PRINCIPLE OF JOINT LIABILITY: EXPLORING PROVISIONS FROM BNS

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Introduction:

Joint liability as envisaged under section 3(5) BNS, [sec 34 IPC], is a principle of evidentiary rule[1] which holds individuals jointly liable for the acts done by the principal offender, in furtherance of common intention of all.[2]

The essential ingredients required for invoking this section are: *First*, the act must be done by several persons, *second,* in furtherance of common intention of all which requires a prior meeting of mind, and *third,* there must be participation by all.[3]

Similar liability, on the other hand, as under section 3(6) BNS [sec 35 IPC], prescribes the rule of individual liability for the accused persons characterized by them having same/ similar intention independently, without any premeditation.[4] There is no shared [joint] liability under this section and the liability of individual accused is limited to his own acts.[5]

Thus, unless the conditions of pre-consent, presence, and participation are fulfilled, the act merely falls under similar intention and not common intention.

The principle of joint liability was developed in the case of *"Barendra Kumar Ghose v. King-Emperor"* to address the necessity of dealing with increasing group crimes [6] wherein it is often hard to affix individual liability, and to draw with certainty the link between the acts of the individual accused and the overall crime committed by the group.[7] It addresses the inconsistency of imposing liability only on the principal offender, when it was with the efforts

[1] *Barendra Kumar Ghosh v The King Emperor* AIR 1925 PC 1
[2] Bharatiya Nyaya Sanhita 2023, s 3(5)
[3] *Suresh and Anr v State of UP* 2001 AIR SCW 1051
[4] *Pandurang v State of Hyderabad* AIR 1955 SC 216
[5] Bharatiya Nyaya Sanhita 2023, s 3(6)
[6] Law Commission of India, Forty-Second Report: The Indian Penal Code (Government of India 1971) para 2.63
[7] ibid 1

of them all that the crime was given effect.[8]

However, this paper argues that even though having the principle of joint liability has its own desired effects, the law sometimes goes a step further to wrongly hold people liable who didn't even share that particular common intention. This is in part due to its structurally inadequate "evidentiary threshold", and the 'expanded' scope of joint liability, by virtue of various judgements.

LITERATURE REVIEW:

This paper derives its arguments from analysis of sections 3(5) to 3(8) of BNS pertaining to joint liability, in addition to the chapter on Joint Liability in PSA Pillai's Commentary on IPC and Hari Singh Gour's Book on Penal Laws of India. It also engages with various judgements of High Courts and the Supreme Court of India, interpreting them in a way that aid in the substantiation of the argument being made here. It also draws excerpts from Law Commission's 42nd report on IPC, and certain journal articles one of them being from Singapore Journal of Legal Studies.

The Distinction And Its Stakes:

The distinction between common and similar intention is fine but crucial[9], because each of these produce almost the same observable conduct. There is just a tad bit of distinction between the factual scenario of the two.

It is crucial at the same time because the standards of culpability, and the scope of liability, among the two differ considerably. The accused is held liable for the acts of the principal offender under the former [common intention], where the principal offender's acts are imposed upon his own acts and are treated as if he was the one committing those.[10] However, in the latter [similar intention] the accused is held liable only for his own individual acts.[11] And conflation of the two is particularly dangerous because it can lead to miscarriage of justice.[12] This is particularly the case in joint liability because as opposed to general crimes, the circumstantial evidence in joint liability relates not only to accused's own acts, but that of other

[8] ibid 1
[9] *Dukhmochan Pandey v State of Bihar* AIR 1998 SUPREME COURT 40
[10] ibid 4
[11] ibid 4
[12] ibid 3

offenders' as well, as were contemplated by all of them.

And the fact that the doctrine is invoked mostly in cases of murder/ killing,[13] where the quantum of punishment inflicted is anyways high, poses an even greater ordeal for the accused. While this serves as a deterrent to commit group crimes, the Court needs to strike a balance between its objective of preventing group crimes from taking place, and humanitarian considerations of wrongfully imposing vicarious liability.[14]

Through his paper I argue that the evidentiary framework that the Courts deploy in order to establish common/similar intention is structurally flawed, which in addition to Court's relaxation of ingredients required of common intention inevitably leads to conflation between common and similar intention.

A Practical Problem: Documented Evidence

The fact that there is a paucity of literature on this topic is primarily because it is often dismissed as not that real of a problem. But this issue is real than is often imagined. Consider for instance, the case of, *Mohan Choudhary v. State of Bihar,* which provides us with actual fact scenarios, among other cases, wherein the Trial Court misinterpreted the principle of joint liability and wrongly convicted the accused under common intention, being subsequently reversed by the High Court. Here, the Court explicitly remarked that this case could be at best categorized under similar intention and not under common intention.[15] However, even this correction of justice does not prove to be a 'correction' in all senses, as seen in the case of *Gopi Singh v. State of UP,* wherein the accused was now 97 years old, and had already spent 42 years of his life in jail.[16] This inordinate delay of justice, and the conviction being imposed 'wrongfully', is clearly inexplicable. This is precisely the kind of miscarriage of justice that I aim to flag through this paper. What exactly is the reason behind this, is what we'll analyze as we go through this paper. Is it then really a 'misinterpretation' of the principles formed or an 'improper reliance on facts?' I argue that it is neither, but a problem inherent in the doctrine itself, that even after setting it out clearly, the result cannot be predicted with certainty. For instance, in the given case, this correction came not because the law changed or new evidence

[13]M Sornarajah, 'Common Intention and Murder under the Penal Codes' (July 1995) pp 29-55 Singapore Journal of Legal Studies < https://www.jstor.org/stable/24866735?seq=1> accessed 6 May 2026, pg 29
[14] ibid
[15] LNIND 2024 PAT 122265
[16] LNIND 2026 ALL 84

emerged, but because a different Court interpreted the same evidence differently. Thus, this is not doctrinally sound, because the subsequent Courts also merely read the circumstantial evidence differently, in absence of clear evidentiary framework to distinguish the two.

Reliance On Circumstantial Evidence: Why Courts Rely On It And Its Implications

This problem of conflation arises primarily because the Courts base the finality of their conclusion by primarily relying on the circumstantial evidence to ascertain the presence of common/similar intention.[17] This is done because direct evidence of prior-concert or other unique factors that help in establishing common intention are rarely available. Even when they are available, they are considered to be unreliable, because they are generally obtained from accomplices or approvers, which the Courts are reluctant to accept unless corroborated by material particulars, as noted by Dr. Hari Singh Gour in his *Penal Laws on India*.[18] This leaves the Court with no other option but to judge such intention by placing reliance on the circumstantial evidence deduced from the conduct of parties unfolding itself during the offence and even prior and subsequent to that.[19] Some factual configurations are common to both common and similar intention, which poses a greater difficulty for the Courts to be able to determine conclusively whether the given factual scenario corresponds to common intention or just similar intention. For instance, the Court in the case of *Pandurang v. State of Hyderabad* remarked the fact that all the accused persons ran together as a unit after commission of the offence is distinct from the accused merely running at the same time,[20] but then does this even qualify as being 'conclusive evidence' for establishing common/similar intention and how do the Courts even differentiate between the two evidences that appear to be the same on the face of it?

The Three Structurally Aggravating Factors:

The problem is further compounded by the three features under section 34 IPC [corresponding to sec 3(5) BNS] which operate cumulatively. The Court vide the case of, *"Jasdeep Singh v. State of Punjab",* made participation essential by commission of an act having nexus with the offence committed.[21] Thus, ***firstly,*** by relaxing the requirement of participation, cases like

[17] *Gopi Nath v State of UP* AIR 2001 SC 2493
[18] Hari Singh Gour, *Penal Law of India,* vol 1, 11th edn, Law Publishers, Allahabad, 1998, p 316.
[19] ibid 4
[20] ibid 4
[21] (2022) 2 SCC 545

"*Surendra Chauhan v. State of MP",* demonstrate that mere presence may be tantamount to participation in certain class of cases.[22] Also, as per the case *"Suresh v. State of UP"* the act performed by the accused can be covert and also an illegal omission in cases rather than the overt act requirement in order to be liable jointly.[23]

Secondly, the Courts do not stress over the requirement of having a long interval of time and an elaborate plan, but even those formed instantaneously, within the twinkling of an eye,[24] are held as sufficient by the Courts to constitute shared liability, as evident in the case of "*Pandurang v. State of Hyderabad."*[25] The meeting of minds can therefore be so instantaneous and tacit that it leaves no observable trace so as to distinguish it from independently formed similar intentions. The question in furtherance of this that arises is that if the intention can be formed in such a way, can it also be withdrawn in the same manner? How does the Court determine such cases by assistance from circumstantial evidence alone? Can the Court then conclusively establish such?

Thirdly, the case of "*Ramesh Singh v. Andhra Pradesh"* negates the possibility of using precedents in this area, thus, the Courts are left on their own, with just the factual scenario of the case in hand.[26]

This being the position of law, the factual scenario is rendered convoluted, and it becomes structurally impossible for the Courts to draw the line between common and similar intention, while adjudicating the cases in order to be able to conclusively determine the liability. It thereby leads them to pronounce inconsistent judgements, regardless of how much ever articulately they set out the doctrine.

This is evident from the factual scenario of the following case. As basic facts as going inside the house, coming out together, having a considerable amount of time in the meantime to come up with a shared plan, have been held to be conclusive proof of common intention by the Court in "*State v. Fazal*."[27]

Law-Commission in its forty-second report, explicitly rejected the suggestion of tightening the

[22] 2001 AIR SCW 1005
[23] 2001 AIR SCW 1051
[24] ibid 12 pg 34
[25] ibid 6
[26] 2004 AIR SCW 3682
[27] ILR (1953) 3 Raj 73

section 34 liability to correspond to section 149 (pertaining to common object), and stressed on the requirement of having a shared intention.[28] But the abovementioned judicial interpretations laying down relaxations in the ingredients of common intention under the offence of joint liability, have had the effect of making it practically equivalent to common object requirements under section 149, by allowing mere presence, illegal omission, and absence of any prior agreement to be qualified as encompassing common intention, under joint liability. Thus, these relaxations are being made by Court in the rule of joint liability must be made with caution, and with corresponding tightening of evidentiary framework.

The Gap In Theory And Practice

The Courts themselves recognize the injustice, for instance in the case of *"Mahbub Shah v. King Emperor",* by caveating that common intention must be inferred only when it is the necessary inference.[29] That is to say that the incriminating facts must be incompatible with the innocence of the accused and incapable of any other explanation.[30] They flag the fine line of distinction between the two, noting a resultant miscarriage of justice if blurred. But they do not develop a clear evidentiary framework in order to address the same. They make the theoretical distinctions perfectly clear when they pronounce judgements in different cases, but these cannot be directly applied onto practical realities.

In practice, the Courts while addressing the question of joint liability, ask for the prosecution to establish the common intention. And once this is done, they rarely engage with the question, whether the same conduct could've been categorised as similar intention, this oversight makes the Court to sometimes reach a different conclusion.

While the argument is not to scrap the principle of joint liability as a whole, but to develop a clear evidentiary threshold via a framework, for avoiding 'wrongful' imposition of vicarious liability. Thus, a possible solution to this problem of conflation can be that the possibility of similar intention be positively excluded while affixing the liability for common intention. That is to say, that while hearing the prosecution make its case, the Court must rule common intention, only if there is not even the slightest possibility for the case to fall under similar intention. Thus, while adjudicating cases of common intention, the Court must also

[28] Law Commission of India, Forty-Second Report: The Indian Penal Code (Government of India 1971) para 2.63
[29] *Mahbub Shah v King Emperor*, AIR 1945 PC 118
[30] ibid 4

simultaneously consider the principles of similar intention.

Conclusion

Thus, despite making the theoretical distinctions between common and similar intention perfectly clear while pronouncing judgements, the Courts often end up conflating the two in practice, which clearly highlights the inadequacy of the evidentiary framework adopted by the Court established under these doctrines compounded by the relaxations it has made in the ingredients of joint liability. This assumes considerable importance given the differing standards of culpability between the two. There is therefore a need for the Court to parallelly consider the possibility of similar intention in cases where common intention has been established by prosecution, and it must be only after its negation that the Courts then rule common intention, being the only necessary inference.