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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

W H I T E   B L A C K  
L E G A L

# **COMMON INTENTION AND IMPACT ON STAGES OF CRIME**

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## **Abstract**

The man who has a conscience suffers whilst acknowledging his sin. That is his punishment-- as well as prison."<sup>1</sup>

### **–Common Aphorism**

Crime and punishment have age old relation. Wise people who created the law at old times did their best to ensure that appropriate punishment is given with respect crime is adequate to deter the common people to abstain from committing the crime. This is a tricky subject because the punishment should be such that it deters and at the same time should be appropriate as per the crime done.

However, the complexity in law grew with respect to time. This is because criminals came up with novel ways to commit crime and their advocates came up with unique reasons by finding loopholes in the law to protect their clients even if they did the crime. This led to continuous improvement by modification of law, addition of new laws. However, this elusive cat and mouse game still continues.

This paper focuses on stages of crimes and its relation with common intention. Common intention played a very important role to deter the common people from committing the crime.

## Introduction

“It is the duty of every citizen /resident of any country, nationals as well as expatriates to know the basics of the governing laws of the country one resides. Ignorance of the law or unawareness cannot be pleaded to escape liability.”<sup>2</sup>

–Common Aphorism

It is important to know the stage of crime so that appropriate punishment can be awarded. But, is it adequate to deter the common people from committing any crime even for the Court?

Advocates at one side are protectors of the law but at the same time some advocates find loop holes in the law to protect their client who might be a criminal but since it cannot be proved in court; the would-be criminal cannot be convicted.

Over the time lawmakers keep on realizing these loop holes and work to fix them. In this paper, let's discuss the importance of common intention that is very helpful to deter the common people in even participating in crime where they have complete knowledge of the crime before the crime is committed.

### Research questions

This paper is an attempt to find the answer to the following questions:

1. Is crime punishable at any stage of crime?
2. Is there any relation between joint liability and stages of crime?
3. Is there any difference in punishment if there is similar intention and not common intention?

### Stages of Crime

Before discussing essential elements of crime and stages of crime. Let's understand what crime is.

### What is crime

There is no definition mentioned of crime in India Penal Code (IPC). Although, it can be defined as an action of doing an act that is opposite to law or not doing an action that one is legally obliged to do and because of that not doing of that action someone suffers; such action can be punished via judicial process in court of law. These proceedings are conducted in the name of the state.



This is because any criminal act is considered as act against the state. Since, one of the objectives of the state is welfare of public and safety of public, by any action if this objective is violated then the action becomes against the state as well. While, in civil cases, they are usually between two parties where both defendant and plaintiff will be individual or group of individuals and no party needs to be state.

In easy terminology, whatever legislature (meaning IPC, CrPC, case laws etc.) mentions as crime is crime.

### Elements of crime

It is also important to understand that what are the essential elements of crime so that court can decide whether action done is a crime or not. The essential elements of crime are as follows:

1. Person (human being)
2. Actus Reus
3. Mens Rea
4. Injury

It is important to note that even if one element is missing then the action will not be called crime. Let's understand each one of them.

1. Person: this means that the action should be done against a person. IPC 11 mentions that "person" includes artificial person (company, association of persons), judicial person. The person should be such that law should apply on it so that if there is a crime committed by it then it can be punished appropriately. For example, if a dog bites a man, then dog cannot be punished under law as dog is not a person.
2. Actus Reus: this is Latin for "guilty act" or "voluntary act". This is also known as physical aspect of crime. It means that the action done should be voluntary and it is not done under force. If an act is done under force, then it will not be considered a crime. Legal maxim "actus me invito factus non est mens actus" applies here, it means that if anyone is forced to do any action then it is not as per his / her will. IPC 32 also include an act that is legal duty of a person not done by him / her that he / she is obliged to do and that not doing action leads to hurt to common people.

IPC 33 extends this action to series of actions that are related to each other or done by a person.

3. Mens Rea: this is Latin for “state of mind illegal in law”. As per Latin maxim “actus non facit reum, nisi mens sit rea”, which is considered important to ascertain whether the person has committed crime or not. This means that even if someone has done action that is criminal but it will not be considered crime unless it is proven that person was aware that he/she is committing a crime i.e. mind was also guilty. Mens Rea has different degrees from highest to lowest in the following order:
  - i) Intention – here, the person has complete awareness of the action that he / she is doing and what will be the outcome if that action is done.
  - ii) Knowledge – here, the person has knowledge that the action done most probably be illegal but still he / she does it. This is lesser degree that there is no direct knowledge of outcome as there is certain probability involved.
  - iii) Recklessness – here, the person is indifferent to the outcome. For example, a person doing rash driving. The person is aware that there is a risk but still does the action with indifference.
  - iv) Negligence – this is lowest degree of mens rea. It is seen mostly in the case of medicine. Here, due to negligent action common people suffer harm. There is no intention of the person to cause harm but he / she is ignorant and because of that ignorance some harm is caused.
4. Injury: IPC 44 mentions injury as harm caused to a person that is done in an illegal manner. The harm can be done to mind, body, property that person owns, or reputation, or any combination of all these harms. If there is no injury caused then there is no crime committed.

### Stages of Crime

Let's understand what are the different stages of crime from beginning to the end i.e. from starting of crime as how it is thought and then leading to the final completion. Understanding the stages is helpful to determine whether crime is committed or not and what is the appropriate punishment for the action done.

Following are the stages of crime in the given order:

1. Intention
2. Preparation
3. Attempt
4. Completion

Let's understand each one of them.

1. Intention: this is the first stage of crime. It is also known as mental stage as the person thinks of committing a crime. It is important to understand how this intention is formed. As per crime psychology, motive has direct correlation with intention. The motive is taken in negative connotation. Motive means the goal and intention is the means to achieve the goal. For example, a thief has motive to get money then his intention will be to steal the money from someone.

As per law mere thinking of a crime cannot be punished.

2. Preparation: this is the second stage of crime. Here, after intention is decided as what to be done. The person does the required preparation to take the crime towards completion. It is difficult to prove that preparation is unlawful or are being done to commit a crime. However, there are certain cases where preparation of an offence can also be punished.

Following are the cases where mere preparation of a crime can be punished:

- i) IPC 122: it is related to collection of arms. When someone is doing collection of arms then it is obvious that the intention is to commit crime as under Indian law, keeping firearms without permission is illegal.
- ii) IPC 233, 234, 235: these are related to doing preparation to produce counterfeit government-controlled coins or government-controlled stamps.
- iii) IPC 242, 243: these are related to storing documents that are fraud, counterfeit or fake money including coins, counterfeit weights. IPC 399: this is related to doing preparation and making plans to do dacoity to loot a common people or group or an industry or a factory.

3. Attempt: this is the third stage of crime. At this stage a person tries to commit a crime or attempt to commit a crime to fulfil the intention and with the preparation done. Doing attempt of a crime is punishable and IPC 511 mentions the punishment when a crime is attempted. Depending how far the attempt has reached to the completion of the crime the punishment is given.

Inchoate offence: inchoate means that what is just begun and not fully developed. Thus, a crime that is attempted but it does not reach completion is known as inchoate offence.

There are various tests that are used to determine whether the action can be called as attempt or not. This is important because an attempt is punishable but preparation is only punishable under certain cases.

These tests are as follows:

- i) Proximity test: this test means that how near the person is towards completion of the action or offence. When the person is very near to completion then chances of completion of crime increases exponentially.
- ii) Locus Poenitentiae test: It means that person has sufficient time to decide whether to commit the crime or not. For example, a person is prepared to carry a contraband such as alcohol in state of Gujrat. Carrying alcohol is not an offence in Maharashtra. When the person is travelling towards Gujrat but decides not to carry alcohol in state of Gujrat much before entering into Gujrat state then that person cannot be punished.
- iii) Equivocality test: this test is combination of above two tests. The aim is to prove without any reasonable doubt that the person was doing an attempt for the completion of the crime.

4. Completion: this is the final stage of crime. When the action is complete then it is said that crime is committed. For example, a person decides to kill a person. For that he procures a gun, plans when to shoot, and as per plan shoots the person then crime is said to be committed. Once this stage is reached it is certain that the person will be punished as per crime committed.

## Common intention

Before understanding common intention and common object; it is beneficial to understand joint and group liability. This is because common intention and common object falls under joint and group liability.

Liability means when a person is responsible for doing any action. Following are the types of liability:

1. Joint Liability
2. Constructive Liability

Let's understand each one of them:

1. Joint Liability: when two or more people commit a crime together then all of them are liable to be punished for the crime. For example, when two people kill a third person together then those two people are jointly liable to be punished under IPC 302. Common intention generally falls under joint liability.
2. Constructive Liability: It is a type of advance joint liability where several people decide to commit a crime where the objective of everyone involved is same. Here, each may play different role for the completion of crime. They have already decided that who will do what action. It is possible that one person is not present at the location where crime is committed but if it is found that the person is involved in the crime then that person will be held liable. In this way if they together commit an illegal action then all are punishable. Generally, common object falls under constructive liability.

### Common intention and relevant case laws

Now, let's understand what is common intention.

As explained above common intention falls under joint liability. Common intention is mentioned in IPC 34. It mentions then when two or more people do a crime where their purpose is same then they will be jointly held accountable for the crime committed. Here, the key part is that each person will be charged with the offence in the manner that the offence was done individually by him or her and no one else was present.

Essential ingredients of common intention are as follows:

- i) First and foremost, there should be a crime committed.
- ii) In the action, there should be involvement of two or more person.
- iii) All the person involved in doing the crime should be aware that what action they are doing meaning they should all have common intention to do the action that is illegal.

When all of the above ingredients are fulfilled then IPC 34 applies on each person as if he / she has done the illegal action individually.

The most famous case related to common intention is known as post master case. Following are the details related to the case:

Emperor vs Barendra Kumar Ghosh, (1925) 27 BOM LR 148

This case is from pre-independent India. This case actually mentioned common intention. In this case Barendra Kumar Ghosh along with three other persons went to post office with the common intention to loot the post office. While Barendra Kumar Ghosh stayed outside of the office to ensure that no one gets in or if someone is coming the alert the three other persons so that they can runaway from the crime scene.

When three other persons tried to loot the post office, post master objected; during this they shoot the post master and fled from the post office along with Barendra Kumar Ghosh. Later, the post master died because of the injuries.

While, all fled from the crime scene but Barendra Kumar Ghosh was caught during fleeing but his three other persons fled and never found.

Later, Barendra Kumar Ghosh was charged under IPC 302 (murder) and IPC 34 (common intention). To which Barendra Kumar Ghosh objected that he did not shoot the post master and hence should not be charged under IPC 302. But the court said that it is evident that there is common intention. Barendra Kumar Ghosh will also be charged under IPC 302 even though he has not individually committed the murder of post master.

### Common object and relevant case laws

Now, let's understand what is common object.

As explained above common object falls under constructive liability. Common object is mentioned in IPC 149. It mentions that there should be five or more person with common object. The common object should be illegal or unlawful. Even if the person is mere member of the group of five or more people with illegal common object and not present at the location, then also he / she will be charged as per the law for the crime done.

Essential ingredients of common object are as follows:

- i) The action should be done by any one or more person from the group of five or more person that are aware of the common object that is illegal or unlawful.
- ii) Common object: following are the common objects that are mentioned in the law. Only under these common objects; IPC 149 can be mentioned. While common intention has wide application; common object is applicable only under following crimes:
  - a) Criminal trespassing: it means that going into someone's property without the permission.
  - b) During a gathering of persons, they try to frighten the police or government authorities that are at that place working to control the public. They can try to frighten the police or government authorities by acting together and applying force to disturb peace or they air firearms to frighten.
  - c) Acquiring someone else's property without the approval of the owner by using unlawful force either by beating the owner or its people taking care of property or frightening them by airing firearms.
  - d) Forcing some people to do a particular task meaning it is compulsory to do the task otherwise persons may harm them.
  - e) Showing resistance to the police or inciting someone who is arrested to harm the police and come out of that arrest.
- iii) Even if the person is member of the group and actually was not there in person at the place where crime was done then also that member is liable under IPC 149.

One case that is related to common object is Mahendra Singh vs The State of Madhya Pradesh. Following are the details related to the case:

Mahendra Singh vs The State of Madhya Pradesh

Here, the plaintiffs were harmed with commonly available weapon such as sticks and agricultural tool such as farsa. They were harmed by a group of around 20 people when they were returning to the village.

The problem raised was that the charges were filed against less than 5 people and defendants mentioned that they should not be charged under IPC 149.

The Hon’ble court mentioned that even though less than five people were convicted but it does not mean that they cannot be charged with IPC 149. It is not a must condition to bring five or more people before the court to charge defendants under IPC 149.

Difference between common object and common intention

Following are the differences between common object and common intention. They are mentioned below in format of a table. The differences are as follows:

The basis means what is the basis of difference between common object and common intention.

<b>What is the basis</b>	<b>Common Intention</b>	<b>Common Object</b>
Crime	Common intention is not a crime alone. It means that a person cannot be punished only when charged with common intention alone. It needs to be applied another IPC that mentions the actual crime that is done	Common object is adequate alone to charge a group of persons on an individual (as part of group) under IPC 149. The punishment can also be given under IPC 149 as well
What it says	Common intention means that two or more person have same	Common object is actual goal of the group of five or more persons doing illegal



	understanding	action.
Number of persons required	Common intention can be formed by two or more persons	Common objective can be formed by five or more persons
What is the liability	As mentioned in post master case, all persons are equally liable as per the crime done, as if the crime is done by an individual person alone	In common object, the punishment is different with respect to how much knowledge of common object that particular individual has
Preparation involved	Common intention should be formed before the crime is done	In common object, even if the person has knowledge, it is adequate to charge him / her under IPC 149
Is participation required	Yes, participation is required. However, small or large it may be	Even though, person is not involved in the action of the crime; he / she is still liable as long as he /she has knowledge
What proof is required	common intention needs to be proved for the punishment to be given	In common object, the intention is not required to be proved
What constitutes	The application of common intention is far and wide and it depends on the case	Here, the object should be from what is mentioned in the essential ingredients. Only then common object can be applied.

#### Similar intention with relevant case laws

Though similar intention may seem same to common intention but it is not. In similar intention there is no common understanding before the crime is done.

#### Why knowing similar intention is important:

Suppose police charged the persons with common intention but later during the case it was revealed

that one or more persons were not aware of the complete plan. Due to this they cannot be charged with the same punishment as others. This creates a big difference because now the punishment given to the person will not be with respect to crime. This can create difference between life and death. For example, crime done was murder but if the person had only similar intention, then he / she will not be charged under section 302.

One case that is related to similar intention is *Suresh vs The State of Uttar Pradesh*. Following are the details related to the case:

*Suresh vs The State of Uttar Pradesh, (2001), 3 SCC 673*

In this case Suresh was found guilty of rape of two women and murder of one people, Trial court convicted him under IPC 34 and IPC 302. Later, he went to high court where the conviction was not changed. Later, he appealed in Supreme Court. Supreme Court mentioned that the charge of rape cannot be approved as evidence is not proving the charge beyond reasonable doubt and hence IPC 34 was removed. Hence, the charge of rape was removed but the conviction was held as murder was proved beyond reasonable doubt.

Difference between common intention and similar intention

As mentioned above the difference between common intention and similar intention is of the understanding of the action to be done beforehand. When person(s) has common understanding of action to be done then they can be charged under IPC 34. If anyone of them is not aware of the of the action to be done beforehand then he / she cannot be held liable under IPC 34. This can create difference between life and death.

At which step crime becomes punishable and its relation to common intention

As mentioned in stages of crime, the crime becomes punishable at:

- i) At the stage of preparation in some cases. Here, common object comes into play. If the person has knowledge of the action to be done but he / she is not at the location then also he / she can be punished.
- ii) At the stage of attempt, when the tests mentioned in the stages of crime are fulfilled then punishment is given as per the action done.
- iii) At the stage of completion, it means that when the illegal action is done then common intention

plays a major role if group of persons are charged under IPC 34. If the charges are proved in court, then each individual will be charged with the punishment of murder even if they might not have done the actual crime of murder, in case murder is committed by anyone in group.

## Conclusion

To conclude, the research paper answers the research questions as follows:

1. Is crime punishable at any stage of crime?

No, crime is not punishable at the stage of intention. At the stage of preparation crime is punishable under certain cases. At the stage of attempt, when the tests mentioned in the stages of crime are fulfilled then punishment is given as per the action done. At the stage of completion, it means that when the illegal action is done then crime is certainly punishable.

2. Is there any relation between constructive liability and stages of crime?

At the stage of preparation punishment is in some cases. Here, common object comes into play. If the person has knowledge of the action to be done but he / she is not at the location then also he / she can be punished.

3. Is there any difference in punishment if there is similar intention and not common intention?

As mentioned above the difference between common intention and similar intention is of the understanding of the action to be done beforehand. When person(s) has common understanding of action to be done then they can be charged under IPC 34. If anyone of them is not aware of the of the action be done beforehand then he / she cannot be held liable under IPC 34. This can create difference between life and death.

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