



**BNS/IPC – APP LAW PAPER - I**

**COMMON INTENTION 3(5), SIMILAR INTENTION 3(6) & COMMON OBJECT  
(JOINT LIABILITY/VICARIOUS LIABILITY)**

**Common intention\_3(5):-**

- Common intention means **meeting of mind** of the persons accused of an offence (Meeting of mind : an agreement between the accused persons to do some act). It requires **prior concert**.( Pre- arranged plan)
- Although common intention means meeting of mind which requires prior concert, it can **also develop on the spot** after the offenders have gathered there.
- Once such agreement is formed between two or more persons, they become mutual agents of each other.
- To constitute common intention it is necessary that the intention of each person be known to all the others and be shared by them.

**Note :** In order to attract section 3(5) of the Sanhita, there must be pre-arranged plan and meeting of minds which may also develop on the spot as well but before the crime. There must be at least two persons to be charged under joint liability Even if out of the two, one is absconding and it is found that both participated in the crime then Section 3(5) can be invoked even against one.

### **Essential ingredients**

- A criminal **act** must be done by **several persons**;
- Such act must be done in **furtherance of** common intention of all, and
- There must be **participation** of all persons in furtherance of the common intention.

**Note:** Once it is established that a crime has been committed in furtherance of common intention of all the accused, it is irrelevant what was the nature of participation of particular accused. He would be liable for the crime as if he alone committed the crime.

### **Participation**

- ❖ Mere presence is not sufficient under this section rather participation is required. Participation may be by presence or absence. Mere presence at the crime scene as a spectator does not establish a common intention unless active participation in the crime is proven.
- ❖ It is not necessary that accused must be actively involved in physical activity of assault to convict him on the ground of common intention. If mental element is cogently (expressed clearly) established then it is sufficient to convict accused under section 3(5) of BNS. **Role may either be active or passive.**
- ❖ Where a crime **involves diverse acts** to be done at different places and time then in that case it is not necessary that the participant must be present at the scene of crime.
- ❖ Where a crime **involves physical violence**, generally physical presence is necessary. However, participation may be direct or **indirect** or may be latent or patent.

### **Furtherance of Common Intention**

The phrase 'in furtherance of common intention' means **any offence which is committed in order to fulfill the objective** of their common

intention. Therefore, if any other offence apart from the main offence which is agreed to be committed by formation of common intention is committed to support or facilitate the commission of the offence agreed upon, then all the other accused would be jointly and constructively liable for the commission of that offence.

In *Girija Shankar Vs State of Uttar Pradesh*, AIR 2004 SC. 1808 Supreme. Court observed that Section 34 of IPC (now Section 3(5) of BNS) does not say 'common intention of all' or 'intention common to all'. Under this section, the essence of liability is to be found in the existence of common intention animating (to make someone active) the accused leading to doing of a criminal act in furtherance of such intention.

**For example**, 'A', 'B' and agree to kill 'X'. After killing 'X' they were returning back and they were chased by 'Y'. 'B' kills also. In this case all of them i.e. 'A', 'B' and 'C' will be liable for murder of 'Y' also.

### **Principle of Joint Liability**

It does not create a distinct offence; it only lays down the principle of joint criminal liability. Also, it does not create a substantive offence i.e. it is not an independent offence and for it there is no separate punishment. Mere fact that the co-accused was found in the company of the main accused at the time of occurrence is not sufficient to impute common intention on him.

Section 3(5) of BNS recognizes the principle of vicarious liability in criminal jurisprudence. It would be attracted only if one or more than one persons act conjointly in commission of offence with other. It is only a rule of evidence and does not create any substantive offence.

Supreme Court in *Ashok Kumar Vs. State of Punjab*, AIR 1977, held that essence of liability under Section 34 of IPC (now Section 3(5) of BNS) is simultaneous consensus of mind of persons participating in criminal action to bring about a particular result. **Unless common intention is proved,**

**individual offenders will be liable only for their individual acts.** *Proof of common intention is rarely available.* It has, to be culled out from the facts and circumstances of the case. The essence of joint liability lies in this common intention.

For example, A and B goes to kill X. B stood on the door so that X does not escape. A killed X by stabbing him. In this case, both A and B will be liable for murder.

### **DIFFERENCE BETWEEN 'COMMON INTENTION' (S.3(5) BNS) & 'COMMON OBJECT' (S.190 BNS)**

Section 3(5) requires active participation, emphasizing an **individual's intention as a crucial factor**. In contrast, under Section 190, a person can be held guilty solely for being part of an unlawful assembly with a common object to commit a specific offence, **regardless of their personal intent** to commit the crime.

A bench of Justices JB Pardiwala and R Mahadevan explained the difference while hearing the case where the husband along with his mother, were convicted for setting the former's wife ablaze on fire in relation to alleged dowry demand. The husband was present at the crime scene and witnessed the crime when his mother poured the kerosene oil on his wife and set her ablaze. However, the husband didn't commit an overt act, proving his common intention to commit the crime, instead, he poured water to stop the fire.

The Court acquitted the husband, citing the **prosecution's failure to demonstrate any overt act by the husband**. The Court clarified that mere presence at the crime scene as a spectator does not establish a common intention unless active participation in the crime is proven.

Membership in an unlawful assembly with a common objective to commit an offence can lead to joint liability under Section 190, **even if an individual member did not intend to commit the specific act** ultimately carried out by

others. **Lack of awareness** of the particular act committed by other members or intention to commit such an act is **not a valid defence**, such an individual cannot claim innocence and will be held jointly liable.

Whereas, for invoking Section 3(5), some overt act coupled with an intention to commit such an act is a condition precedent.

“the position under Section 190, BNS, is very different. The charge framed under Section 190, BNS, disregards the intention of the individual members of the assembly altogether, and **concentrates merely on the common object of the assembly** as a whole. The result of this position is that there may be cases in which a person might be guilty of an offence under Section 190, BNS though he himself had no intention to commit it or was even unaware of its commission.”,

“On the other hand, under Section 3(5), BNS, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 3(5), BNS, unless some criminal act is done in furtherance of the said common intention and the accused himself has in some way or the other participated in the commission of the said act.”,

### **Illustrations**

Also, the Court with the help of an illustration explained the working of Section 190:

An unlawful assembly is formed with the object of wiping out all members of a particular community residing in a mohalla. While this assembly is busy with its unlawful activities, some of its members might come across a member of the other community and in the prosecution of the common object proceed to murder him.

“Say X, who is a member of this very unlawful assembly might discover that Y was his old friend. X might not want that this old friend of his should be killed, and in spite of his wishes, and contrary to his intention, Y might be murdered. If it so happens, then X who was a member of the unlawful assembly, might be held to be guilty of an offence committed by another member of the said assembly, even though the offence itself was committed quite contrary to his desires and even in opposition to his own intention provided it is shown that X continued to remain a member of the assembly at the time of the offence and the **offence itself was directly or indirectly within the purview of the common object of the assembly.**”, the court explained.

The reason is that the criminal liability under Section 190, BNS is determined **not by the intention of the various individual members** constituting it but by the common object of the assembly as a whole.

Section 3(5) position different

"The position under Section 3(5) is different. The connection here between the **offender and the offence is far closer and deeper.**

Under Section 3(5) every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally. That is, he is a sharer not only in what has been described as a common act but also in what is termed as the common intention, and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different.

To put it in other words, whereas under Section 190, BNS the entire emphasis both in respect of the physical act as well as in respect of the mental state is **placed on the assembly as a whole**, under Section 3(5), BNS, the weight in respect of both is divided and is placed both on the individual member as well as on the entire group."

<b>Common intention - Section 3(5 )</b>	<b>Common Object - Section 190</b>
1 Common intention refers to a pre-arranged plan and acting in concert pursuant to it. It implies a meeting of minds and a plan to commit a criminal act.	1 Common object refers to a shared goal among a group of people to commit a criminal act. It does not require a pre-arranged plan or prior meetings of minds.
2 It is a rule of evidence and does not create a specific offence.	2 It creates a specific offence as being a member of unlawful assembly is in itself an offence.
3 In order to attract Section 3(5) number of persons is immaterial. Only requirement is that there must be more than one person.	3 It requires minimum of 5 persons to constitute unlawful assembly.
4 It requires some active/passive participation, however small the act may be.	4 Mere membership of unlawful assembly is sufficient to attract provisions of Section 190.
5 It requires a pre- arranged plan.	5 It does not require prior meeting of mind.
6 Common intention may be any intention for the purpose of Section 3(5)	6 Common object of unlawful assembly must be one of the objects mentioned under Section 189.
7 <b>Proof</b> : More stringent as it requires proof of the pre-arranged plan.	7 <b>Proof</b> : Less stringent as it does not require proof of prior planning.
8 <b>Liability</b> : Each person is liable	8 <b>Liability</b> : Each person is liable

for the act done by the others if it is in furtherance of the common intention.	for the offense committed by any member of the group in furtherance of the common object.
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### **Common intention 3(5 ) Vs Similar intention 3(6)**

- If a person does a criminal act with criminal intention or knowledge and another person joins him with same criminal knowledge or intention, then liability of the person joining will be **same as the liability** of person doing the criminal act.
- Common intention requires the proof of the fact that the accused had entered into an agreement with the main accused to commit the offence together. There has to be a clear evidence of said agreement.
- In case of similar intention each one will be held liable for their individual acts and not jointly for the acts of others. Also, the accused acts simultaneously but does not share the intention with others.

### **Difference of Common intention Vs Similar intention: Liability of each individual**

In Pandurang **Vs.** State of Hyderabad, AIR 1955 SC 216, the Supreme Court held that several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet **none would be attracted** under section 34 (now Section 3(5) of BNS) because there was no prior meeting of minds to form a pre-arranged plan or common intention. In a case like that, each would be individually liable for whatever injury he caused but none would be vicariously convicted for the act of others.

We can understand this through two **simple situations**:

A, B, & C togetherly plan to murder D.

A, B, & C, having no interactions among them, plan to murder D.

In 1st situation, A, B, and C has reached a consensus to murder D. Their intentions are known and shared with each other. So, it is an example of **Common Intention.**

In the 2nd situation, A, B, and C do not know each other at all and they have not ever had an interaction. Their intentions are not shared and known, though it is the same. So, it is an example of a **Similar Intention.**

<b>Common intention 3(5)</b>	<b>Similar intention 3(6)</b>
It must be pre-arranged plan, prior meeting of minds of those involved in the crime.	It does not require a prior meeting of mind or pre-mediation of the commission of the act.
Each person is held equally liable for the same offence.	Each person would be liable for their individual effort or acts and not jointly for the acts of others.
It requires the proof of the fact that the accused had entered into an agreement with the main accused.	Criminal knowledge is a condition precedent to Section 3(6), that must be established while creating evidence under this section.
Intentions are known and shared.	Intentions are unknown and unshared.

## **CASE LAWS**

### **Furtherance of Common Intention**

In **Surendra Chauhan Vs. State of Madhya Pradesh, 2000**, a doctor was neither competent to terminate pregnancy nor he had the approval of the government. His clinic lacked the basic instruments necessary for the purpose. Victim was taken to that clinic by a person for termination of the pregnancy of the victim and she died in the process. Doctor and the person who took her to clinic were held liable for the death of the victim as the crime was committed in furtherance of the common intention. In this case the two accused knew that the clinic did not have the facility for termination of pregnancy and the doctor did not have the competence to complete the procedure without hazard. Still they concerted and carried on the termination of pregnancy of the victim. Hence there was common intention of the two accused to undertake a procedure illegally and in furtherance of their common intention they subjected the victim to the abortion process as a result of which the victim dies. Hence there was common intention, an act was done in **furtherance of the common intention** and each of the two accused participated in the criminal act. One brought the victim to the clinic and the other applied the procedure on the victim.

### **Common Intention can develop on the spot**

In **Kripal Singh Vs. State of Uttar Pradesh, 1954**, there was a dispute over land between the accused and the victim. One morning the three accused tried to stop labourers from working in the field which the labourers tried to resist. When the victim intervened two accused hit him with sharp weapons. Third accused stabbed the victim with spear blade which struck the victim in jaw. The blow injured the brain of the victim who died on the spot. The court held that the three accused were liable under s. 326(now Section 118(2) of BNS) read with s. 34(now Section 3(5) of BNS). However, third accused alone was liable for murder. The common intention which developed on the spot was to attack the victim with sharp weapons. Other two accused did not intend murder of the victim.

In *Lallan Rai Vs. State of U.P., 2002*, victim along with three other persons was returning from Taraiya Bazar to his village on the day of Holi festival. 14 accused were sitting at the house of Rajendra Rai variously armed with weapons. At the instigation of Rajendra Rai all accused persons encircled the victim and his companions and killed the victim. Defence unsuccessfully tried to plead that the accused should be tried for their individual actions. It could not be proved that 14 accused had assembled with the purpose to kill the victim because there was no evidence that they knew that he would be returning at that time through that path. It was found in trial that the plan to kill developed all of sudden. That is why application of s. 149(now Section 190 of BNS) failed because the assembly was not unlawful. But the Supreme Court applied s. 34(now Section 3(5) of BNS) and held the accused persons liable for murder because they shared common intention to kill the victim and this common intention had developed on the spot

### **Participation is irrelevant**

In *Krishnan Vs. State 2003*, the victim was attacked by four accused. They had earlier also threatened her. One day when the deceased refused to comply with their demand, they attacked her and her brother armed with sharp weapons. Four accused gave blow at different parts of the body. One gave blow on the right side of the head of the deceased with aruval. This injury proved to be fatal. Holding all the accused liable for murder under s. 302(now Section 103) of BNS) read with s. 34(now Section 3(5) of BNS) the Supreme Court held that when several persons participate in a criminal act with common intention it is **irrelevant what was the individual role of a participant**. All would be held liable for the crime as if it was done by him alone.

In *Subed Ali and Ors. Vs. The State of Assam, AIR 2020 SC 4657*, the foundation for conviction on the basis of common intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the acts of others with whom he shared the common intention. The

presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. It is therefore **not necessary** that before a person is convicted on the ground of common intention, he must be **actively involved in the physical activity** of assault. If the nature of evidence displays a prearranged plan and acting in concert pursuant to the plan, **common intention can be inferred**. A common intention to bring about a particular result may also develop on the spot as between a number of persons deducible from the facts and circumstances of a particular case. The coming together of the accused to the place of occurrence, some or all of whom may be armed, the manner of assault, the **active or passive role played** by the accused, are but only **some of the materials for drawing inferences**.

### **Common intention Vs Similar intention**

In Mahboob Shah **Vs.** Emperor, 1945 Allah Dad and few others were trying to collect reeds from the bank of Indus river. They were warned by Mahboob Shah against collecting reed from lands belonging to him. Ignoring the warning the deceased collected reeds but was stopped by Qasim Shah, nephew of Mahboob Shah while he was placing them on boat. Qasim Shah was hit by the victim by a bamboo pole. On hearing Qasim Shah's cries for help, Mahboob Shah and his son Wali Shah came armed with their guns. Wali Shah fired at the victim who died instantly and Mahboob Shah fired at another persons causing him some injuries. Lahore High Court sentenced Mahboob Shah with murder of victim under s. 302 (now Section 103 of BNS) read with s. 34(now Section 3(5) of BNS). But on appeal Privy Council set aside the conviction for murder for Mahboob Shah stating that common intention required pre-arranged plan and it has to be proved that criminal act was done in concert pursuant to prearranged plan. Here the two accused might be having same or similar intention but not common intention and since firing of Mahboob Shah did not kill anyone he was not held liable for murder by the application of s. 34(now Section 3(5) of BNS).

### **Spectator does not establish a common intention**

In State of Uttar Pradesh **Vs.**Sahrunnisa,2009, three boys of the family were being sacrificed on the superstitious belief of a father and daughter that they would regain life. Mother of the boys and her son- in-law (husband of her daughter) were helpless spectators. Two boys died in this while the third somehow escaped death. Dismissing the appeal of the State, the Supreme Court held that a poor muslim lady would normally be too afraid of her husband and daughter who were mistakenly convinced of supernatural occurrence and hence dared not oppose their actions. This cannot be termed as her having common intention to commit the crime **nor can her not opposing be termed as participation in the crime.**

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