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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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UNRAVELING THE DYNAMICS BETWEEN SECTION 149 & SECTION 34- OFFENCE AND EVIDENCE IN RECENT LEGAL PERSPECTIVES.

AUTHORED BY - NANDINI BHAGAT & RIA SINGH

In a mob or a group of persons, it becomes difficult to identify or establish the guilt that was played by the members of its groups during the commission of the offence. In such case the role played by Section 149 of the Indian Penal Code comes handy.

According to Section 149 any member of an unlawful assembly who commits an offence in the course of pursuing an assembly's common object, or an offence that the assembly's members knew was likely to be committed in that regard, is guilty of the offence.¹ This includes any member of the assembly at the time the offence was committed. The purpose or the objective of the discussed provision is that the liability for the offence committed shall be shared amongst the members of the unlawful assembly. Section 141 can be considered as an essential in establishing the joint liability under Section 149.

Understanding Section 141 IPC

India, being a nation, which provides its citizens with a diverse set of rights for maintaining a life of dignity and honor. As per Article 19(1)(B) of the Indian Constitution provides its citizens with a fundamental right to assemble peacefully. However, Section 141 is an exception of this right. This section criminalizes unlawful assembly based on certain criteria, this may be regarded as establishing reasonable restriction for the protection and welfare of the society as against any misuse of the rights provided. To establish an unlawful assembly under Section 141 IPC there are certain elements the prosecution must prove-

No. of Individuals required – A minimum of five individuals are required to form an unlawful assembly.

¹ Indian Penal Code, 1860, 149, No. 45, Acts of Parliament, 1949 (India).

Common Object- By the concept of common object, it renders that all the members of an assembly must have a common object, all the members should have the prior knowledge or a pre-conceived intention to commit an unlawful objective.

Knowledge of common object- Each and every member of the assembly must be aware of the common objective and willingly participate or support in the activity conducted by the assembly.

SECTION 149

According to Section 149 if an unlawful assembly's members commit an offense in the pursuit of the assembly's common object, or in an endeavor they knew was likely to be undertaken in that pursuit, then anyone who was a part of the assembly at the time the offense was committed is guilty of that offense. Generally speaking, an offense committed in furtherance of a shared objective would be one that the assembly members understood was likely to be committed. This term indicates that the accused were members of an unlawful assembly, of which the offense was directly related to the unlawful assembly's shared goal. The phrase "in prosecution of common object" denotes that the crime was performed directly in line with the assembly's shared goal or to achieve that goal.

In **Bhudeo Mandal Vs State of Bihar**, the apex court held that the evidence had to unequivocally demonstrate both the common purpose and the unlawfulness of the purpose before any person could be found guilty under Section 149.²

In **Ram Dhani Vs State** it was held in an effort to settle a land dispute, the complaining party ripped off the accused party's crop. The latter were gathered to stop the cutting and numbered more than five. The court ruled that those defending the property in self-defense could not be parties to an unlawful assembly. As a result, it was impossible to claim that they assembled illegally.³

Origin of Section 149

The Indian Penal Code, 1860's Section 149 has a history rooted in colonial times. The British Draft Penal Code, commonly known as the Macaulay Code, served as the foundation for the current Indian

² Bhudeo Mandal V. State of Bihar, 1981 AIR 1219 SCR (3) 291.

³ Ram Dhani & Ors. V. State of UP, 1997 CriLJ 2286.

Penal Code, 1860. Though it did not have a clause similar to Section 149, the Draft Penal Code did stipulate five years in prison for rioting. Section 149 of the Indian Penal Code of 1860 was added by the British to put an end to any Indian uprising against their rule. Indians' desire for freedom was stoked in the 19th century, and they were beginning to band together to resist the harsh British rule, which the British observed. This outraged the British, who then deliberately employed Section 149 to put down and imprison the rebels in order to make the people afraid to speak out against the injustice. Therefore, it may be concluded that the aforementioned provision was originally used in an oppressive manner. However, following India's independence, the courts interpreted the act strictly in order to avoid erroneous convictions under the guise of the common aim.

Section 149 comes into play when members of an unlawful assembly are constructively accountable for offences committed by any member, pursuing a common aim. Constructive culpability under section 149, however, is not applicable to free fights. Liability only extends to those directly participating in inflicting harm during a scheduled altercation. When a number of individuals assault a person, it might be challenging to determine how each individual contributed to the offense. Section 149 charges may be brought against each of the accused in such circumstances. This provision's primary premise is that any person involved in an illegal assembly with a shared goal shall be held accountable for the group's crime. Additionally, they would be guilty if they deliberately participated in an offense knowing that it was likely to be committed. Let's take, for instance, that D and E beat Z with bamboo sticks while A, B, and C gripped Z to hold him tight. Section 149 of the Indian Penal Code, 1860 holds A, B, and C accountable even though they did not beat Z as D and E did. This is because all the accused had the same intention of physically abusing the victim.

Thus, by holding offenders accountable under Section 149 by virtue of common goal, this provision was designed to protect social order and deter criminals who knowingly aid in the commission of attacks against innocent persons.

Concept of Common Object

The term "object" refers to the purpose, and when it is shared by all those present at the unlawful gathering, it becomes common. At any point, all or some of the assembly sections can come together to form a single object. This section's explanation makes it quite evident. However, as common

objects are entertained in human minds, there isn't any concrete proof of this. It is a question of fact that can be eliminated based on the particular facts and circumstances of each instance. It can be inferred from the nature of the gathering, the types of weapons used by it, the participants' conduct, and the language they used both before and after the incident. An assembly is not illegal if there is a common object shared by only four of the five people present, not the fifth. A mere bystander or a member of the parties' family cannot join an unlawful assembly unless they actively took part in or supported the violence.

Ingredients of Section 149

- There must be an unlawful assembly
- Any offence must be committed by the member of the unlawful assembly
- The offence committed must be in furtherance of the assembly's common objective or the members must have knowledge about the happening of the offence.

In **Vijay Pandurang Thakre Vs State of Maharashtra**, it was held that in order for Section 149 to be applicable, a person must actively participate in the offense with the required criminal intent or share the unlawful assembly's common goal; otherwise, the person will not be held accountable under the abovementioned Section.⁴

SECTION 302 & 149- THE INTERLINKING

The Indian Penal Code, Section 302, outlines the penalties for murder. A group of people may face charges under Section 302 read with Section 149 if they have an identical objective of killing another person. The question of whether an offence under Section 302 implicatory may be found guilty of when the charge was for an offence under Section 302 read with Section 149 of the IPC was brought up in the Supreme Court of India case of **Nanak Chand v. State of Punjab (1955)**. It was decided that the conviction for the offence under Section 302 would not be maintainable since there was no distinct charge for the offence under Section 302 exclusively, and the charge was made under Section 302 read with 149 of the IPC.

⁴ Vijay Pandurang Thakre & Ors V. State of Maharashtra AIR 2011 SC 1305.

The Delhi High Court recently on January 18, 2022 illustrated, in the case of Mohd. Shoaib @ Chhutwa v. State (2022), that in order to convict an accused person under Section 302 read with Section 149 of the IPC, there must be a clear finding regarding the nature of the unlawful common object. If there is no such finding, then the accused person's presence alone will not be sufficient to prove the common object. Therefore, generic accusations and ambiguous evidence cannot serve as the basis for a conviction under Section 149 read with Section 302.⁵

In conclusion it can be said that Section 302 prohibits charging the remaining members of the unlawful assembly with murder if one of their members has committed a murder. When the assembly's common objective was to murder the victim, Section 302 read in conjunction with Section 149 will take effect.

SECTION 34

The highest degree of mens rea, or blameworthiness of mind, is criminal intention. In criminal law, intention has a symbolic meaning. It relates to murder and the most serious crimes in the criminal justice system as the highest manifestation of the mental element. The Indian Penal Code does not define "intention," however section 34 addresses common intention. Section 34 of the IPC gives legal justification to the collective purpose of multiple persons to commit a crime and carry out the plan as intended. Section 34 addresses circumstances in which multiple people commit an offense that calls for specific criminal knowledge or purpose. Anyone who participates in the conduct with that knowledge or intention has the same liability as if they had done it alone. In this case, individual responsibility is referred to as joint culpability.

Concept of Common Intention

The expression "common intention" suggests having a predetermined strategy and working together to carry it out. There must not be much time between the creation of the common intention and the act's commission. In order to implement this section, a pre-concert need not be demonstrated; instead, it can arise spontaneously among several parties and be deduced from the specific facts and circumstances of each instance.

⁵ Mohd. Shoaib Ansari & Ors V. State & Anr AIR 2022 SC 862.

In **Mahboob Shah v. Emperor**, the appellant, Mahboob Shah, who was 19 years old at the time, was found guilty by a session judge on the charge of killing Allah Dad in violation of sections 302 and 34. He received a death sentence by the Sessions court. The death penalty was likewise upheld by the High Court of Judicature. The death sentence and murder conviction were overturned on appeal before Lordship. In front of the appellant, it was argued that there was evidence of a spontaneously formed common intention because "when Allah Dad and Hamidullah tried to run away, Wali Shah and Mahboob Shah Came in front of them... and fired shots." Their Lordship was not satisfied upon this view and humbly advised His Majesty that the appellant has succeeded in his appeal, his appeal should be allowed and his conviction for murder and the sentence of death set aside.⁶

Various Interpretations of Joint Liability Under Section 34

- ❖ Premeditation of minds is required to establish common intention. Prior agreement that sparked the common intention must have existed, and the criminal conduct must have been carried out to promote the shared goal.
- ❖ Even if there may have been no premeditation and the intention came to them on the spur of the moment, they still needed to communicate with each other.
- ❖ Since common intention is based on the accused's intentions at the relevant moment, proving it is extremely difficult. It must therefore be eliminated based on the specific facts and circumstances of each case.
- ❖ Section 34 can only be invoked for the concept of common intention and not on similar intention.

An individual will only be held accountable for his own actions, without proof of a shared intention. They shall be handled in accordance with IPC s. 38. Additionally, the accused should be given the benefit of the doubt if there is any question.

Barendra Kumar Ghosh Vs King Emperor⁷

It is one of the landmark cases describing the concept of joint liability and it is also known as the 'Post Master Case'. In this instance, on August 3, 1923, at around 3:30 p.m., the accused Barendra

⁶ 72 I.A. 148(P.C.).

⁷ Barendra Kumar Ghosh V. King Emperor (1925) 27 BOMLR 148.

and the other three individuals went to the Shankaritola post office with weapons. While the other three entered the post office through the rear entrance, the accused stood outside the establishment. Post Master Amrita Lal Roy was pressed to give them the money that he was counting. When he declined, the other three pulled out handguns and started to open fire and fled the place.

In light of this, he died immediately. When the accused saw others fleeing, he also fled by blasting his pistol into the air. But the post office assistant followed him and nabbed him. He was accused along with others of violating S. 34 in the common aim of the parties and S. 302 (murder to post master) and S. 394 (causing hurt while committing robbery). He argued that he didn't intend to kill the postmaster; he was just keeping watch outside the post office. The Calcutta High Court upheld his S.302 murder conviction along with S.34.

Overlapping scenarios- Section 34 & 149

***Jaswant Singh v. state of Haryana*⁸**

In the following case the appellant was accused of forming an armed group that ambushed and assaulted the victim by hitting him on the head. The victims then ran to seek refuge, and he and the other accused followed after them. The court held the actual participation in the murder of the deceased and forming an armed group near the house of the victim shows premeditated act and this would be enough to convict the accused under section 34 and 149 of IPC.

***Karnail Singh and Another v. State of Punjab*⁹**

In the above case there was a long-standing hostility between the victim and the appellant that led to several crimes and legal proceedings. One evening, four of the accused broke through the victim's roof's covering, ignited flammable materials inside the house, and set the victim and his sister on fire. In the end, Section 149 of the IPC was applied to charge the accused for organizing an unlawful assembly with the object of setting the victims' house on fire.

In an appeal against the judgement of the High Court of Punjab the question was whether the appellant's conviction under Section 34, despite only having been charged under Section 149 was

⁸ Jaswant Singh v. state of Haryana, AIR 2000 SCR 903.

⁹ Karnail Singh And Another vs The State of Punjab, AIR 1954 SCR 904.

unlawful. The court found that the object of the appellants to set fire to the house of the victim thereby killing the victim, it was also their intention under section 34. On the facts of this case there can be no difference between the object and the intention with which the offences were committed therefore the substitution of Section 34 in the place of section 149 in the charge has no prejudice to the appellant.

***Ram Yadav and 3 Others V. The State of Bihar*¹⁰**

The victim in the aforementioned case passed away from a head injury sustained by appellant Kari Yadav, and the other appellants carried out a common intention or acted in concert with Kari and Ram Yadav by throwing the victim's body into the river at their command. The rest of the appellants shared the common object of the common intention of each other.

Section 149 and section 34 of the Indian Penal Code overlap each other and in case where the accused acted in concert of all, if the number of those acting together was more than five, each individual could be charged for the offence of one of them with the help of section 149 of the Indian Penal Code. They could also be charged for their contributions in furtherance of the common intention under section 34 of the Indian Penal Code.

Intersection between Section 149 and Section 34 IPC

Section 34 and section 149 both provide criminal liability between the participants of an offence but from different angles. Section 34 deals with several people performing distinct, similar, or different activities; if they are carried out to further a common intention, each individual is accountable for the outcome of all of them, just as if he had carried them out alone. Section 149 establishes a new, unique offense and addresses its associated penalties. It renders each person present at an unlawful assembly at the time of the crime guilty of that crime.

Similarity of the section lies in the requirement of a common object or intention or a prearranged plan in furtherance of which the criminal act is done. The difference lies in the degree of actual participation required in the criminal act.

¹⁰ Ram Yadav vs State of Bihar, 1996.

The nature of participation under Section 34 IPC has been discussed in the case of *Ramaswami Ayyangar v. State of T.N 1976*¹¹, It is important to interpret Section 34 along with Section 33, which clarifies that the "act" mentioned in Section 34 encompasses a number of acts taken together as a single act. Consequently, it is possible to interpret the phrase "when a criminal act is done by several persons" in Section 34 to imply "when criminal acts are done by multiple persons." Even though each accomplice's actions in the criminal action may differ, they must all take part in the criminal enterprise in some way. For example, one accomplice may only act as a guard to keep others from helping the victim, or they may take other actions to help carry out the shared plan. Just as much as his other participants really carry out the intended crime, such a person also does a "act." The person who initiates or assists in the commission of the crime must, however, be physically present at the actual crime scene in order to facilitate or promote the offence, the commission of which is the joint criminal venture's goal, in order for Section 34 to apply in the case of an offense involving physical violence. The mere fact that people are present who aid in the execution of the shared plan amounts to genuine participation in the "criminal act." The concurrent consensus of the thoughts of those involved in the unlawful activity to bring about a particular result is the essence of Section 34.

As far as Section 149 IPC is concerned, in addition to the common object, merely being a member of an unlawful assembly within the meaning of Section 141 IPC may be sufficient. As held in *Lalji v. State of U.P 1989*¹², "If an individual's case meets the requirements of the provision, it becomes irrelevant whether or not they took any personal responsibility for the situation. He is not permitted to claim that he did not personally conduct the crime that was committed in pursuit of the unlawful assembly's common object or that which the assembly's members knew was likely to be committed in pursuit of that object. It is necessary to assume that each person intended the likely outcomes of the actions they joined. It's not required for every member of an illegal assembly to engage in overt behavior.

Even while an overt conduct or active participation may point to a common intention on the part of the criminal, Section 149 may impose vicariously criminal liability for the mere act of participating in an unlawful gathering. Note that being a member of an unlawful assembly with the necessary

¹¹ *Ramaswami Ayyangar v. State of T.N*, AIR 1976 SCR 580 SCC (3) 574.

¹² *Lalji v. State of U.P*, AIR 1989 SCR (1) 130 SCC (1) 437.

common object or participation in the unlawful assembly is the ground for constructive guilt under Section 149.

While the primary element of section 34, participation in action, is replaced in section 149 by membership in the assembly at the time of the offence, there is a difference between object and intention. Although an object may be shared, the intentions of multiple members may differ or even be similar in that they are all unlawful. Both sections address groups of people who are criminally charged as co-offenders. Although there is some similarity between them and there may be some overlap, section 149 cannot, in any case, reduce section 34 to addressing only joint action by the commission of precisely similar acts—a type of circumstance that is not at all deserving of separate consideration.

As given in the case of *Virendra Singh v State of Madhya Pradesh*¹³

- Section 149 by itself create a specific offence, whereas Section 34 does not do so,
- Section 34 requires some degree of active participation, particularly in crimes involving physical violence; however, Section 149 does not require it; liability arises from merely being a member of a lawful assembly with a common object; furthermore,
- Section 34 speaks of common intention, whereas Section 149 contemplates common object, which is unambiguously wider in scope of common intention i.e., section 34.
- While Section 149 mandates that there be a minimum of five individuals who must share the same object, Section 34 does not specify the minimum number of people who must share intention.

Differentiating Factors

- *Prearranged plan*

A prearranged plan must have existed in order for there to be a common intention, which indicates action-in-concert and requires a previous meeting of the minds. It is evident that situations in which Section 34 may be invoked reveal a component of each accused person's involvement in the action. Even if the acts differ and have various characteristics, they are all motivated by a single common

¹³ Virendra Singh v State of Madhya Pradesh, AIR 1989 SCR (1) 130 SCC 437.

intention. In the case of *Mahbub Shah v. King Emperor 1944*¹⁴ the principle of section 34 is made clear by the lordships that “common intention within the meaning of section 34 implies a prearranged plan, and to convict the accused of an offence applying the section 34 it should be proved that the criminal act done in concert pursuant to the prearranged plan”¹⁵

Whereas as far as section 149 is concerned, In *Moti Das v. Bihar*¹⁶, the Supreme Court held that pre-concert is not necessary. An assembly may start off legally but can eventually turn illegal. Being a part of an unlawful assembly is illegal in and of itself, and section 143 stipulates that membership in such an assembly carries a six-month imprisonment, a fine, or both.

- Overt act

In *State of Up v Iftikhar Khan*¹⁷ it was observed that to attract section 34 IPC it is not necessary that any overt act should have been done by the co-accused. There mere participation in the act with prior meeting of the minds is enough for applicability of section 34 on all of the co accused.

Evidence of some overt act is necessary in the case of section 149 IPC. As declared in the case of *Rambilas Singh v. State of Bihar*¹⁸ the court held that it is not required to prove that each and every one of the accused engaged in overt acts or that the actions of one or more of the accused were carried out in pursuit of the unlawful assembly's members' common object in order to find someone vicariously liable under sections 34 and 149.

Both sections 34 and 149 IPC deal with groups of people who are subject to punishment as participants in an offense. The people are held vicariously liable for the acts of others in both of these provisions. Both of these parts share certain fundamental similarities and overlap to some degree at the same time. These two sections also differ significantly in additional ways. In cases when five or more people commit an act or plan to commit an act, Sections 34 and 149 IPC may be applicable. Section 149 IPC has a broader application than Section 34 IPC. When Section 149 is applicable,

¹⁴ Mahbub Shah v. King Emperor, 1945 47.

¹⁵ Mahbub Shah vs Emperor, (Dec. 18, 2023). _

¹⁶ **Moti Das v. Bihar**, AIR 1954 SC 657.

¹⁷ UP v. Iftikhar Khan, AIR 1973 SCR 863 SCC 512.

¹⁸ Rambilas Singh v. State of Bihar, 1963.

individuals who do not actually commit the offence are nevertheless subject to a constructive liability.

Analyzing the concept of Mens rea

The essential element of a crime to be committed is mens rea or the “guilty mind”. It refers to the mental state of a person which he had at the time when he committed the crime. The intention to act in a certain way which results in the birth of a crime is known as mens rea. In criminal law the concept of mens rea is used to determine the guilt of a person. It is the state of mind at the time of commission of the crime and it should be a guilty state of mind for a crime to be committed. To determine whether a person can be held liable for the crime he had committed, it is important to analyse the intent of the person.

The importance of mens rea is explained by Lord Diplock in the judgement of **R v Tolson** “*The full definition of every crime contains expressly or by implication a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed; or, again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition.*”¹⁹

Application of Mens rea in Section 34 and 149 IPC:

The provision of section 34 of the IPC declares guilt of the persons who acted in furtherance of common intention to do a criminal act. The word intention denotes the state of mind of the persons participating in a criminal act. For an act to fall under the ambit of section 34 IPC the act should be the result of a guilty state of mind commonly shared by the of the criminal act.

The intention to participate in a criminal act denotes some prior meeting of minds, the formation of a pre-arranged plan which resulted in common guilty intention of all the participants then executed to commit a criminal act. The importance of previous meeting of minds for an offence to fall under section 34 IPC is described in **Mohan Singh v State of Punjab**²⁰ the court observed similar intention and common intention as required by section 34 are different from each other. Persons with similar intentions that are not the outcome of a prearranged plan cannot be found guilty of committing a

¹⁹ICLR, <https://www.iclr.co.uk/knowledge/glossary/mens-rea-and-actus-reus/>, (Dec. 18, 2023)

²⁰ Mohan Singh v State of Punjab, 1970

"criminal act" under section 34 IPC.

To bring this section into effect, a pre-concert need not be established; instead, it can arise spontaneously on the spot among several parties and be deduced from the specific facts and circumstances of each case.

In order to implement this section, a pre-concert need not be established; instead, it can arise spontaneously on the spot among several parties and be deduced from the specific facts and circumstances of each case. The application of Section 34 IPC for the inference of the existence of a common intention does not need any prior meeting of minds or premeditation. The case's surrounding circumstances and the parties' actions suggest the presence of a common intention. It is not required to provide concrete evidence of common intention. For the purposes of common intention with respect to section 34 IPC, even the participation in the commission of the offence need not be proved in all cases. The common intention could occur even during the course of an occurrence of an offence.

Section 149 IPC

The provision of section 149 declares guilt of each member of an unlawful assembly who acted in prosecution of the common object of that assembly. The term "object" refers to the purpose, and when it is shared by everyone present at the unlawful assembly, it becomes common object. A person may be prosecuted under section 149 of the IPC if they participate in an unlawful assembly as defined by section 141 of the IPC and carry out an act directly related to the common object.

Object like intention is a mental element of a plan. The common object of an unlawful assembly to light the house of a person on fire, has a mental notion of a state of mind which had the intent to achieve the goal or the purpose of setting the house on fire. A common object is not a pre-arranged plan, it may be formed at any stage by all or a few members of the assembly.

In the second part of S. 149, the word "knew" is used, implying more than a possibility but less than could have known. An offence committed in prosecution of common object would generally be offence which the members of the assembly had the knowledge of or knew was likely to be committed and therefore had the intention of committing it, which also shows the presence of a guilty intent on

the part of the members. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which they took part in.

Challenges in proving offences under section 34 and 149 IPC

While the essential elements are laid down by the provisions of section 34 and 149, the burden of proving the presence of common intention, knowledge of common object, creation of unlawful assembly, individual membership of an unlawful assembly, lies on the prosecution. In order to prove the presence of all the ingredients to create a situation given under section 34 and 149 IPC, the prosecution has to extract the evidence from the facts and circumstances of the case. In the absence of such evidence the guilty person could walk free, to prevent such a scenario it is important to understand the legal hurdles faced in proving offences under sec 149 and 34 IPC:

- **Mental element of the criminal act**

Mental element has a crucial part to play in both the sections of 34 and 149 IPC. The intentions of a person are the result of mental process of his mind and one cannot prove what is going on in someone else's mind. As explained in the case of in *State of UP v. Iftikhar Khan*²¹, it is difficult to prove intention of an individual, it has to be inferred from his act, or conduct and other relevant circumstances.

Also, common object is developed in the human mind so there can be no concrete evidence to prove the common object. It is a question of the fact and can be extracted from the facts and circumstances of each case. The manner of assembly, the weapons used by it, the participants' behavior, and the language they used both before and after the incident can all be utilized to determine it.

- **Prior Meeting of minds**

To convict a person under section 149, it is essential that the person had prior knowledge of the crime likely to be committed in pursuant to the common object. The question arises as to whether the each and every person knew the consequences of the acts related to the common object and this is difficult to determine. It again involves understanding the mental state of the accused which can only be determined through the facts and circumstances of the case. Consider an unlawful assembly gathered

²¹ UP v. Iftikhar Khan, AIR 1973 SCR 863 SCC 512

in front of a house to commit criminal trespass, the person residing in the house resisted and, in the end, killed by the accused as a result of the resistance, here although the common object of the assembly was to commit criminal trespass, it cannot be said that they already had the knowledge that in doing so the person could have been killed. Therefore, they cannot be held liable of an offence under section 302 IPC read with section 149 IPC.

- **Question of individual liability**

The membership in an unlawful assembly is an essential element to determine the guilt of the accused under section 149 IPC. Membership of an unlawful assembly can be determined by looking at facts and circumstances of the case. When the question arises of an accused being a part of the unlawful assembly, the court looks at the evidence given by the prosecution. Among which corroboration of witnesses, testimony of the other accused and names registered in the FIR are the most important. But in cases where there are no witnesses of the person being part of the unlawful assembly the accused can walk a free man. Also, in the cases where an accused is being falsely implicated by the other members or the police itself of being a part of the assembly, the innocent accused can be falsely convicted.

CONCLUSION

In conclusion, a complex legal environment requiring careful thought and analysis is revealed by the intricate interaction between Section 149 and Section 34 in the context of offences and evidence. The complexity of these laws and the difficulties the legal community faces in navigating them are highlighted by recent legal viewpoints.

Section 149 emphasizes the shared liability principle, which highlights the combined accountability of those working towards a common goal. Conversely, Section 34, which addresses the notion of common intention, is crucial in determining who is liable for a coordinated criminal conduct done by a group of offenders. Collectively, these provisions provide a crucial component of the legal framework designed to guarantee justice. Recent judicial interpretations and legislative amendments reflect an ongoing effort to strike a balance between the need for collective responsibility and individual culpability. Courts are increasingly cognizant of the challenges posed by these sections and are providing nuanced interpretations to address the evolving nature of criminal activities and the

complexities surrounding evidence in contemporary legal scenarios.

In this dynamic legal landscape, it becomes imperative for legal practitioners, scholars, and policymakers to engage in ongoing dialogue and critical analysis. By unraveling the dynamics between Section 149 and Section 34, the legal community can contribute to the development of a robust framework that upholds the principles of justice, fairness, and individual rights.

