


Subject: **LAW**

Production of Courseware

 - Content for Post Graduate Courses



Paper : **SUBSTANTIVE CRIMINAL LAW**

Module : **CRIMINAL CONSPIRACY**



CRIMINAL CONSPIRACY

Quadrant I: Description of Module

| Description of Module | |
|-----------------------|--|
| Subject Name | Law |
| Paper Name | Substantive Criminal Law |
| Module Name/Title | Criminal Conspiracy |
| Module Id | 19 |
| Pre-requisites | A general understanding of the fundamental principles of criminal law. |
| Objectives | <ul style="list-style-type: none">➤ To introduce theoretical analysis of law➤ To enable students to acquaint students with the diversity of conceptual perspectives informing the discipline of law |
| Key Words | Conspiracy, Agreement, Illegal, Overt act, IPC |

Quadrant II: E-Text

INTRODUCTION

The Chapter VA: Criminal Conspiracy was inserted in the Indian Penal Code (IPC) in 1913 as the experience at that time showed that dangerous conspiracies are entered into in India and that the existing law was inadequate to deal with the prevailing conditions. It comprises of only two sections 120A and 120B. Conspiracy was originally used to explain the acts of agreement of those who combined to carry on legal proceeding in vexatious or improper way.¹

CRIMINAL CONSPIRACY DEFINED:² Section 120A, IPC defines criminal conspiracy. It is a substantive offence in itself. In simple terms, a criminal conspiracy is an agreement between two or more persons to commit a crime.³ Two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with

¹ Sir James F. Stephen, A History of the Criminal Law of England, 1883, Vol. II, Macmillan & Co. London, p.227

² Section 120 A, IPC: *When two or more persons agree to do, or cause to be done,— (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.* Explanation.—*It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.*

³ David Ormerod, Smith & Hogan's Criminal Law, 13th Edition, 2011, Oxford University Press, Oxford, p.423



oneself.⁴ A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as a design rests in intention only, it is not indictable. When two or more persons agree to carry it into effect the very plot is an act itself, and the act of each parties, promise against promise *actus contra actum* capable of being enforced, if lawful, punishable if for criminal object or for the use of criminal means.⁵ The gist of the offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy is formed, nor in attempting to do any of the acts nor in inducing others to do them, but in forming of the scheme or agreement between the parties. The gist is an agreement to break the law. Conspiracy is a matter of inference deducted from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose common between them.⁶ Unless any nexus or any link is established between two persons there cannot be any conspiracy as defined under section 120A, IPC.⁷ The meeting of minds is essential and mere knowledge is not sufficient. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence.

ESSENTIALS: The constituent elements of the offence of criminal conspiracy are: (1) an agreement between two or more persons, (2) to do an illegal act, or (3) to do a legal act by illegal means, and (4) an overt act done in pursuance of the conspiracy.⁸ The essence of the offence of conspiracy is the agreement and association to break the law, or to do an illegal act. An agreement to do an illegal act which amounts to a conspiracy as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into agreement.⁹ It is essential that the offence of conspiracy requires some kind of physical manifestation of agreement. However, the express agreement need not be

⁴ Haradhan v. Union of India, AIR 1990 SC 1210

⁵ Mulcahy v. R., (1868) 3 HL 306

⁶ G.S.Naidu v. State, (1963) 2 Cr LJ 546

⁷ Narendra v. State of Bihar, (1991) 2 Cr LC 344

⁸ State of Rajasthan v. Jaigovind, AIR 1951 Raj 89

⁹ P.K.Narayanan v. State, 1995 (1) SCC 142



proved nor is it necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.¹⁰

Conspiracy comes into being just the moment the agreement to commit the crucial act is reached and it continues to exist so long as the object, for which the association was formed, continues in the process of fulfilment as per agreement. Having carved an exception in favour of agreement to commit offence which is punishable per se without proof of an overt result of conspiracy or any overt act in pursuance of the agreement, other conspiracies need some acts besides the mere agreement to render it punishable. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

Two or More Persons: When two or more person agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and everyone who joins in the agreement. Thus there have to be two conspirators and there may be more than that.¹¹ It is not necessary that every one of the persons, agreeing to do the illegal act or acts, should be capable, in law, of committing an offence in respect of that act. It is not an ingredient of criminal conspiracy that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.¹² However, where several persons are charged with the same conspiracy, it must be proved that there is one large conspiracy involving all the persons charged and not a number of unrelated conspiracies entered into by different groups of the accused.¹³ The unity of will and purpose amongst all the accused must be proved; and an accused not shown to be a member of a large conspiracy is entitled to acquittal, however bad his record may be

¹⁰ Kehar Singh v. State, AIR 1988 SC 1883

¹¹ State of Tamil Nadu v. Nalini, 1999 Cr LJ 3124 (SC)

¹² Major Barsay v. State of Maharashtra, AIR 1959 Bom 354

¹³ S.K.Sarvaria, R.A.Nelson's Indian Penal Code, 10th Edition, 2008, Vol. 1, LexisNexis, Delhi, p 994



and, however, much he may be suspected of this or that offence.¹⁴ Where it cannot be said that everyone of the accused was in agreement to do the same illegal act or cause same illegal act to be done, they cannot be held to have been parties to one and the same conspiracy within the meaning of this section.

Consensus ad idem: In order to prove a criminal conspiracy, there must be evidence to show that there was an agreement between two or more persons to commit an offence. In the Parliament attack case, the accused had never contacted the deceased terrorist on place but had helped one of the conspirators to flee a safer place after the incident and was not held guilty as a conspirator.¹⁵ No charge of criminal conspiracy can succeed unless if it shown that several persons have agreed to do an illegal act or a lawful act by unlawful means. This implies that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of the offence. In *State of Tamil Nadu v. Nalini (Rajiv Gandhi assassination case)*,¹⁶ the Supreme Court had laid following important points relating to criminal conspiracy: (1) Association of accused with one of main accused or even his knowledge about conspiracy would not make him conspirator as agreement is *sine qua non* of agreement, (2) Accused harbouring main accused persons knowing fully well their involvement in the commission of offence is itself not sufficient to infer that he was member of conspiracy, (3) If accused had no knowledge of conspiracy, then his mere association with the main conspirator would not make him member of the conspiracy, (4) It is not necessary for the conspirator to be present at the scene of the crime. However, conspirators may be enrolled in a chain, A enrolling B, B enrolling C and so on and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella spoke enrolment, where a single person at centre is doing the enrolling and all other members being unknown to each other though they know that there are to be other members.¹⁷ Persons may be members of a single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.¹⁸ Once the

¹⁴ Chandiram v. Emperor, AIR 1926 Sind 174

¹⁵ NCT of Delhi v. Navjot Sandhu, 2005 Cr LJ 3950 (SC)

¹⁶ AIR 1999 SC 2640

¹⁷ State of Tamil Nadu v. Nalini, AIR 1999 SC 2640

¹⁸ State of Tamil Nadu v. Nalini, AIR 1999 SC 2640



object of conspiracy has been achieved, any subsequent act which may be unlawful would not make the accused part of the conspiracy, like giving shelter to absconder. However, a conspirator is not responsible for acts done by co-conspirator after termination of the conspiracy.¹⁹

Criminal conspiracy may come into existence, and may and will persist so long as the persons constituting the same remain in agreement, and so long as they are acting in accord in furtherance of the objects for which they entered into agreement.²⁰ It is not necessary that each conspirator should be aware of all the acts done by each of the conspirators in the course of the conspiracy.²¹ The acts done by any of the conspirators in the furtherance of the purpose of the conspiracy are merely indication of what the object of conspiracy was. A conspirator can join the conspiracy at any stage and similarly leave it at any stage. However, where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy.²²

Illegal Act: There can be no conspiracy if the act is not illegal. According to section 43, IPC, “illegal” is applicable to everything which is an offence prohibited by law or which furnishes ground for an action. “Act” includes an illegal omission also. *Actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show meeting of minds, a consensus to effect an unlawful purpose. However, it is not necessary that each conspirator should have been in communication with every other.²³ The overt act necessary to be proved to establish conspiracy includes (i) acts signifying agreement, (ii) acts preparatory to the offence, and (iii) acts constituting the offence itself.²⁴ To sustain a charge of conspiracy to do an illegal act, the prosecution must prove the committing of an illegal act by the conspirators. If the conspiracy is merely to do an act which is not illegal, though in the hope and belief that that act may result in the death of, or injury to, some persons, that does not amount to do an illegal act. For instance, if A and B agree that they will induce Y to point his finger at X believing

¹⁹ State of Tamil Nadu v. Nalini, AIR 1999 SC 2640

²⁰ Abdul Rehman v. Emperor, AIR 1935 Cal 316

²¹ S.K.Sarvaria, R.A.Nelson’s Indian Penal Code, 10th Edition, 2008, Vol. 1, LexisNexis, Delhi, p 994

²² Hari Singh Gour, Penal Law of India, 11th Edition, Vol.II, 2009, Law Publishers, Allahabad, p.1139

²³ Halsbury’s Laws of England, 4th Edition, Vol.11, para 58, p.44

²⁴ Ratanlal & Dhirajlal, The Indian Penal Code, 12th Edition, 2010, LexisNexis, Delhi, p.614



that Y is endowed with some special power which will enable him to kill by so doing, there is no agreement to do an illegal act and no conspiracy to commit an offence.²⁵

Every conspiracy involves an element of illegality or illegal act. It is immaterial whether the illegal act is the ultimate object of the agreement or is merely incidental to it. Since an act may be illegal without being criminal it follows that an agreement to do an illegal act may amount to criminal conspiracy though it may not be punishable as such. It may be an offence to conspire with another to do an act which, if done alone, would not be criminal.

If one conspires with another to employ illegal means to achieve a legal purpose one may be convicted for conspiracy. For instance, obtaining credit without means to pay, though not criminal, is unlawful. It has been held criminal to conspire to enable a person to get goods on credit by means of a false certificate, knowing that he did not intend to pay for them.²⁶ Where the agreement is not to commit an offence but to commit an illegal act, or an act, which is not illegal, by illegal means, it does not amount to criminal conspiracy unless some act besides the agreement, is done by one or more parties to the agreement in pursuance thereof.²⁷ Once a conspiracy to commit an illegal act is proved, act of one conspirator becomes the act of another.²⁸ The conspiracy can be inferred from circumstances giving rise to exclusive or irresistible inference of an agreement between two or more persons to commit an offence.²⁹

Commencement & Continuance: The conspiracy to commit a crime and the crime itself are two different offences. Conspiracy precedes the commission of crime and is complete before the crime is attempted or completed.³⁰ Although conspiracy is committed as soon as the agreement for the 'unlawful' object is made, it is clear that conspiracy is a continuing offence and is committed not only when agreement is first reached but also as long as the agreement to effect the unlawful object continues.³¹ Thus, a conspiracy is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice of necessity. To make out an offence of criminal conspiracy it

²⁵ Emperor v. Shanharaya, AIR 1940 Bom 365

²⁶ S.K.Sarvaria, R.A.Nelson's Indian Penal Code, 10th Edition, 2008, Vol. 1, LexisNexis, Delhi, p 994

²⁷ State of Bihar v. KP Sinha, AIR 1961 Pat 451

²⁸ Shiv Narayan v. State of Maharashtra, AIR 1980 SC 439

²⁹ M.S.Reddy v. Inspector of Police, Nellore, (1991) 3 Andh LT 542

³⁰ Leo v. Supdt., District Jail, AIR 1958 SC 119

³¹ Ratanlal & Dhirajlal, The Indian Penal Code, 12th Edition, 2010, LexisNexis, Delhi, p.617

does not suffice to establish that a number of persons had a common intention to commit an act opposed to or forbidden by the law, it has further to be proved that they ‘agreed’ to commit the relevant act. The gist of the offence of criminal conspiracy to commit offences lies in the agreement or common intention of the accused and the question whether such an agreement or common intention exists, is a matter of inference to be deduced from the facts of the case and the acts of the accused proved in evidence and alleged to have been committed by them in pursuance of such agreement or common intention.³²

Conviction: It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough that the court is in a position to find out that two or more persons were actually concerned in the criminal conspiracy. For instance, an occasion may arise when conspiracy is proved against three conspirators, but two of the three conspirators are not before the courts for reasons beyond the control of the prosecution. In such a case, even one conspirator can be duly convicted and sentenced. If pursuant to a criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.³³ When several persons are charged of the offence of criminal conspiracy and all the accused except one is acquitted, the conviction of the remaining one accused on that charge is illegal. The reason is that the conspiracy requires an agreement and one cannot conspire with himself.



Figure 1: Criminal Conspiracy

³² Ratanlal & Dhirajlal, The Indian Penal Code, 12th Edition, 2010, LexisNexis, Delhi, p.617

³³ State of H.P. v. Krishna Lal, AIR 1987 SC 773



PUNISHMENT OF CRIMINAL CONSPIRACY: ³⁴ Section 120B prescribes punishment for criminal conspiracy. The section prescribes punishment for two offences of varying gravity, viz. (i) criminal conspiracy as such, and (ii) criminal conspiracy to commit an offence punishable with at least two years or more of rigorous imprisonment. Moreover, section 120B is supplementary as criminal conspiracies. It is a settled law that for an offence under this section, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. Criminal conspiracy is an offence created and made punishable by the IPC. The offence of conspiracy to commit a crime is different from the crime and the object of the conspiracy, because the conspiracy precedes the commission of crime, and is complete before the crime is attempted or completed; equally the crime attempted does not require the element of conspiracy as one of the ingredients.

| Punishment under Sec 120-B | Punishment under Sec 120-B |
|--|--|
| Criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards. | Other Criminal Conspiracies |
| Punishment as if he had abetted such offence. | Imprisonment of either description for a term not exceeding six months or with fine or with both |

In *State of Bihar v. Kailash*,³⁵ where there were two ration in the town of Patna -- one standing on the name of respondent Kailash Prasad Singh and the other in the name of respondent Shyam Sunder Singh. Respondent Adya Prasad was the Munshi of the first shop while respondent Ragho Prasad was the Mumshi of the latter shop.

³⁴ Section 120B, IPC: (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

³⁵ AIR 1961 Pat 451



Respondent Ambika Prasad was a helper of Adya Prasad. Occasionally he worked for the other shop also. The case against the respondents was that between October 1952 and February 1954 they conspired to cheat the Ration Office at Patna by presenting forged challans and obtaining ration authorities on the basis of those forged challans and thereafter taking delivery of grains from the Government godowns. The accused was the license holder of a shop and there was evidence that he used to visit the offices. However, it was not proved that he filed any of the fabricated challans. The only circumstance against him was that he knew of the passed challans and must have been benefitted by the fraud. Therefore, the evidence of his being member of the conspiracy consisted of the commission of the offences themselves by others. The court held that it could not be said that the charge of conspiracy had not been proved against him.

In *Sushil Suri v. Central Bureau of Investigation*,³⁶ the Supreme Court held that where two Chartered Accountants had dishonestly and fraudulently opened several fictitious accounts in some banks with an intention and object to facilitate of bank finance for the purpose other than stated in the loan application. The accused persons submitted to the bank, fake and forged invoices of fictitious/non-existent supplier. The essential ingredient of criminal conspiracy is agreement to commit offence between accused and the commission of crime alone is enough to bring about a conviction under section 120B. The appellant with Directors and Chartered Accountant defrauded revenue and in the process cheated the public exchequer of crores of rupees and were convicted under section 120B, 420, 409 and 471.

³⁶ AIR 2011 SC 1713