires higher proof, but the scope of liability is broader and easier to establish in the offence u/s 149.

### **Critical Evaluation and Contemporary Relevance**

While both provisions are vital to control group crimes, their misapplication can lead to miscarriage of justice. Courts have repeatedly cautioned against over-reliance on constructive liability without adequate proof. In recent times, with the rise in mob violence, riots, and group assaults, the interpretation of Sections 34 and 149 has gained renewed relevance.

Scholars argue that a balance must be struck between ensuring deterrence and safeguarding individual culpability. The concept of ‘vicarious liability’ in criminal law must not override the fundamental principle of ‘personal responsibility’ unless clearly justified.

Position in the United Kingdom (UK)

The principle is known as "Joint Enterprise" or “Common Purpose” liability.

Doctrine of Joint Enterprise:

When two or more persons embark on a joint venture to commit an offence, and one commits another offence in the course of that venture, the others may be held liable if they intended or foresaw the possibility of that offence.

Leading Cases:

R v. Powell; R v. English : Liability arises when the secondary party foresees the possibility of the principal committing the offence.

R v. Jogee Landmark case reversed the old doctrine.

→ Mere foresight is not enough; intention to assist or encourage is required.

Current Position:

Each participant must intentionally assist or encourage the main offence.

Foresight is evidence, not the test of guilt. Position in the United States (US)

Position In The United States

A. The Principle – Accomplice and Conspirator Liability

Accomplice Liability:

Governed by Model Penal Code (MPC) § 2.06.

A person is liable if he aids, abets, or encourages another to commit a crime with purpose of promoting or facilitating the offence.

Conspiracy Liability:

When two or more agree to commit a crime and one performs an overt act, each is liable for acts done in furtherance of the conspiracy.

Pinkerton v. United States (1946):

Each conspirator is liable for acts of co-conspirators done in furtherance of the conspiracy.

B. Distinction from Indian Law

US law emphasizes mens rea and participation rather than group membership.

No fixed number required (unlike Sec.149 IPC).

Liability ends when the conspirator withdraws before the act.

Comparative Table: India, UK, and US

Conclusion;-The doctrines of common intention and common object are indispensable tools in the administration of criminal justice. They ensure that all those involved in the planning, promotion, or execution of a crime are held accountable, even if they did not physically perpetrate the act. However, the application of these provisions requires careful judicial scrutiny to avoid penalizing innocent individuals based solely on association.

These doctrines represent not only legal rules but also embody deep philosophical debates about guilt, intention, and fairness in criminal law. As group criminality continues to pose challenges, the effective and just application of Sections 34 and 149 will remain a cornerstone of Indian criminal jurisprudence

These doctrines represent not only legal rules but also embody deep philosophical debates about guilt, intention, and fairness in criminal law. As group criminality continues to pose challenges, the effective and just application of Sections 34 and 149 will remain a cornerstone of Indian criminal jurisprudence.

The Indian law under Sections 34 and 149 IPC represents a codified form of joint criminal liability combining both common intention (narrow, focused) and common object (broad, group-based).The UK system, after Jogee, emphasizes individual intention rather than mere foresight, thus aligning with principles of fairness and proportionality. The US adopts a dual framework—accomplice and conspiracy liability—emphasizing both agreement and participation. The modern trend (post-Jogee) in comparative jurisprudence moves toward limiting vicarious criminal liability and ensuring individualized culpability.

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