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Learn About Group Liability Under Indian Law

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Criminal law aims at the punishment of the wrongdoer. They are called public wrongs in which immediate victim might be one person or his family but the ultimate victim is the society as a whole because society hates the crime and criminal. In criminal matters the action is taken by the state as according to the doctrine of *parens patriae* the state is the parent of all citizens and being guardian, the state takes the action if any wrong is committed against any member.

Indian Penal Code 1860 (IPC) is the oldest law in India which was framed by Lord Macaulay. It defines all the offences and provides for their punishment.

The principle of vicarious/joint liability is stated in section 34 and 149 of IPC. They deal with constructive liability i.e. the liability of all for the acts of one or some of them.

Section 34 is an interpretative provision and embodies the principle that if two or more persons intend to do things jointly, it is just the same as if each of them had done it individually. If the intention or purpose is common, so must be the responsibility. It is a rule of evidence and does not create a substantive offence. Common intention is a question of fact. It is subjective and can be inferred from the facts and circumstances of the case.

Before a person can be held liable for the acts of another person, the following points have to be established:

- There was a common intention, in the sense of pre-arranged plan between the two. There must be a prior meeting of minds to do a particular act together. If several people have the same intention but they did not have a prior concert with each other it shall not constitute common intention. Presence of offenders together is not sufficient to prove common intention. The pre-arranged plan need not be elaborate nor is a long interval of time is required. It could arise and be formed suddenly. There is no rule that a common intention presupposes prior concert; it can be formed previously or in the course of occurrence and on the spur of the moment.

The criminal act must have been done while, or for the purpose of, executing or carrying the common intention. The act should not be extraneous of the common intention. It should be inferred from the whole conduct of all the persons concerned and not only from an individual act of one of them. Suppose one of the said accused enters the room where the intended victim usually sleeps, but somebody other than the intended victim is sleeping in the room and on a mistaken impression, he shoots him. The shooting of the wrong man is in furtherance of the said common intention.

- The person sought to be made liable had in some way participated in the act. It is important that the offenders join in the actual doing of the act and not merely in planning its preparation. Besides pre-planning what is required is an element of physical presence at the scene of occurrence coupled with actual participation which can be of passive character such as standing by and guarding the door while the other accused actually kills the person

Section 141 states that an assembly of five or more persons is designated an “unlawful assembly” if the common object of the persons composing that assembly is:

1. To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or
2. To resist the execution of any law, or of any legal process; or
3. To commit any mischief or criminal trespass, or other offence; or
4. By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal rights of which he is in possession or enjoyment, or to enforce any right or supposed right; or
5. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

An assembly which is not unlawful in its inception does not become an unlawful assembly because of its refusal to obey an order to disperse. Also, it does not become unlawful by reason of its lawful acts exciting others to do unlawful acts.

According to section 149 IPC states that a person can be convicted and sentenced only on proof of his being a member of the unlawful assembly sharing the common object notwithstanding as to

whether he had actually participated in the commission of a crime or not. There must be a nexus between the common object and the offence committed. The presence of accused as a part of an unlawful assembly is sufficient for conviction.

SEDITION

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law shall be punished for the offence of sedition.

Any form of communication which brings or attempts to bring any hatred or excites disaffection towards the Government of India shall be liable for the offence of sedition. The expression "disaffection" includes disloyalty and all feelings of enmity. The section aims at rendering penal only such activities as would be intended, or have a tendency to create disorder or disturbance of public peace by resort to violence.

According to section 121 IPC states that whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

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