

Section any offence,
whereas section 149
does.



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Section 34 does not by itself create any offence, whereas Section 149 does.

In a charge under Section 34 there is active participation in the commission of the criminal act, under Section 149 the liability arises by reason of the membership of the unlawful assembly with a common object, and there may be no active participation at all in the preparation or commission of the crime. Sections 34 and 149 — “Common object” and “Common intention” — Distinction: The principal element in Section 34 is the common intention to commit a crime. There is no question of common intention in Section 149.

An offence may be committed by a member of an unlawful assembly and the other members will be liable for that offence, although there was no common intention between that person and other members of the unlawful assembly to commit that offence provided the conditions laid down in the section are fulfilled. Thus, if the offence committed by the person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, every member of the unlawful assembly would be guilty of that offence, although there may have been no common intention and no participation by the other members in the actual commission of that object.

Section 149 creates a specific offence while Section 34 is merely explanatory and does not create any specific offence. There is a difference between object and intention, for though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of Section 34 is replaced in Section 149, by membership of the unlawful assembly. Both sections deal with combination of persons

who become punishable as sharers in offence. Thus, they have a certain resemblance and may be to some extent overlap. Section 34 limits itself to the furtherance of the common intention while Section 149 goes further and is more strongly worded than Section 34.

The words “ common object” and “ common intention” are not synonymous. They involve substantial difference. Under Section 34 a criminal act must be done by several persons ‘ in furtherance of common intention of all’, whereas under Section 149, the mere membership of an unlawful assembly, any member of which commits an offence, in prosecution of the common object of that assembly is punishable.

While Section 34 deals with the liability of persons where an offence is committed in furtherance of a common intention to commit that act, Section 149 deals with the liability of persons in respect of an offence when they had the knowledge of there being a likelihood of its being committed in prosecution of their common object. Section 149 does not deal with the common intention to commit an offence. In effect the common object with which it deals may be one which is lawful, while the common intention contemplated by Section 34 is with reference to the committing of a criminal act. Section 34 deals not with the liability of persons for an offence which is likely to be committed in the course of what was intended by them, but deals with only the liability of persons who intended to commit a criminal act when that act is committed. Knowledge, that an offence is likely to be committed is not what is contemplated by Section 34. Even where an offence is committed by one person, another person who was with him at the time the offence was committed cannot be punished, though he had a similar intention because

the section deals with the liability of persons for a criminal act done in pursuance of a common intention. Participation of the individual offender in the criminal act in some form or other which is the leading feature of Section 34 differentiates it not only from Section 149, but also from other affiliated offences like criminal conspiracy and abetment. Whereas, Section 34 does take into account the fact of the participation of every individual offender in the offence which is therein described as criminal act as well as his mental state which is therein connoted by the word "intention".

Section 149 completely ignores both these factors. Whereas, Section 34 is merely declaratory of a rule of criminal liability and does not create a distinct offence, Section 149 is not mere declaratory provision and does create a distinct offence/ Section 34 speaks of 'common intention' while Section 149 refers to 'common object'. Besides this, Section 149 comes into operation only when there is an unlawful assembly of five or more persons as required by Section 141, but there is no such limitation of members under Section 34 where under the members may be two or more. Although, there is a difference in common object and common intention, they both deal with combination of persons who become punishable as sharers in an offence, and a charge under Section 149 is no impediment to a conviction under Section 34 if the evidence discloses the commission of the offence in furtherance of the common intention of all. *Alma v. State of M. P.*, is a good case on the point.

There the Trial Court convicted certain five accused persons under Sections 148, 149 and 302 of the Code and sentenced them to life imprisonment. The High Court on appeal confirmed the conviction of three accused persons.

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Before the Supreme Court it was argued that the conviction could not be recorded with the aid of Section 149. The Court, however, could not agree with this argument and stated that this state of affairs (regarding the required minimum number of accused persons under Sections 34 and 149) should not make any difference. " The submission that the conviction could not be recorded with the aid of Section 149 should not make any difference as it can be sustained with the aid of Section 34.

Of course the High Court has recorded the conviction with the aid of Section 149 as it came to the conclusion that at least five persons were involved".

The leading feature of Section 34 is the element of participation in action, whereas membership of the assembly at the time of committing the offence is the important element in Section 149. The two sections have a certain resemblance and may to a certain extent overlap, but it cannot be said that both have the same meaning. If the common object which is the subject-matter of the charge under Section 149, does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and might not therefore be permitted.

Section 34 refers to cases in which several persons intend to do and do a criminal act; it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act.

In the latter class of cases Section 149 of the Code may be applicable but Section 34 is not. The principal element in Section 34 is the common intention to commit an offence. There is no question of common intention in Section 149.

In a case of riot or unlawful assembly, the Court is concerned with a common object. A common object is different from common intention in that it does not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the people get there. In a case under Section 149 there need not be a prior meeting of minds. It is enough that each has the same object in view and their number is five or more and that they act in an assembly to achieve that object. Section 149 is controlled by Section 141 while Section 34 is an independent section in the sense that it is not controlled by any section.

Common intention is not defined whereas 'common object' has been defined in Section 141 so that if the common object is an object other than any of the objects specified in Section 141, Section 149 would not apply. Section 34 is wider in scope than Section 149 in the sense that in order to apply Section 34 only two persons are required whereas at least five persons are required for the application of Section 149. Section 34 refers to cases where several persons intend to do and do an act, it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases Section 149 is applicable but Section 34 is not. The difference between 'common object' and 'common intention' can be explained by means of an illustration.

Suppose the University Students Union decides that the examinations should be postponed and with that object they go in a procession to gherao the Vice-Chancellor in his office and to lift the gherao only when he concedes the demand for postponement of the examinations, in other words 'wrongfully to confine him and thus by a show and use of criminal force to compel him to

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do something which he would otherwise not do'. The members joining in the procession are members of an unlawful assembly and liable as such. A small group within the procession feels at a certain stage that a mere gherao would be ineffective and so they break furniture, another group commits arson. The intention to commit mischief and arson is not known to the other members of the assembly who share the common object but they would be liable for mischief and arson as such offences are in prosecution of the common object, even though they do not participate in them nor have any knowledge about them except that they could visualise the likelihood of such offences being committed in prosecution of the common object. The Supreme Court has made a distinction between common intention and common object in the case of *Ram Dular Rai v. State of Bihar*, and said that "Common object" is different from a "Common intention", as it does not require a prior concert and a common meeting of minds before the attack.

It is enough if each has the same object in view and their number is five or more and that they act as assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one, comes into existence at the outset.