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The Common Object of the Parties in the Process of Crime Commission: A Critical Analysis

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Abstract
This paper analyses the principle of common object as one of the principles invoked in the determination of group liability. It examines the problem of the application of the principle in Northern States of Nigeria, India and the importation of the principle to Southern States of Nigeria and Uganda by the judiciary. The paper highlights areas of overlap and distinction between the principles of common object and common intention. The paper recommends that great care and caution must be taken in the application of the principle in order to avoid confusion, especially, in the Southern States of Nigeria and Uganda where there is no statutory provision for the principle.
Keywords: Common Object, Common Intention, Crime, Offence and Court.

INTRODUCTION

One of the problematic areas in criminal law of most legal systems is the difficulty involved in the determination of group criminal liability in circumstances where more than one person participate in process of crime commission.[1] The problem often arises when a member of the group that participated in the crime disclaimed criminal liability of the offence,[2] either on the ground that he neither intended nor foresaw the commission of the offence by one or more of the members or that he did not know that the actual offender was armed with dangerous weapons.[3]

Faced with this scenario, the court had to probe or ascertain the "group intention" of all the members and determined how this group intention emerged, both in time and place, with the mental element of the individual member of the group who actually carried out and executed the offence.[4]

In some jurisdictions, the mental element of the individual member of the group who committed the offence is imputed to or equated with that of the group that participated in the crime, thus, making the group constructively liable for an offence which they had not, in fact, committed. This results in a joint criminal liability of the group by reason of their being, either members of a conspiracy team,[5] or of an unlawful assembly, or that they shared a common object in the execution of their joint criminal enterprise.[6]

RELEVANT STATUTORY PROVISIONS

Most criminal law legislations across the jurisdictions under consideration made certain provisions which help in ascertaining group criminal liability. Only very few made specific provisions with regard to the doctrine of common object. The Penal Code Law applicable in all the States forming part of Northern Nigeria[7] and the Penal Code Law of India[8] are only two of such legislations. In Uganda, Queensland Australia and States forming part of Southern Nigeria, analogous provisions are made which specifically relate to the doctrine of common intention.[9] The same position obtains under the English Common Law but with some variations in terminologies.

NORTHERN NIGERIA

Section 108 of the Penal Code of Northern Nigeria states:

> *If an offence is committed by any member of an unlawful assembly in*

[1] Marianne Giles (1990) *Criminal Law Review* pp. 383 – 393. See also, Nigam, R.C. (1968) *Law of Crimes in India.* London: Asia Publishing House, p. 178
[2] The words "offence" and "crime" are used interchangeably here and both have the meanings given to them in the various Criminal and Penal Codes under relevant jurisdictions of this paper.
[3] In *R v Ward* (1986) 85 Cr. App R., p. 71, Ward, along with three others attacked a group of people. Ward was armed with a scissors and another member of the party with a knife. The victim was stabbed with the knife. All the four were convicted and on appeal, Ward contended that he used his scissors in self-defence and that he was unaware that his companion had a knife.
[4] This is so because it is a fundamental principle of criminal law in all jurisdictions that there can be no liability without fault apart from offences of strict liability.
[5] See Garner, B.A. (2009) *Black's Law Dictionary,* 9th Edition. (St. Paul Minnesota: West Group) p. 351, where conspiracy is defined as an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective
[6] Other principles of law enunciating group criminal liability include common intention, conspiracy, rioting *etc* See also, *R v Chan Wing-Siu* (1984) All. E.R p. 877
[7] Section 108, Penal Code, Cap p. 3 Laws of the Federation, 2004.
[8] Section 149, Indian Penal Code of 1860
[9] See section 8 of the Criminal Code of Southern Nigeria, Cap. C38, Laws of the Federation of Nigeria, 2004, section 22 of the Penal Code of Uganda and section 8 of Queensland Australia Criminal Code.

> *prosecution of the common object of that assembly, every person, who at the time of the committing of that offence is a member of the assembly, is guilty of that offence.*

There are three main operative words or phases under this section which need further clarification.

The first is the meaning of the term "unlawful assembly". The Code explains this in numerical terms, namely that an assembly of five or more persons is designated an unlawful assembly if the common object of the persons composing it is any, or all of the five objects mentioned in paragraphs (a) – (e) of section 100 of the Code.[1] This means in effect that an assembly of less than five persons cannot be designated an unlawful assembly even though the assembly had as its object any of the five objects listed in section 100 of the Code.

Richardson noted that an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.[2] It is submitted, however, that this can only be so if the members are five or more and that they have in common any of the five criminal objects itemised in section 100 of the Penal Code.[3]

The second clarification is the meaning to be ascribed to the term "common object" as used in the section. Again, section 100 of the Penal Code comes in aid when it provides that an assembly of five or more persons is designed an unlawful assembly if the common object of the members is:

(a) to overawe by criminal force the Government or the Government of the Federation or any Government of Nigeria or any public servant in the exercise of his lawful powers, or
(b) to resist the execution of any law or of any legal process, or
(c) to commit any mischief or criminal trespass or other offence of any kind whatsoever,[4] or
(d) by means of criminal force or show of criminal force to enforce any right or supposed right, or
(e) by means of criminal force or show of criminal force to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

These objects are wide enough, particularly paragraph c, to cover any conceivable offence or crime or act prohibited by statute. Thus, it is safe to submit that the term "common object" as used in section 108 means the same thing as any unlawful act or to carry out a lawful act unlawfully.

The third issue is on how membership of an unlawfully assembly is acquired or defined. In this regard, the Penal Code provides that:

> *Whoever being aware of facts which render any assembly an unlawfully assembly intentionally joins the assembly or continues in it is said to be a member of an unlawfully assembly* [5]

This provision emphasises "knowledge of facts" and "voluntariness" as criteria for membership. Therefore, a person who is forced or compelled by threat to join an unlawful assembly is not, strictly speaking, a member. Also, mere presence of a person in an unlawful assembly does not make such a person a member of that assembly, unless it is shown that the person had done something or omitted to do something which would make him a member.[6]

In *Sokoto v The State,*[7] a Native Authority policeman stood – by during a raid by an unlawful assembly on the house of a federal prison warder for the purpose of killing him, which eventually resulted in the death of a little boy. The policeman was charged with other members under section 108 of the Penal Code and was convicted by the trial court. On appeal, the policeman contended that he was not a member of the unlawful assembly but a mere innocent by-stander.

Dismissing this contention, the Supreme Court, per Coker, J.S.C held:

> *The ninth accused was a Native Authority policeman and the nature of the offence was such that . . . some persons in authority were required to lend an air of security to the whole exercise. The ninth accused was present throughout the commission of the offence. He rode on his bicycle to the house of the complainant, and stood-by holding his bicycle. As a policeman, he had a primary duty to prevent the commission of a crime or to arrest persons committing an offence in his presence. The breaking of the complainant's door, the killing of the little boy . . . were all offences of such an aggravated nature that should have prompted him to exercise the*

[1] Compare English Common Law where the number is pegged to three.
[2] Richardson, S.S (1987) *Notes on the Penal Code Law,* 4th Edition. Zaria: A.B.U Press, p. 62. See also, Motti Das v State of Bihar (1954) Cr. L.J. p. 1708
[3] For this, See sections 100 and 101 of the Penal Code of Northern Nigeria.
[4] The words "of any kind whatsoever" were inserted by Penal Code (Amendment) Law, 1965. The reason for this insertion was to avoid the ambiguity created in the strict interpretation of a similar provision under section 141 of the Indian Penal Code where the *ejusdem generis* rule was applied to defeat the Legislature's Intention.
[5] Section 101 of the Penal Code of Northern Nigeria
[6] See Gour, H.S. (1982) *The Penal Law of India,* 10th Edition. Allahabad: Law Publishers, p. 1152
[7] (1968) 1 All N. L. R, p. 120

> *powers of his office if he did not support the whole exercise from the beginning to the end.*[1]

The requirements of "knowledge of facts and intention to join" under section 101 of the Penal Code should be well noted. These requirements supply the mental element of the common object under section 108 of the Penal Code. The foregoing clarifications have brought out two salient points. First, the provisions of sections 100 and 101 of the Penal Code must always be called in aid in the interpretation and application of the common object doctrine provided for under section 108 of the Penal Code. Second, section 108 is not so much about the unlawfulness of the assembly *per se* but that of the object of the assembly.

INDIAN PENAL CODE

The relevant provision of the law in India is section 149 of the Indian Penal Code (hereinafter abbreviated as "I.P.C). The section provides as follows:

> *If an offence is committed by any member of an unlawful assembly in prosecution of the common object, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.*

It is clearly evident that the wording of this section is similar in every respect to the provision under section 108 of the Penal Code of Northern Nigeria. The Northern Nigerian Penal Code, however omitted the portion which reads: "or such as the members of that assembly knew to be likely to be committed in prosecution of that object". This shows that the Indian doctrine of common object appears wider in scope than the Nigerian Penal Code.[2]

Apart from this, the clarifications made in respect of the provision under the Penal Code of Northern Nigeria with regard to the meaning to be ascribed to words and phrases like "unlawful assembly", "common object" and "membership of unlawful assembly" apply *mutatis mutandis*.[3]

It must be noted that there still remains some fundamental differences both in terms of content, application and terminology between the two Codes. Most important of these differences is the nature of the common object required to make an assembly unlawful. Whilst the third clause to section 141 of the I.P.C. requires the commission of "any mischief or criminal trespass, or other offence" simpliciter, section 100 (c) of the Northern Nigeria Penal Code by an amendment effected in 1965, added the words "of any kind whatsoever" to that subsection, thereby extending the frontiers of common objects to cover any conceivable offence.

In India, the tendency has been to apply the *ejusdem generis* rule in the interpretation of the third clause to section 141 of the I.P.C. with the result that the unlawful common object anticipated under the clause is restricted to kindred offences enumerated thereunder.[4] Gour has lamented that the third clause was originally intended to include all offences, and not only "mischief, criminal trespass and *ejusdem generis*".[5] He, however, maintained that, strictly speaking, the third clause to section 141 of the I.P.C as worded, must be interpreted *ejusdem generis*, otherwise the preceeding enumeration would have been unnecessary.[6]

SOUTHERN NIGERIA, UGANDA AND QUEENSLAND AUSTRALIA

One notable feature of the main criminal legislations of States forming part of Southern Nigeria, Queensland Australia and the Republic of Uganda is the striking similarities in their provisions.[7] The reason for this may not be far – fetched as both the Criminal Code of Southern Nigeria and Penal Code of Uganda are based on the Queensland Australia Criminal Code of 1899.

Although, the three different legislations have identical provisions with respect to the doctrine of "Common Intention",[8] none of the three legislations made specific provisions with respect to the doctrine of common object. What the three legislations do have in common with the jurisdictions of India and Northern Nigeria in this respect is only in the codification of the common law principle of "unlawful assemblies" but with some variations.

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[1] *Ibid.* at p. 124, therefore, where a person has a right to control the actions of another and he deliberately refrains from exercising it, his inactivity may be a positive encouragement to others to perform the illegal act. See also, Smith, J.C. and Hogan, B. (1983) *Criminal Law,* 5th Edition. London: Butterworth & Co. Publishers Limited, p. 125.

[2] This is because the Penal Code of Northern Nigerian is restricted to "prosecution of the common object of the assembly". The Indian provision extends to objects which the members knew to be likely committed.

[3] Thus, section 141 of the I.P.C. defines an unlawful assembly and common object while section 142 of the I.P.C defines membership of an unlawful assembly in the same terms as the provisions of sections 100 and 101 of the Northern Nigerian Penal Code.

[4] See Gour, H. S (1982) *Op. cit* p. 1161

[5] *Ibid:*

[6] *Ibid:*

[7] The Criminal Codes of Southern Nigeria and Queensland Australia and the Penal Code of Uganda respectively

[8] See section 8 of the Southern Nigeria Criminal Code, section 22 of the Uganda Penal Code and section 8 of the Queensland Criminal Code.

Thus, section 69 of the Criminal Code of Southern Nigeria provides as follows:

> *When three or more persons with intent to carry out some common purpose, assemble in such a manner, or being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.*

Apart from the obvious differences between this provision and provisions of section 100 of the Penal Code of Northern Nigeria[1] and section 141 of the I.P.C dealing with the definitions of unlawful assembly, section 69 of the Criminal Code and its related sections in Uganda and Queensland Australian Codes use words and phrases which are more appropriate for a discussion of the doctrine of "common intention" than "common object".[2]

ENGLAND

Under the English Common Law, there is an old rule of notable antiquity that:

> *. . . where several persons are proved to have combined together for some illegal purpose, any act done by one of the party, in pursuance of the original concerted plan and with reference to the common object is in contemplation of the law . . . the act of the whole party, and therefore the proof of such act will be evidence against any of the others who were engaged in the same general conspiracy, without regard to the question whether the prisoner is proved to have been concerned in the particular transaction.*[3]

Although, this statement of the law in England appears to be on all fours with the principles of common object as applicable in India and Northern Nigeria, nevertheless, the principle as used in England specifically relates to rule of evidence and common law conspiracies,[4] which apart from being abolished by the Criminal Law Act of 1977, is beyond the scope of this paper.

Apart from this, position in England is not very different from the three jurisdictions of Uganda, Southern Nigeria and Queensland Australia both in relation to the meaning of unlawful assembly (which has a common law origin) and the doctrine of common intention. However, judicial interpretation of accessorial liability in cases of joint enterprise in England appears, in some respect, to follow the wider provision of the Indian Law on the doctrine of common object even though the cases and the principles involved invariably turn on the doctrine of common intention.[5]

In *R v Chan Wing-Siu,*[6] the appellant and two others, armed with knives, entered the flat of their victim intending to steal from him. The victim refused to surrender any money upon which he was attacked and stabbed to death. All the three accused persons were charged with murder and convicted. On appeal, it was held that a secondary party could be liable for an act which he foresaw but did not intend, if he took part in an unlawful joint enterprise and it was proved that he contemplated or tacitly authorised the act as a possible incident of the execution of the planned joint enterprise. The court went on to state that the existence of such a principle of liability is not in doubt and that it is irrelevant in such a situation that the necessary *mens rea* for the principal is intent.[7]

The foregoing exposition is merely to show that the doctrine of common object as a principle of group criminal liability, is not provided for and is not therefore applicable in the jurisdictions of Uganda, Southern Nigeria, Queensland Australia and the common Law of England.

ELEMENTS OF THE OFFENCE

Judicial authorities[8] and academic writers[9] in India have consistently stated that the doctrine of common object as provided for under section 149 of the I.P.C constitutes a distinct and substantive offence and not merely an

[1] Under the Penal Code, an unlawful assembly is an assembly of five or more persons but under section 69 of the Criminal Code, it is an assembly of three or more persons.
[2] For example, words and phrases like "with intent", "common purpose" *etc*
[3] Butler, F. and Mitchell, S. (eds.) (1988) *Archbold: Pleading, Evidence and Practice in Criminal Cases,* 40th Edition. London: Sweet and Maxwell, p. 910
[4] Peter Murphy (ed.) (2003) *Blackstone's Criminal Practice.* Oxford University Press, p. 91
[5] In *R v Slack* (1989) 3 W.L.R p. 513, where the accused persons in a case of joint enterprise were charged with murder which was committed by one of their members. The trial court directed the jury that a person is responsible for the acts of another if that person foresees the acts of the other as possible part of result of the joint enterprise. The direction appears similar to the fourth elements of the offence under section 149 of the I.P.C.
[6] (1984) 3 All E.R. p. 877
[7] *Ibid.* at p. 883
[8] *Laiji v State of U.P* (1989) 15 C.R p. 130 at 135, *Chand v State of Punjab* (1955) A.I.R S.C 274 at pp. 277 – 278.
[9] Srivastava, O.P (1992) *Principles of Criminal Law.* Lucknow: Eastern Book Company, p. 60

enabling section to impose vicarious or constructive liability.[1] The question is, what are the essential elements of this offence that the prosecution must prove in order to establish group liability through the invocation of the doctrine of common object?

In India, as well as the States forming part of Northern Nigeria, the elements of the offence can be summarised as follows:

(I) that there is an unlawful assembly;
(II) that an offence is committed by any member of the unlawful assembly;
(III) that the offence was committed by the member of the unlawful assembly in the prosecution of the common object of that assembly.

In India, an alternative clause is added to the third requirement above which reads "or such as the members of that assembly knew to be likely to be committed in prosecution of that object".[2]

Richardson has commented that the above clause forms part of the essential requirements under section 108 of the Penal Code of Northern Nigeria.[3] This view is not correct as the clause is expressly omitted under that section.[4] The correct position is as stated by the Supreme Court of Nigeria in *Nyam v The State.*[5] In that case, Idigbe, J.S.C said:

> *. . . section 108 differs in intent and contemplates other circumstances. These are, as section 108 indicates, that there is an unlawful assembly and that a member of it commits an offence in prosecution of the common object of that assembly – that is, an offence in following up the common object.*[6]

(1) **AN UNLAWFUL ASSEMBLY**

The term "unlawful assembly" has the meaning ascribed to it by section 100 of the Penal Code of Northern Nigeria and section 141 of the I.P.C.

Although, the numerical strength of the assembly must always be five or more persons before the common object doctrine can be invoked against the assembly, it does not follow that, at all points in time, five or more persons must be brought before the court can convict.[7]

Circumstances may exist whereby less than five persons are brought before the court. First, it may be that the charge alleges that less than five persons before the court along with others are named, but who are at large, constituted an unlawful assembly.[8] Similarly, less than five persons may be charged and convicted if the prosecution's case is that the persons before the court and some unidentified and unnamed other persons numbering more than five composed an unlawful assembly.[9] Thus, there is no legal bar preventing the court from holding that convicted persons, less than five in number, constituted an unlawful assembly with certain other identified or unindentified persons mentioned in the charge.

The Supreme Court of India in *Dharam Pal v State of U.P* stated as follows:[10]

> *If the court, whose duty is to separate the chaff from the grain, does hold that the convicted persons were certainly members of an unlawful assembly which must have consisted of more than five persons, there can be no principle of law . . . which would stand in the way of the application of section 149 of the Indian Penal Code convicting those found indubitably guilty of participation in carrying out of the common object.*

However, cases may exist where the prosecution specifically names five or more persons in a charge and alleges that they constitute an unlawful assembly. In such a case, if both the charge and the evidence are confined to the persons named in the charge, and out of the persons so named, two or more are acquitted, leaving before the court less than five persons, the doctrine of common object cannot be invoked against them, for they no longer constitute an unlawful assembly.[11] In such situations, every member becomes individually responsible for his own acts.[12]

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[1] In *Mudhuwa v The State* (1954) V.P 36 at 38, it was held that neither the principle of common intention nor common object creates a distinct offence but that they declare principles of criminal liability.
[2] See section 149 of the I.P.C.
[3] Richardson, S.S *Op. cit* at p. 66
[4] See section 108 of the Penal Code of Northern Nigeria
[5] (1965) N.M.L.R p. 50
[6] *Ibid.* at p. 53
[7] See *Asemakaha v The State* (1965) N.M.L.R where out of a riotous mob numbering over 300 people, only two persons were charged and one was convicted and the other discharged and acquitted.
[8] Dana v State of Bombay (1960) S.S.C.R p. 172
[9] *Dallip Singh v State of Punjab* (1954) S.C.R, p. 145
[10] (1975) 2 S.C.C, p. 596
[11] Gour, H.S *Op. cit* pp. 1220 – 1221
[12] Alternatively, the doctrine of common intention may be invoked against the remaining members for there is no stipulation as to membership in numerical terns.

(II) **OFFENCE IS COMMITTED BY ANY MEMBER OF THE UNLAWFUL ASSEMBLY**

The substantive nature of the offences created under section 108 of the Penal Code of Northern Nigeria and section 149 of the I.P.C can readily be seen in this requirement. Therefore, mere presence of an unlawful assembly is not sufficient to invoke the provisions of these sections. An offence or offences must be committed by any member of the unlawful assembly before the sections can be called in aid. The commission of the offence must be by any member, and not necessarily all the members, as the sections do not envisage joint acts – but focus on joint liability.[1]

Although, Gour, relying on *M.D. Das v Emperor,*[2] has posited that the word "offence" as used in section 149 of the I.P.C confined to offences under the I.P.C alone and does not include offences under Special Act.[3] The truth of the matter is that this restrictive interpretation is not applicable under section 108 of the Penal Code of Northern Nigeria in view of the wide definition of the word "offence" under section 28 of the Penal Code.[4]

(III) **OFFENCE MUST BE COMMITTED IN THE PROSECUTION OF THE COMMON OBJECT OF THE ASSEMBLY**

Sections 108 and 149 of the Penal Codes of Northern Nigeria and India respectively do not intend to subject a member of an unlawful assembly to punishment for every offence committed by a member of the assembly. For these sections to apply, the prosecution must prove that the offence was committed in the prosecution of the common object of the assembly.[5]

In Mizaji v State of U.P.[6] The appellants, five in number, had gone with the common object of getting forcible possession of the land in possession of the deceased. Mizaji was armed with a pistol and his father, Tej Singh with a spear and others were armed with lathis. When the deceased and others with him knew of this, they protested to Tej Singh. But Tej Singh and his party took possession of the land and asked the complainants to go away otherwise they would be "finished". The deceased party refused to do so consequent upon which Tej Singh asked Mizaji to fire at them which he did. The deceased fell down and died half an hour later.

All the appellants were convicted for murder under section 302 of the I.P.C after reading it with section 149 of the I.P.C. On appeal to the Supreme Court and while affirming their conviction, the Supreme Court observed that from the conduct of the appellants, it appeared that the members of the unlawful assembly were prepared to take forcible possession at any cost and the murder must be held to be immediately connected with the common object. The court states further that:

> *"Prosecution of common object means that the offence committed must be one which is committed with a view to accomplishing the common object".*[7]

Therefore, every person who is engaged in prosecuting the same object, although, he had no intention to commit the offence will be guilty since criminal liability is determined not by the intention of the various individual members constituting the assembly but by the common object of the assembly as a whole.

In searching or probing for the common object of the assembly, no direct evidence is normally available. It has to be determined on the facts and circumstances of each case. It can be inferred from the nature of the assembly,[8] it can be inferred from motive of the crime,[9] the weapon used in the attack,[10] the conduct of the assaillants both before and at the time of the attack.[11] There can be no one formular, as there can be several. Once the object of the assembly is proved, it is not open to the court to see as to who actually did the offensive act since the act of one is regarded as liability for all.[12] Accordingly, the prosecution is under no obligation to prove which specific overt act was done by which of the accused person.

(IV) **OR SUCH AS THE ASSEMBLY KNEW TO BE LIKELY TO BE COMMITTED**

If the offence committed is not in direct prosecution of the common object of the assembly, the Indian Penal Code still fastens criminal liability if it can be held that the offence was such as the members knew was likely to be committed.[13] The case that clearly illustrates this alternative requirement is the

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[1] Nigam, R.C. *Op. cit* p. 194
[2] (1944) A.I.R, 211 at 212
[3] Gour, H.S *Op. cit* p. 1219
[4] Section 28 provides that "except where otherwise appears from the context, the word offence includes an offence under any law for the time being in force".
[5] What Idigbe J.S.C. referred to as "following up" in the case of *Nyam v State* (Supra). It is also means "in furtherance of". See Gour, H.S *Op. cit* p. 1219
[6] (1959) A.I.R S.C p. 572
[7] *Ibid.* 575
[8] *Metthew v State* (1956) A.I.R S.C 241
[9] *Nyam v State* (Supra)
[10] Naidu v State (1968) S.C>D, p. 803
[11] Mizaji v State (Supra)
[12] Laiji v State (Supra)
[13] This requirement can only be found under the Indian Penal Code as it is not provided for under the Penal Code of northern Nigeria

case of *Metthew v State,*[1] where two of the accused persons were confined in a police cell, other twenty-nine accused persons agreed to release their comrades and in pursuance thereof attacked the Police Station at about 2. a.m, fully armed with deadly weapons. As a result, two police constables were killed in the course of the raid. They were all convicted for murder.

On appeal, it was argued on behalf of the accused persons that since the common object by the assembly was only to rescue two of the accused persons who were in police cell, they could not be held liable for murder committed by others in the assembly. Bose J. dismissing this contention observed:

> *People do not gather together at the dead of night armed with crackers and sticks to rescue persons who are guarded by armed police without intending to use violence in order to overcome the resistance of the guards, and a person would have to be very nice and simple-minded if he did not realise that the sentries posted to guard the prisoners at night were fully armed and were expected to use their arms should the need arise, and he would have to be a moron in intelligence if he did not know that murder of the armed guards would be a likely consequence of such a raid; and what holds good for murder also holds good for looting in general. Now, section 149 applies not only to offences actually committed in pursuance of the common object but also to offences that members of the assembly know are likely to be committed. It would be impossible on the facts of this case to hold that members of the assembly did not know that murder was likely to be committed in pursuance of the common object of that kind by an assembly as large as one we have here.*

It should be noted, however, that the knowledge contemplated by this requirement does not mean knowledge of mere possibility of the commission of the offence but it must be reasonably likely.[2]

PUNISHMENT

Although, sections 108 and 149 of the Penal Code of Northern Nigeria and India respectively create distinct offences, their punishment must depend on the offence of which the offender is by that section made guilty.[3] There is, therefore, no meaning in charging a person solely under these sections without reference to the offence by which the offender is made guilty.[4]

It is important to note that an accused person cannot, for example, be convicted under section 221 of the Penal Code of Northern Nigeria for committing the offence directly and at the same time under section 221 read with section 108 for committing the offence constructively for that will amount to a contradiction in terms.[5]

COMMON OBJECT AND COMMON INTENTION DISTINGUISHED

A lot of confusion of thought has been created, mostly by Nigerian Courts, as to the relationship and distinction between the principles of common object and that of common intention[6] notwithstanding the fact that the West African Court of Appeal had, as far back as 1955, made what is generally accepted as the proper distinction between common object and common intention in the Nigerian case of *Ofor v The Queen.*[7]

Even more confusing is the fact that Nigerian Courts readily cite *Ofor v The Queen* as authority. Thus, in *Adekunle v State,*[8] a case involving the interpretation and application of section 8 of the Criminal Code of Southern Nigeria which deals with common intention, the Supreme Court, per Nnamani J.S.C (as he then was) said:

> *Now to come to the instant case, there was definitely a common object or desire by the appellant and the members of their family that the deceased be taken out of the compound. There is evidence that all the women in the compound held a meeting and resolved that the deceased be removed . . . On the face of it, that is, as far as the common intent or object or desire can go.*[9]

Also, in *Emeka v State*,[10] decided under the Penal Code of Northern Nigeria, the Court of Appeal, per Oguntade,

[1] Supra
[2] Chitaley, W. Ward Bakhale, V.B (eds.) (1979) *The criminal Digest of India,* Vol. 6. Bombay: The All Indian Reporter limited, p. 353
[3] Gour, S.H *Op. cit,* p. 1216 and Nigerian case of *Mailayi Sokoto v State* (1968) All N.L.R p. 120
[4] Chitaley, W.W and Bakhale, V.B (eds.) *Criminal Digest of India,* Op. cit, *p. 363*
[5] Section 221 of the Penal Code of Northern Nigeria provides for culpable homicide punishable with death
[6] See *Adekunle v State* (1989) 5 N.W.L.R (Part 123) p. 505 at 518
[7] (1955) 15 W.A.C.A p. 4
[8] Supra
[9] *Ibid* at p. 519
[10] (1998) 7 N.W.L.R (pt. 559) p. 556

J.C.A (as he then was said:

> *It is important that I stress here that an agreement on a common purpose or object is not always the same as agreement as to how the agreed common purpose or object is to be effected. In other words, common object is not the same thing as common intention.*[1]

The above statements of the Supreme Court and the Court of Appeal are ambiguous and difficult to understand even on the facts of their respective cases and against the established principles of common object and common intention. Okonkwo and Naish had criticised the distinction made by the West African Court of Appeal in *Ofor v The Queen* by stating that:

> *It may be suggested that though the decision was undoubtedly correct, the distinction between common object and common intention by the West African Court of Appeal serves only to confuse.*[2]

However, Gour, citing Gosh v Emperor,[3] illustrated the distinction between common object and common intention thus; A and B both start to kill C. A intends to do so because he is C's enemy; B, because he wishes to rob C. Here, the object of both A and B is to kill C but their intentions differ.[4] The distinction between these obviously over-lapping principles have been stated in a long list of decided cases in India,[5] particularly, *Gosh v Emperor,* where Lord Summer stated:

> *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.*[6]

From the authorities, the distinctive features of these two principles of group liability can be gathered from their respective statutory provisions.[7] There are: firstly, common object requires an assembly of five or more persons whereas there is no such requirement with respect to common intention. Secondly, common intention requires some form of active participation by every individual offender in respect of the offence charged; in common object, mere membership of the unlawful assembly suffices.

Thirdly, common intention enunciates a mere principle of liability and does not create a distinct offence but common object apart from enunciating a principle of liability, creates a distinct offence. Fourthly, common intention requires a pre-concert or prior meeting of mind[8] but common object does not require such prior meeting of mind since an unlawful object can develop after people assemble together, *etc.*

CONCLUSION

The doctrine of common object as a principle of joint or group criminal liability is an exception to the general rule that a person is liable for what he himself does and not for what others do. It imports the idea of vicarious or constructive liability through being a member of an unlawful assembly actuated by certain specified objects.

In India and Northern Nigeria where the doctrine of common object applies, it has statutory provisions explaining its principles, limits and applications. In Uganda, Southern Nigeria and Queensland Australia, the principle does not apply in its statutory pure form as there are no provisions to that effect. It therefore serves no useful purpose for courts in these jurisdictions, especially in Nigeria, to make ambiguous and most times, vague references to this principles without explaining its special features.

In England, the early application of the principle relates to common law conspiracies but a variant of the principle is equally applied in relation to cases of joint criminal enterprise. The reason for non application of the principle, in its strict form, in England, Uganda, Southern Nigeria and Queensland Australia may be as a result of the strict *mens rea* requirement in these jurisdictions, particularly, in England. In the other jurisdictions where the principle applies, great care and caution must be taken in order to avoid what a learned commentator called "guilt by association".[9]

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[1] *Ibid.* at p. 585
[2] Okonkwo, C.O (1980), Okonkwo and Naish on *Criminal Law in Nigeria, Ibadan:* Spectrum Books Limited, p. 173
[3] (1925) A.I.R, P.C. 1
[4] Gour, H.S, *Op. cit.* p. 1219
[5] Prakash v State (1956) A.I.R, p. 241
[6] Supra, p. 2
[7] That is, sections 108 of the Penal Code of Northern Nigeria and section 149 of the Indian Penal Code
[8] See the decision of the West African Court of Appeal in Ofor v The Queen (Supra) where Coussey J.A in holding that there was no meeting of mind by the two accused persons as to import common intention, held "it seems to us on the evidence that the intention of each accused was suddenly formed and formed independently of each other" p. 5
[9] Ashworth, A. (1988) "Guilt by Association" *Criminal Law Review,* p. 128