

1. Introduction

The concept of criminal liability generally states that if any criminal act is done by a person then he is solely responsible for such activities and only he can be held guilty for the same. However, there are few provisions[1] laid down under Indian Penal Code 1860 (*hereinafter referred as IPC*) embodying the principle of group liability (also termed as Joint liability, Constructive liability or vicarious liability) to determine the liability of each member of the group for the crime committed by the entire group or by any member thereof.[2] A person may be constructively and jointly liable for an offence which he did not actually commit. These persons, despite actively participating in the occurrence of the offence, do not actually participate positively in the commission of the offence;

- By sharing Common Intention as defined under Section 34 of IPC; or
- By way of Common Object as per Section 149 of IPC
- By way of Criminal Conspiracy as mentioned under section 120- A IPC[3]

2. Concept of Joint Liability

Section 34 of IPC embodies the common sense principle of joint liability laid down in **the case of Reg v. Cruse [4] as per which if two or more persons intend to commit a crime jointly, it is the same as if each of them had done the act individually. Thus, each of them will be liable for the act in the same manner as if it were done by him alone.** The present section does not create any specific offence except laying down the principle or a rule of evidence to apply in a situation wherein it may be difficult to distinguish between the acts of individual members of a group who commits a crime in furtherance of the common intention of all or to prove the liability of each individual in the group as if the act was done by each of them individually. [5] The said section run as follows:

“When a criminal act is done by several persons in furtherance of the common intention of all, each of such accused persons is liable for that act in the same manner as if it were done by him alone”

Illustration- A along with B & C proceeded to D’s house in order to avenge an insult by the brother of D. They opened fire on the members of D’s family. It was found that the shots of A did not hit anyone, but the shots of B and C succeeded in killing D. Since the act of firing was done in furtherance of the common intention of the group to take revenge. A is as much liable for the offence of murder as are B and C.[6]

3. Essential Ingredients under Section 34 along with Case Laws

Following three conditions must exist to attract the principle embodied under section 34- [7]

(i) **A criminal act done by several persons –** In *Nazir v. Emperor* [8] The court observed that Section 34 if read with Section 33 of IPC makes it clear that a criminal act means unity of criminal behaviour, which results in something for which an individual would be punishable if it were all done by himself alone, that is, is a criminal offence. Thus, whatever acts are done by several individuals in furtherance of common intention would constitute a whole particular criminal act for which each individual shall be liable. The acts committed by individuals in the criminal act may be different, but all of them must contribute towards the commission of the act. For e.g. if one person is guarding the door to prevent someone coming to the relief of the victim or providing the equipment to commit the offence in furtherance of common intention shall be equally liable. Such a person should be physically present at the actual scene to facilitate the commission of the crime.[9]

(ii) **Such act was done in furtherance of the common intention of all to commit that criminal act-** 'Common Intention' is the essence of constituting joint liability under section 34 of IPC wherein it implies a 'pre-arranged plan and prior meeting of minds'. The acts done by each member could be different but must be done in furtherance of the meeting of minds to commit a particular act. In *Joginder Singh v. the State of Haryana* [10], the Hon'ble Supreme Court observed that common intention can be inferred from the manner in which the accused arrived at the scene and attacked the victim along with the way of beating/ injuries caused by either of the accused and acts done by others to assist those causing the injuries. In this present case, the accused brought the weapons from the house by which other accused attacked. Thus, the common intention to commit murder was held as established.

(iii) **Must participation of all by doing some act in the commission of the offence in furtherance of that common intention [11]-** In *Tukaram Ganpat Panadare v. State of Maharashtra* [12], the Hon'ble Supreme Court stated that the physical presence of the accused is not necessary at the place of crime, he might remain in the vicinity to alert his fellow criminals about the danger or assist them in any other way. However, the participation of each member of a group in the commission of a criminal act is a condition precedent in order to fix the joint liability.

(iv) **Each such person is liable for that act in the same manner as if it were done by him alone**

4. Whether there should be a common intention or similar intention to constitute Liability

Section 34 can be invoked only when the accused shares a common intention and not when they share a similar intention[13]. The Hon'ble Supreme Court explained the distinction between common and similar intentions in ***Dukhmochan Pandey v. the State of Bihar***. [14]In this case, the complainant had sent some labourers to work on his field. At noon, the accused party numbering about 200 people assembled at the field with deadly weapons and asked the labourers to stop the work. When the complainant objected, two accused directed the mob to kill the labourers and thus shots were fired which resulted in the mass assault of labourers by the mob. The court while deciding the question as to whether the mob which had the common object to prevent the labourers from working in the field, had developed, on the spot, the common intention to commit murder, observed that intention could be formed previously or on the spot during the progress of crime. Thus, there should be a prearranged plan before constituting the offence under section 34, the plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly. But there must be a pre-arrangement and premeditated concert. `

5. Leading Cases on Joint Liability

1. The classic case of ***Barendra Kumar Ghosh v. King Emperor*** [15]has been followed by a number of High Courts and the Supreme Court, the court dealt with the scope of Section 34 for which Lord Sumner stated that Section 34 when it speaks of a criminal act done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the criminal act, that is to say, the totality of the series of acts which result in the offence. In the present case, the appellant who was charged and convicted under Section 302 read with Section 34 with the murder of a Sub-Postmaster contended that he was not liable for murder as he was standing outside the room and did not fire the fatal shot[16]. The court while rejecting the contention stated that the criminal act is the offence which finally results irrespective of the action of several persons. Thereby, even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things, 'they also serve who only stand and wait'. [17]
2. In another prominent case ***Mahbub Shah v. King-Emperor***[18], the court held that 'Section 34 lays down a principle of Joint Liability in the doing of a criminal act'. Under the Section, the essence of that liability found to be existing in the common intention leading to commit a criminal act in furtherance of such intention which is emanating from the accused[19]. Sir Madhavan Nair, while delivering the judgement of the Privy Council also stated that to invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown then the liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. [20]

3. In ***Pandurang Tukia and Bhillia v. State of Hyderabad***[21], a three-judge Bench of Supreme Court while upholding the above-mentioned landmark judgments held that the essence of joint liability under Section 34 lies in the existence of common intention to do a criminal act, which would mean pre-arranged plan, that is, a prior concert or prior meeting of minds and participation of all the members of the group to execute the plan. Therefore, to jointly convict a man for the criminal act of another, the act must have been done in furtherance of common intention. [22]

6. Concept of Constructive Liability

Section 149 of IPC finds its basis on Constructive Liability which is the *sine qua non* for its operation. It states that the mere membership of the unlawful assembly having a common object to commit an offence is enough to hold the co-members liable for the act done by the other members of the assembly even if some of the members did not do any of the act to commit the offence. The person who did the offensive act renders immaterial. The knowledge of the members of an unlawful assembly that a particular offence or nature or probable consequences were to be committed or achieved by the objects of the assembly will make all the persons liable for the unlawful act of other members. [23] In the case of ***Mohammad Arif v. State of Gujarat***[24], the agreement was only to give a thrashing to the victim specifically, but one of them pulled out a knife and stabbed the victim, the Court held that the object to cause a fatal injury was not known to other members at the initial stage nor at the execution stage which could make all others liable for the death. Therefore, it can be construed that the other members of the unlawful assembly were not constructively liable for the offence committed by another member as the main ingredient, that is, the common object was not present.[25]

7. The distinction between Section 34 and Section 149[26]

These sections deal with cases of constructive criminal liability imposed on a person for an act not actually done by him but by his associates. However, there is a clear distinction between the provisions of sections 34 and 149 IPC as states below.

i) **Section 34 is a substantive law while section 149 creates a specific offence**

Section 34	Section 149
Explanatory clause falling in Chapter II of Code dealing with 'General Exceptions' and creates no offence. That is to say, the section only explains	Creates a specific offence in the membership of an unlawful assembly itself, for which the participants may be liable for punishment. The

the liability of each person in the criminal act when the same has been done by several persons jointly in order to fulfil the common intention shared by all. The liability of each person for the act will be as such as if the whole has been done by a single person alone. Active participation, especially in a crime involving physical violence, is necessary.	section falls in Chapter VII: ‘Offences against Public Tranquillity. While Section 149 creates constructive criminal liability for an act done entirely by another person provided the conditions of that section are fulfilled. Once a case fulfils the requirements of section 149 then the fact that he did nothing with his own hands would be immaterial.
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ii) The distinction between ‘Common Intention and Common Object’

Section 34 (Common Intention)	Section 149 (Common Object)
The principle element is the common intention of several persons to commit a crime.	The essence of the offence of an unlawful assembly is a common object of the persons forming the assembly
For ‘common intention’, a prior concert or meeting of minds between the several persons who decide to commit a criminal act is necessary. Each of the members of the group must share the same intention with regard to the execution of the criminal act.	For ‘Common Object’ it is not necessary that there should be a prior meeting of minds of the members of the unlawful assembly. It may form in a spur of the moment, but what is more important for it to be adopted by all the members and shared by all of them. Object differs from intention as an object may be common among the members of the assembly while having a different intention. The common intention need not necessarily be to do a criminal act. For example- the common object to recover possession of the property from a trespasser is not unlawful itself but it will become unlawful the moment object becomes to obtain possession ‘by means of criminal force ‘

iii) The distinction between ‘participation’ and ‘membership’

Section 34	Section 149
The court should be satisfied that the accused has taken some part in the execution of the	Section 149 requires no participation in the commission of an offence, the basis of

criminal act, that is, actively participated, to make the person jointly liable for the act done by several persons to commit a criminal act in furtherance of common intention.	constructive guilt under the section is by being a mere member of the unlawful assembly at the time of the commission of the offence even if the act has been done by any other member of the assembly.
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iv) Number of Participants

Section 34	Section 149
The section can be invoked even if the crime is committed by two persons or only two persons are involved in the crime.	It requires that for an unlawful assembly to subsist at least 5 or more individuals must be a member of the group.

v) Operation

Section 34	Section 149
An overt act on the part of each individual acting jointly to commit a criminal act is necessary.	Mere membership to the unlawful assembly is enough to fix criminal liability.

vi) In the leading case of ***Shiv Ram v. State of Uttar Pradesh***[27], the accused persons committed murders of the family members of the deceased under a belief that they were giving shelter to suspects who alleged to have killed brother of the main accused, in a most brutal manner by severing three heads and roasting alive an innocent boy of 10 years in the fire. The Apex Court held that an unlawful assembly could develop a common object in a spur of the moment when five-person were put to death in a brutal manner. It provides that even if anyone member of the unlawful assembly commits an offence, then all the other members will be liable for it, even though there was no common intention between him and them to commit it, provided that the conditions of that section are fulfilled namely-

- a) An offence committed in furtherance of the common object of the unlawful assembly
- b) The offence committed was of such nature that the other members knew it to be likely to be committed in furtherance of the common object.

8. Leading Case Laws

a. In **Willie (William) Slaney v. the State of M.P.**, [28] the legality of conviction by applying

S. 34 and S. 149 under IPC was examined and it was held that S. 34 and S. 149 provided for criminal liability which is viewed from different angles with regard to actual participants and men actuated by a 'common object or a 'common intention' and charge is imposed on one involving the direct liability and the constructive liability without specifying who is directly or sought to be constructively liable. In such cases, the evidence as to who was primarily responsible for the act which brought about the offence is relevant.

b. The facts in **Krishnan v. State of Karnataka** [29] were such that four persons attacked the deceased as she was alleged to have been in an illicit relationship with a man. One of the accused inflicted an injury on the backside near the shoulder, the other accused hit the deceased on the head and the other two accused caused cut on her neck. After causing the fatal injury all the accused ran away. The Apex court while dismissing the appeal by the two accused as contended that they did not cause fatal injury held that the acts in the present case may have been different in character but they were actuated by one and the same intention fulfilling the requirement of joint liability which requires proof of common intention and doing of separate acts by the several individuals to hold each of them liable for the result of them all.[30]

9. Conclusion

The essence of joint and constructive liability is in the existence of common intention or common object which actuate the offender to commit an offence in furtherance in such intention. The principle of group liability as present in IPC helps to ascertain a specific role played by each member of the group and liability held by each member of the group jointly/constructively/vicariously for the acts done by others. It has been upheld by the Apex Court in various judgments that it is not must for the common intention to exist before the commencement of the criminal act, it may develop subsequently during the course of the commission of the offence. The essence being one can be held liable for the act done by the other provided the essential condition as indicated above that prearranged plan or common intention to bring about the particular result is present. Thus, it can be stated that different individuals may do different acts to achieve an ultimate result in the furtherance of common object/intention of the group or unlawful assembly thereby making the others jointly or constructively liable for the acts committed by them.