BLOGS

Common Intention Under Indian Penal Code

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The principle of vicarious or joint liability is stated in Sections 34 and 149 of the Indian Penal Code 1860. Section 34 IPC states that 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. Section 34 and 149 IPC depicts the rule of constructive liability.

Common Intention

Section 34 is a rule of evidence and does not create a substantive offence. Section 34 is framed to meet cases in which it may be difficult to distinguish between the acts of individuals.

Following are the essentials ingredients of common intention

1. Common intention

Common intention implies a pre-arranged plan or prior meeting of minds. Mere presence together is not sufficient to hold that both the accused shared common intention. The criminal act must be done for the purpose of executing common intention. If the act done actually is not joint then the common intention cannot be implied.

Common intention is a question of fact. It can be inferred from the facts and circumstances from the whole conduct of all the persons. It should not be inferred from an individual act of one of them.

2. Participation

It means to take part in the act which advances the common cause. It is essential that the accused are joint in the actual doing of the act and not mere planning of its preparation. If the participation of the accused is invoked in the crime but there is no common intention, then section 34 will not be attracted.

In the case of **Mahbub Shah v. Emperor**, the appellant was of age 19 and was convicted by Session Judge of the charge Section 302 IPC read with Section 34 IPC for the murder of A. The Session court sentenced him for death. The High Court also confirmed the death sentence. On appeal conviction for murder and sentence of death was quashed. It was contended there was evidence of forming common intention at the spur of the moment.

Their Lordship was not satisfied upon this view and humbly advised His Majesty that the appellant has succeeded in his appeal, his appeal should be allowed, and his conviction for murder and the sentence of death set aside.

In the case of **Suresh v. State of UP** it was held by the court that the act mentioned in Section 34 need not be an overt act, even an illegal omission to do a certain act in a situation can amount to an act.

In the case of **Tukaram v. State of Maharashtra** the court held that participation does not mean participation in the actual doing or commission of the crime. If a person is directing entire operations from distance, he would be deemed to participate in the crime.

Unlawful Assembly

IPC does not punish mere assembly of persons. However, where persons assemble to cause terror in minds of the people the assembly will be termed as unlawful assembly.

Section 141, IPC-means an assembly of 5 or more persons if the common object of the assembly is-

1. To overawe by using criminal force or show criminal force, to Central or any State Government or Parliament or any State Legislature or any public servant; or
2. To oppose the performance of any law or legal process; or
3. To carry out any mischief or criminal trespass or any other offence; or
4. By use of criminal force takes possession of any property or deprives any person of the right to the way or the use of water or any incorporeal right; or
5. The use or show of criminal force compels any person to do any illegal act.

Essentials to constitute an Unlawful Assembly

- There must be an assembly of five persons.

- The assembly must have a common object its illegal unless it is inspired by an illegal common object.
- The common object must be to commit one of the five illegal objects specified in section 141, IPC.

Section 142 IPC states that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

In the case of **Moti Das v. the State of Bihar,** it was held that 'an assembly, which was lawful to start with, became unlawful the moment one of the members called on the others to assault the victim and his associates, and in response to his invitation all the members of the assembly started to chase the victim while he was running.'

Section 149 IPC states that 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.

Section 149 IPC is an exception to the general principle of criminal law as a person can be convicted even if he has not actually participated in the commission of the crime but he is a member of unlawful assembly.

Punishment for Unlawful Assembly

Under Section 143 of I.P.C. whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

In the case of **Madan Singh v. State of Bihar** it was held by the court that mere presence in an unlawful assembly cannot render a person liable unless he was actuated by a common object.

Difference between Section 34 and Section 149 IPC

Section 34 is a rule of evidence whereas Section 149 creates a specific substantive offence. The number of persons in Section 34 is immaterial. Under Section 149 IPC five or more persons should have entertained the common object. Section 34 requires active participation and in Section 149 mere presence is sufficient.

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