
JOINT CRIMINAL LIABILITY: THE DOCTRINE OF COMMON INTENTION AND COMMON OBJECT

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ABSTRACT

The traditional principle of individual criminal liability holds that a person is responsible only for offences personally committed by him. However, a complex issue arises when crimes are perpetrated by multiple individuals acting collectively. The Bharatiya Nyaya Sanhita (BNS), through Sections 3(5) and 190, addresses this challenge by incorporating the doctrines of common intention and common object, thereby extending joint criminal liability to participants in group offences. This article critically examines these two foundational doctrines, analysing their conceptual framework, essential ingredients, and judicial interpretation. It explores how common intention requires a prior meeting of minds and active participation, even if in the slightest manner, while common object is premised on membership in an unlawful assembly and the knowledge of the likelihood of the offence being committed. Through an examination of leading judicial precedents, the paper highlights the evidentiary standards, the role of circumstantial inference, and the nuanced distinctions between the two doctrines. By comparatively analysing their scope, basis of liability, and practical application, the article highlights the importance of these provisions in ensuring accountability in cases of collective criminality while safeguarding against unjust attribution of guilt.

Keywords: Joint Criminal Liability, Common Intention, Common Object, Unlawful Assembly, Constructive Liability, Bharatiya Nyaya Sanhita

Introduction

A person who actually commits an offence is generally held criminally responsible for his act and is punished thereof. The basic principle of criminal liability is that one who commits an offence is accountable and he can only be held guilty. However, Sections 3(5) and 190 of BNS make an exception to the rule by imposing criminal liability on the perpetrator as well as his companions who in “furtherance of common intention” or “prosecution of common object”, participate in the commission of the crime. In such situation, each one of them becomes jointly liable.¹

If a person commits a crime, there exists no difficulty in determining his culpability. However, when several individuals are involved in committing a crime, ascertaining precise culpability to each participant becomes increasingly challenging. The differing roles, levels of intent, and degrees of involvement often complicate fact-finding and legal assessment.

The concept of *common intention*, u/s 3(5) of BNS is based on predetermined agreement to perform a crime and the shared mental state behind that. In contrast *common object*, u/s 190 of BNS focuses on criminal liability created due to the acts done in prosecution of the common object of the assembly, to which prior agreement is no pre-condition.

The aim of this paper is to explore these two doctrines in depth, their differences, their application in judicial precedents.

What is an Act?

Section 2(1) of BNS defines ‘Act’ as denoting as well as a series of acts as a single act. It is clear from this provision that criminal act refers to more than a single act, and it covers all the acts and series of acts done in succession which are connected to one another in such a way that they cannot be separated from each other.

Doctrine of Combination

The doctrine of combination in crime assists in ascertaining the liability of each member who commit a crime in group. According to this doctrine when a crime is committed by a group of

¹ Ramesh Singh alias Photti v. State of Andhra Pradesh, (2004) 11 SCC 305

persons in furtherance of a common intention or in prosecution of common object, each member of the group shall be liable for that in the same manner as if it were done by him alone.

Section 3(5) of BNS is said to be based on the decision laid down in *Rex v. Cruise*², where a constable along with his assistant went to arrest a person, several persons who were the friends of that person beat the constable and his assistant. The assistant was killed in the assault, but it was unknown that who dealt the fatal stroke, everyone was held liable for causing the death of the assistant.

Common Intention

The concept of common intention u/s 3(5) of BNS deals with acts done by several persons in furtherance of a common intention. This provision holds each member equally liable for the criminal act when committed jointly with a common intention. The objective of this provision is to make each person liable for the same amount involved in performing an act with a common intention. Common intention implies a pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he participated in pursuance of that common intention.³

Characteristics of common intention

Pre-existing agreement- A prior agreement or understanding between the participants is a key element of common intention. This agreement need not be verbal, it can be inferred from the circumstances and acts of the participants. In order to attract section 3(5) prior meeting of minds of atleast two individuals is necessary. For example- In a robbery by several persons everyone performs different actions, someone does the act, someone looks out, their collective participation in the act can be attribute as common intention.

Participation is *sine qua non*

Mere planning or meeting of mind is not sufficient under this section rather an overt act signifying participation is required. Presence at the time of the offence does not itself prove participation. Where a crime requires diverse acts at different places and time then in that case

² (1838) 8 C & P 541

³ Pandurang v. State of Hyderabad, AIR 1955 SC 216

it is not necessary that the participant must be present at the time on the spot the crime. So, participation may be direct or indirect or may be latent or patent. This principle has evolved in *Barendra Kumar Ghosh v. King Emperor (also known as Post Master murder case)*⁴, there was an appeal against the conviction of B.K. Ghosh, who was standing outside the post office as a look out during the robbery, he was charged of murder of the post master, which was committed during the robbery. Lord Sunner dismissed the appeal against the conviction and held that if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes “*they also serve who only stand and wait*”. Active participation of all members in the act in any manner is necessary. It is not necessary that the act of several persons must be same or identical. What is required is that these acts must be actuated by the same common intention.⁵

Common Intention may develop on Spot (eo-instanti)

Common intention of committing an offence may develop during the course of the occurrence and could develop on the spot. This principle was explained by Bose J. in the *Pandurang case*. According to him the plan need not be elaborate, it could arise and be formed suddenly. For example, if a man shouts at bystanders asking them to help him kill a particular person, and they through their actions or speech aid him to do so or actually join him, in such a case there has been a necessary meeting of minds, however hastily formed, a pre-arranged plan has come into existence. The Supreme Court in several judgements has upheld the view that common intention may develop on the spur of the moment. However, in such cases the court has held, there has to be cogent material to hold all the accused vicariously liable for the criminal acts by invoking Section 3(5).

Common Intention is Different from Same or Similar Intention

Common intention does not mean similar intention of several persons. They are two different concepts of law and are not synonymous. It is necessary that the intention of each one of “several persons” be known to each other for the constitution of “common intention”. Unless the same intention of several persons is not shared with each other it does not constitute common intention. This principle came to into consideration in *Dukhmochan Pandey v. State*

⁴ AIR 1925 PC 1

⁵ *Raju Pandurang Mahale v. State of Maharashtra (2004) Cr LJ 1441*

of Bihar.⁶

Circumstantial evidence as proof of common intention

It has been observed that proof of common intention is rarely available directly. It has to be inferred out of the facts of the case. In *Mahboob Shah v. Emperor*⁷ the Privy Council referring to proof of common intention observed- “It is difficult if not possible to procure direct evidence to prove the intention of an individual, in most cases it has to be inferred from his conduct or act or other relevant circumstances of the case.”

Common Object

The concept of Common object is provided u/s 190 of BNS, which extends the liability to all the members of an unlawful assembly, if any member of such assembly commits any act in furtherance of the common object of the assembly. Any offence committed by a member of the unlawful assembly in prosecution of any of the five objects mentioned in section 189 BNS, shall render his companions constituting the unlawful assembly liable for that offence with the application of section 190. Membership of an unlawful assembly is necessary for the application of this provision and membership of an unlawful assembly is in itself a crime. Common object imposes a liability on a member based on the principle that all members are aware of the objective of the assembly and also the acts which may be performed to achieve the object as well as their consequences.

Characteristics of common object

Constructive Liability- Common object attaches a collective liability to all the members of the assembly for an act committed by the member. The concept ensures that all the involved individuals are held liable for the act, even though they are not directly participating in it but share the common object. This approach contrasts with the concept of *common intention* where the direct participation of the individual was essential to attract liability.

Unlawful assembly- For the application of this provision, the existence of an unlawful assembly is necessary. Unlawful Assembly, as defined u/s 190 BNS, comprises of a group of five or more people assembled for the purpose of committing a criminal act. The membership

⁶ *Dukhmochan Pandey v. State of Bihar*, AIR 1998 SC 40.

⁷ *Mahboob Shah v. Emperor*, AIR 1945 PC 118.

and formation of an Unlawful Assembly is in itself an offence and is punishable. It is the collective objective of the assembly which drives the people to commit a crime

No-prior agreement- It is one of the most essential elements of common object, that there is no need of an explicit and particular agreement prior to the commission of the offence. This enables the broader application of the provision. If any act is done by any member of the assembly in furtherance of the common object of the unlawful assembly then all the members are equally liable for that act, regardless of any existence prior agreement among the members. This helps to apply this provision in a range of cases where there is spontaneous action.

Circumstantial evidence- It is quite difficult to find any direct evidence of a common object, and it can be inferred from the facts and circumstances of the case. In *Ganga Ram Sah v. State of Bihar*⁸, it was held that common object, however, has to be essentially inferred from the facts and circumstances of each case like the nature and number of injuries inflicted upon the body of the victim.

Distinction between Common Intention and Common Object

Common intention and common object, howsoever sound the same but are two distinct legal terms. The most significant distinction being the nature of these provisions- Common Intention, Section 3(5) BNS is not itself an offence, it imposes liability of a criminal act on the persons committing it with the common intent, in contrast Common Object, Section 190 BNS is in itself an offence as it requires a precondition which is the formation of an unlawful assembly, which amounts to a crime. Some of the differences between common intention and common object are-

Basis of Liability- The basis of attracting liability under section 3(5) common intention is the prior meeting of minds of the participants and act of participation in such act, whereas liability under section 190 is based on existence of common object of an unlawful assembly and the principle that every member of such assembly is aware of the probability of the consequences of the commission of the offence.

Number of Participants- Two or more persons committing an act in furtherance of a common intention shall be held liable for the same as if the act would have been done by an individual

⁸ *Ganga Ram Sah v. State of Bihar* AIR 2017 SC 655.

whereas an act should be performed by a member of an unlawful assembly of five or more persons in furtherance of a common object to impose a liability on all members of the assembly. The minimum required persons for common intention is two and for common object it is five out of which any of the member may perform the act and everyone shall be held liable.

Overt Act- Every person involved in the crime must perform some act however, small or insignificant, active or passive signifying the participation and presence at time of the offence to come under liability imposed by common intention, in contrast no such overt action or presence at the time of offence is required, mere membership of an unlawful assembly is sufficient to attract the liability by common object.

Prior agreement- In case of common intention a prior agreement or meeting of minds is necessary among the offenders whereas no such prior agreement is necessary for common object, the membership of unlawful assembly provides for the acknowledgement of a common object.

S.NO.	Common Intention	Common Object
1	The basis of liability under section 3(5) is common intention and participation.	Liability under section 190 is based on the existence of a common object of an unlawful assembly and knowledge of the probability of the consequences of the offence.
2.	Some act however, small or insignificant, active or passive must be done by every offender.	No active participation is necessary and mere membership of unlawful assembly is necessary for application of section 190.
3	Offence must be committed by two or more persons.	Offence may be committed by any member of unlawful assembly of five or more persons.
4	Section 3(5) does not create any specific offence, it just enunciates the principle of joint liability.	Section 190 creates a specific offence.
5	Offender shares common intention and participates in the offence.	An individual may be punished only because he is a member of an unlawful assembly at the time of the offence.

Conclusion

The doctrines of common intention under Section 3(5) of the Bharatiya Nagarik Sanhita (BNS) and common object under Section 190 BNS represent foundational principles of Indian criminal law that address the complex challenge of determining culpability in cases where multiple individuals are involved in performing a crime. While both the principles go beyond the general principle that only the perpetrator shall be punished, and extend the liability to all the offender but they operate in different manner, one depends on the mental agreement and other on membership of an unlawful assembly respectively.

Common intention is rooted in the doctrine established in *Rex v. Cruise* and is further refined through landmark judgments like *Barendra Kumar Ghosh v. King Emperor*, it requires a prior agreement among the individuals performing the act and participation, howsoever small it may be is necessary of all members. The principle recognizes that in collective criminal acts, liability must attach to all who shared the predetermined intention and participated in its furtherance. Only those bear the criminal liability who directly or indirectly participate in the offence.

In contrast, common object attaches liability to all the members of an unlawful assembly. This provision extends liability even to those who do not actively participate in the specific offence committed, it based on the knowledge of the probability of the consequences of the offence.

The evolution of these doctrines through judicial precedents such as *Pandurang v. State of Hyderabad* recognizing spontaneous development of common intention, to *Dukhmochan Pandey v. State of Bihar* distinguishing common intention from mere similar intention—demonstrate the judiciary's understanding of collective criminality. Courts have consistently held that both provisions require careful factual analysis and their application differs in the facts and circumstances of each case.