

## Analytical study of Criminal Conspiracy

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**Abstract:** A conspiracy is an agreement between two or more persons to commit an offence. The mere meeting of mind of the parties to commit an offence is conspiracy. Originally, the IPC consisted of only two provisions for punishing the offence of conspiracy. First, the provision of section 107, which made a conspiracy by the way of abetment, punishable. The others are specific provisions involving offences which are included conspiracies to commit them. As for example, Section 310 (in the definition of thugs), Section 400 (belonging to a gang of dacoits), Section 401 (belonging to a gang of thieves), etc. The position, however changed with the Indian Criminal Law Amendment Act of 1913(8 of 1913) Chapter V-A of the IPC deals with 'Criminal Conspiracy'. It consists of two sections 120A and 120B. Section 120A gives the definition of criminal conspiracy. Section 120B deals with punishment for committing the offence of criminal conspiracy.

**Key Words:** Criminal Conspiracy, Section 120A, Section 120B.

### 1. INTRODUCTION :

Definition of Criminal Conspiracy in Section 120A – 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 the object.

Ingredients – The ingredients of this offence are (1) that there must be an agreement between the persons who are alleged to conspire; and (2) that the agreement should be (i) for doing of an illegal act, or (ii) for doing by illegal means an act which may not itself be illegal.

### 2. EXPLAINING CONSPIRACY :

- **Two or more person needed** – To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself. In *Topandas vs. State of Bombay*,<sup>1</sup> which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty vs. Union of India*<sup>2</sup> it was laid down that “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 oneself.” It also appears reasonable to hold that these two persons must be natural persons so that there could be an agreement between two or more minds. Thus a Director who is the ‘one man’ of a ‘one man’ company cannot be convicted of conspiracy with the company in spite of the fact that the company is a separate entity in law. Under the common law since husband and wife constitute one person there cannot be any conspiracy to commit an offence if husband and wife are the only parties to an agreement.<sup>3</sup> Unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted, e.g., where one was acquitted for want of sanction or on ground of being an exempted person. The Bombay High Court has taken the same view in a recent case. Thus where of the two accused one was a public servant and he had to be acquitted as he was prosecuted without obtaining sanction under 197 of Cr.P.C., the other could still be convicted on a charge of conspiracy as the acquittal of the other accused was not on facts but on technical ground and in spite of evidence establishing the factum of conspiracy.<sup>4</sup>
- **Agreement is gist of the offence** – The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.<sup>5</sup> The object in view or the methods employed should be illegal, as defined in Section 43, supra. A distinction is drawn between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the matter<sup>6</sup> of the assassination of the then Prime Minister of India, Smt. Indira Gandhi,

one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. One of them was acquitted by the Supreme Court. His movements after the incident were not properly proved. The documents recovered from his custody did not indicate any agreement between him and the other accused. They only showed his agitated mind which was in the grip of an avenging mood. This is not enough to establish an agreement with anybody. On the other hand, about Kehar Singh, it was shown that he was having secret talks with one of the actual killers, that they were trying all the time to keep themselves away from their wives and children, they avoided the company of the other members of the family and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret. This was enough to constitute a prima facie evidence of conspiracy within the meaning of Section 10 of the Evidence Act and to bring them within the jacket of punishment of all for the act of one.

**Sections 34 and 120A-** There is not much substantial difference between conspiracy as defined in S.120A and acting on a common intention, as contemplated in S.34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under S.34 is the commission of a criminal act in furtherance of a common intention of all the offenders, which means that there should be unity of criminal behaviour resulting in something, for which an individual would be punishable, if it were all done by himself alone.<sup>7</sup> Another point of difference is that a single person cannot be convicted under S.120A and, therefore, where all the accused except one were acquitted, the Supreme Court ordered his acquittal also<sup>8</sup> whereas under S.34 read with some other specific offence, a single person can be convicted because each is responsible for the acts of all others.

**Sections 107 and 120A** – For an offence under this section a mere agreement is enough if the agreement is to commit an offence. But, for an offence under the second clause of S.107 an act or illegal omission must take place in pursuance of the conspiracy and a mere agreement is not enough.<sup>9</sup>

- **S. 120A I.P.C and S.10 Evidence Act** – Where there is reasonable ground to believe that two or more person have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it.

### 3. Punishment of Criminal Conspiracy:

S.120B (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.

### 4. CONCLUSION:

Any agreement between two or more person to commit an offence is a criminal conspiracy. For the purpose of punishment, S.120B divides criminal conspiracies into two classes. A party to a conspiracy to commit a serious offence is in the absence of an express provision in the I.P.C, punished in the same manner as if he had abetted the offence. Conspiracies to commit any other offences punishable with imprisonment for a term up to six month with or without fine or both. Where the accused is charged both under S.109 as well as 120B of I.P.C and the offence abetted is shown to have been committed as a result of the abetment, the abettor should be punished with the imprisonment provided for the principal offence under S.109 and no separate sentence need be recorded under S.120B I.P.C.<sup>10</sup> Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.<sup>11</sup> Where no jail term was awarded to the principal accused in a conspiracy and he was let off with fine alone, it was held that substantive sentence of imprisonment awarded to the other accused was wrongful and, therefore, they were ordered to pay fine only.<sup>12</sup> Where six of the seven persons accused of criminal conspiracy were acquitted, remaining one accused could not be convicted merely for being the head of the section of the branch where fraud was alleged to have been committed.<sup>13</sup> In a case of robbery of bank and murder, one of the accused confessed to his participation in the robbery and said that the other accused caused death outside the bank while escaping. His death sentence was commuted to imprisonment for life.<sup>14</sup>

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