NOTES

Common Intention and Common Object Under Law of Crimes in India

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Criminal law often deals with crimes committed not by a single person, but by groups of individuals acting together. When multiple people participate in a crime, establishing individual responsibility can become legally complex. To address this, criminal jurisprudence utilizes doctrines of joint and constructive liability. For CLAT PG aspirants, mastering the difference between the common intention and common object is essential.

This article breaks down these two fundamental concepts and examines their transition from the Indian Penal Code (IPC) to Bharatiya Nyaya Sanhita (BNS). It also highlights their key differences, and reviews landmark supreme court rulings that every law student must know.

Common Intention: Joint Liability

Section 34 of Indian Penal code, 1860 and **section 3(5)** of Bharatiya Nyaya Sanhita, 2023 defines common intention. It means acts done by several persons in furtherance of common intention. It does not create a distinct substantive offence itself. Instead, it is the rule of evidence and joint liability.

It 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.

Essentials of Common Intention

To successfully invoke common intention before a court, the prosecution must establish three core elements-

1. There must be two or more individuals involved in committing the criminal act
2. There must be a shared meeting of minds or a pre-arranged plan. The participants must share the same objective and intention regarding the crime.

3. The criminal act must be done by the participants in furtherance of the shared intention. Every participant need not perform the exact same physical act, even a supporting role makes him liable.

Common Intention is different from similar Intention.

Common Intention and similar intention are not two synonymous terms. They are two different concepts of law. In common intention people share a prior plan and work together to commit a crime, making everyone equally liable. While in Similar Intention people have the same goal or thought but they act on their own in furtherance of that goal.

For say two people plan together to rob a house they both went inside and robbed. Both of them share a common intention. Whereas if two thieves who do not know each other decide on their own to steal from different houses on the same street on the same night. They share the same goal, but the goal wasn't shared between the two and they worked alone. Thus, similar intention.

Therefore, the same intention of different people does not constitute common intention unless it is shared with each other.

Common Object: Constructive Liability

While common intention requires a pre-arranged plan among two or more persons, Common Object functions exclusively in the context of an unlawful assembly. Under IPC, **section 149** mandates that every member of an unlawful assembly is guilty of any offence committed in prosecution of a common object. In the BNS, this principle is enshrined under **section 190** read along with **section 189** which provides with the definition of unlawful assembly.

An Unlawful assembly is defined as an assembly of five or more persons whose common object is some illegal goal. These illegalities include actions like forcing the government by fear, damaging property, trespassing, or breaking the law to enforce a personal right. Under section 190 of BNS, this creates 'constructive liability' meaning that if any member of the group commits a crime to achieve their shared goal, every person who was part of the assembly at that time is automatically considered legally guilty of that crime, regardless of who physically committed it.

Difference between Common Intention and Common Object

Basis	Common Intention (sec. 34 IPC/sec. 3(5) BNS)	Common Object (Sec. 149 IPC/ Sec. 190 BNS)
Number of persons	Minimum of two persons	Minimum of five persons to constitute unlawful assembly
Pre-arranged Plan	Prior meeting of minds and apre-arranged plan is essential.	It may be formed on spot without prior planning or premeditation.
Nature of liability	Based on the participation of persons and acts done in furtherance of the shared intention.	Based on membership in an unlawful assembly sharing a common object.
Active Participation	Some overt act or active participation is generally required.	Active participation in the actual crime is not required, mere membership with the same object is sufficient.

Landmark Supreme Court Judgments

Courts have clearly defined limits on both the doctrines through various judgments.

Barendra Kumar Ghosh v. King Emperor (Privy Council, 1924)

This is the first case to interpret and establish the scope of section 34 IPC. Several men entered a post office, demanded money from the sub-postmaster and shot him to death. Barendra Kumar Ghosh remained outside on guard duty while others fired inside. He argues that he did not fire the fatal shot and thus should not be convicted of murder.

The privy council rejected his defense, and held that *"they also serve who only stand and wait."* The court emphasised that participation includes physical presence and performing a designated role in the execution of a pre-arranged criminal act.

Mahbub Shah v. Emperor (Privy Council, 1945)

Popularly known as the *Indus River case*, this ruling laid the clear distinction between common intention and similar intention. In this case, a man named Wali Shah was shot and killed while cutting reeds. His relatives retaliated by firing back at the attackers. The accused person, Mahbub Shah, arrived with another person and they both fired their guns at the same time, killing

someone from the opposing group.

The privy council acquitted Mahbub Shah, stating that while both the shooters shared a similar goal, there was no evidence of pre-arranged or prior consultation between them. Similarity of intention is not the same as common intention under section 34 IPC.

Mohan Singh v. State of Punjab (1963)

In this landmark case, the supreme court looked at how section 34 and section 149 of IPC work together. The court clarified that while section 149 requires an unlawful assembly of at least 5 people sharing a common object, if some group members are found innocent, dropping the total number of guilty people below five, a conviction under section 149 cannot stand out.

The conviction can only be kept if evidence shows there were other, unidentified people involved in the group to keep the total count at five or more.

Nanak Chand v. State of Punjab (1955)

The supreme court examined procedural and substantive aspects of joint liability, establishing that section 34 and section 149 are distinct provisions. Section 34 of IPC is a rule of evidence that applies when people act together based on a prior plan while section 149 IPC creates a specific, separate crime just for being a member of an illegal gathering.

Substituting one section with the other without proper framing of charges can cause prejudice to the accused.

Conclusion

For students navigating criminal law in competitive exams, remembering the core mantras will prevent confusion and help them in exams. Therefore to conclude, Common intention (section 34) is about meeting of minds or pre-arranged plans whereas Common object (section 149) is about Unlawful Assembly of five or more persons with shared illegal goals. Section 34 creates joint liability based on common intention whereas section 149 creates constructive liability based on membership in an unlawful assembly.