

THE INDIAN PENAL CODE

1. CHAPTER V-A CRIMINAL CONSPIRACY

[s 120B] Punishment of criminal conspiracy.

- (1) **Whoever is a party to a criminal conspiracy to commit an offence punishable with death, ⁹¹[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.]**

COMMENT—

Earlier to the introduction of sections 120A and B, conspiracy per se was not an offence under [IPC, 1860](#), except in respect of the offence mentioned in section 121A. However, abetment by conspiracy was and still remains to be an ingredient of abetment under the second clause of [section 107 of IPC, 1860](#). The punishment therefore, is provided under various sections, viz., sections 108–117. Whereas under section 120A, the essence of the offence of criminal conspiracy is a bare agreement to commit the offence, the abetment under section 107 requires the commission of some act or illegal omission pursuant to the conspiracy.⁹² Criminal conspiracy is an independent offence. It is punishable separately.⁹³ The punishment for conspiracy is the same as if the conspirator had abetted the offence.⁹⁴ The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is one to commit an act which although illegal is not an offence punishable with death, imprisonment for life or rigorous imprisonment for more than two years.

Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There may be an element of abetment in a conspiracy; but conspiracy is something more than abetment. The offences created by section 109 and section 120A are quite distinct and where offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as conspiracy to commit those offences.⁹⁵

This section applies to those who are the members of the conspiracy during its continuance. Conspiracy has to be treated as a continuing offence and whoever is a party to the conspiracy during the period for which he is charged is liable under this section.⁹⁶ A conspiracy is held to be continued and renewed as to encompass all its members wherever and whenever any member of it acts in furtherance of the common design.⁹⁷ The most important ingredient of a criminal conspiracy is an agreement for an illegal act, conspiracy continues to subsist till it is executed or rescinded or frustrated by choice or necessity.⁹⁸ The conspirators' connection with the conspiracy

would get snapped after he is nabbed by the police and kept in custody. He would then cease to be the agent of others. In this case (*Rajiv assassination*) the prosecution could not establish that the accused persons who were under detention continued their conspiratorial contact with those who remained outside. A statement which constitutes *prima facie* evidence of a conspiracy may amount to an act for which all the members can be held liable.^{99.}

Where the accused conspired with others in awarding a contract when he was in job, he could be held liable for subsequent acts of other conspirators even after his retirement as he contributed his part for furtherance of the conspiracy.^{100.}

For the purpose of establishing or proving the charge of conspiracy, it is not necessary that there should be knowledge of who are other conspirators and of the detailed stages of the conspiracy. The necessary requisite is knowledge of the main object and purpose of the conspiracy.^{101.} A fraud was alleged to have been committed by Government officers in processing and verifying fake bills. It was held that all the officers who dealt with the relevant files at one point of time or the other could not be considered to have taken part in the conspiracy or that they would be guilty of aiding and abetting the offence. Individual acts of criminal misconduct would have to be considered for fastening liability.^{102.}

An accused can be convicted for substantive offence even where he has been acquitted of the charge of conspiracy.^{103.}

[s 120B.1] **Sanction for prosecution (section 120B IPC, 1860 and section 196 (Cr PC, 1973)).—**

This section has to be read along with section 196(1-A) (2) (Cr PC, 1973), which requires previous sanction of the State Government or the District Magistrate to launch prosecution in respect of a criminal conspiracy to commit an offence punishable with less than two years imprisonment. Thus, where the object of the conspiracy was cheating by false personation under section 419, IPC, 1860, which is an offence punishable with a three-year imprisonment, the mere fact that there were other non-cognizable offences for which too the accused had been charged would not vitiate the trial in absence of sanction under section 196(1A)(2), (Cr PC, 1973), as that section is meant to be applicable to a case where the object of the conspiracy is to commit an offence punishable with less than two years' imprisonment.^{104.} Where the act in question was not done by the army officer in the discharge of his official duties, it was held that a sanction for his prosecution was not necessary.^{105.}

[s 120B.2] **Can a company be prosecuted for Criminal conspiracy.—**

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through that person or the body of persons.^{106.}

[s 120B.3] **Signing differently in vakalatnama.—**

The fact was that the accused put their signatures in *vakalatnama* differently from their original ones. It has been alleged by the complainant that the accused petitioners have deliberately and wilfully put their signatures on the *vakalatnama* in collusion with each other like irresponsible persons in order to gain wrongfully and with a view to cheat and mislead the complainant. It was held that the alleged action of the petitioners in

signing their own name on the *vakalatnama* and filing the same in the Court through their counsel is neither an offence nor prohibited by any law. When the alleged act itself was not illegal, it cannot be said that there was any 'criminal conspiracy' and in absence of the basis for a charge for criminal conspiracy, the petitioners cannot be prosecuted or punished for the offence under [section 120-B of the IPC, 1860](#).¹⁰⁷.

[s 120B.4] Seeking opinion.—

Merely taking someone's opinion, who is an outsider to litigation, before filing the reply in the Court would not undermine the administration of justice in any way and it is not indicative of criminal conspiracy.¹⁰⁸.

[s 120B.5] Hooch Tragedy case.—

In a case, the allegation was that all the accused persons hatched a criminal conspiracy and they created a well-oiled machinery for importing methyl alcohol to make spurious liquor. Accused diluted the spirit by adding water and sold it through their outlets. Many persons died due to the consumption of spurious liquor. Some persons lost their eyesight and number of others sustained grievous injuries. Supreme Court said that the whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business, which itself was a conspiracy, they mixed or allowed to be mixed methanol and used it so freely that ultimately resulted in the tragedy. Conviction is upheld.¹⁰⁹.

[s 120B.6] Corruption cases.—

The prosecution asserted that the appellants A1 to A4 had entered into a conspiracy and in furtherance thereof, A1 who was a public servant, had come to possess assets to the tune of Rs. 66.65 crores, disproportionate to her known sources of income, during the period from 1991 to 1996, when she held the office of the Chief Minister of the State. The Supreme Court in respect to the charge of criminal conspiracy observed that the free flow of money from one account to the other of the respondent's, firms/companies also proved beyond reasonable doubt that all the accused persons had actively participated in the criminal conspiracy to launder the ill-gotten wealth of A1 for purchasing properties in their names.¹¹⁰.

[s 120B.7] Previous sanction.—

No Court shall take cognizance of the offence of any criminal conspiracy punishable under [section 120B of the IPC, 1860](#), (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.¹¹¹.

2. Sentence.—Where the accused is charged both under section 109 as well as [section 120B, IPC, 1860](#), 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 [section 109, IPC, 1860](#), and no separate sentence need be recorded under [section 120B IPC, 1860](#).¹¹² Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.¹¹³ 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 also were ordered to pay fine only.¹¹⁴ 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.¹¹⁵ Where the appellant-accused was one of the active members of the criminal conspiracy along with other accused and hatched the plan to kill/eliminate the deceased and in furtherance thereof other accused persons successfully killed/eliminated the deceased and it was not the case of the appellant-accused and nor was urged also that his case fell under Section 120(2) so as to be awarded less sentence as prescribed therein, the conviction and award of life sentence as prescribed under [Section 302](#) read with [Section 120B, IPC, 1860](#) was held proper.¹¹⁶ The accused pleaded guilty to conspiring to cause a public nuisance. He conspired with others to interfere with a premier division football match by means of extinguishing the floodlights while the match was in progress. The object of doing so was to affect bets placed on the match abroad, which depended on the score at the time when the lights were switched off and the match was abandoned. The plan was not put into effect and the accused and others were arrested before the match was due to take place. The accused would have received substantial reward for his role. He was sentenced to four years' imprisonment. His appeal was dismissed. The Court said that the practice of interfering with such an important sporting fixture was something which should be actively discouraged by severe sentences. The sentence could not be described as manifestly excessive.¹¹⁷

Law relating to Conspiracy as summarised by the Supreme Court in *State of TN through Superintendent of Police, CBI/SIT v Nalini*, ([AIR 1999 SC 2640](#) [[LNIND 1999 SC 1584](#)] : (1999) 5 SCC 253 [[LNIND 1999 SC 526](#)] : [JT 1999 \(4\) SC 106](#) [[LNIND 1999 SC 526](#)] : [1999 Cr LJ 3124](#)).

1. Under [Section 120A, IPC, 1860](#), offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention, but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.
2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.
3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
4. Conspirators may, for example, be enrolled in chain A enrolling B, B enrolling C, and so on and all will be members of the 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 the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be

members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role 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.

5. When two or more persons 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 every one who joins in the agreement. There has thus, to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.
6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.
7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficult in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed to Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".
8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. 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.
9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of

the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the other but the conspiracy into effect, is guilty though he intends to take no active part in the crime.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
91. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).
92. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, 2005 Cr LJ 3950 : (2005) 11 SCC 600 [LNIND 2005 SC 580] .
93. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.
94. *Alim Jan Bibi*, (1937) 1 Cal 484 . It is not necessary that each and every conspirator must have taken part in the commission of the act. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] . *Govt of NCT of Delhi v Jaspal Singh*, (2003) 10 SCC 586 [LNIND 2003 SC 649] , essential requirements of charge under the section. *Ram Narayan Popli v CBI*, AIR 2003 SC 2748 [LNIND 2003 SC 26] : (2003) 3 SCC 641 [LNIND 2003 SC 26] , statement of ingredients. *Nazir Khan v State of Delhi*, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] , statement of ingredients and matters of proof.
95. *Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] . See also *Mohd Hussain v KS Dalipsinghji*, AIR 1970 SC 45 [LNIND 1969 SC 147] : (1970) 1 SCR 130 [LNIND 1969 SC 147] . See also *Jagdish Prasad v State of Bihar*, 1990 Cr LJ 366 Pat, conspiracy with railway employees to procure allotment of wagons under cover of fake letters. *State of Rajasthan v Govind Ram Bagdiya*, 2003 Cr LJ 1169 (Raj), the prosecution has to prove the elements of conspiracy. No proof was forthcoming in this case in the matter of allotment of house of any conspiracy among officials to manipulate the system.
96. *Abdul Kadar v State*, (1963) 65 Bom LR 864 . For an example of a failed prosecution under this section see *State of UP v Pheru Singh*, AIR 1989 SC 1205 : 1989 Cr LJ 1135 . In *Darshan Singh v State of Punjab*, AIR 1983 SC 554 [LNIND 1983 SC 95] : 1983 Cr LJ 985 : (1983) 2 SCC 411 [LNIND 1983 SC 95] , the Supreme Court considered it to be unbelievable that the accused hatched their plot while taking drinks in the presence of a stranger. For proof of conspiracy it often becomes necessary to convert one of the conspirators into an approver witness and this may require corroboration. See *Balwant Kaur v UT Chandigarh*, AIR 1988 SC 139 [LNIND 1987 SC 738] : 1988 Cr LJ 398 . The absence of one of the conspirators at one of their meetings does not by itself rule out his complicity. Conspiracies are hatched under cover of secrecy. They are generally proved by circumstantial evidence, *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : 1995 Cr LJ 1445 ; *Aniceto Lobo v State (Goa, Daman and Diu)*, AIR 1994 SC 1613 : 1994 Cr LJ 1582 : 1993 Supp (3) SCC 311 , conspiracy of three persons, one of whom, being bank employee, took out blank drafts, the other forged signatures and third opened

accounts in fictitious names to encash the drafts, all of them were held to be equally guilty of the offence.

97. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] .

98. *Damodar v State of Rajasthan*, AIR 2003 SC 4414 [LNIND 2003 SC 803] : 2003 Cr LJ 5014 : (2004) 12 SCC 336 [LNIND 2003 SC 803] . *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , alleged conspiracy was to dispose of by auction the property of a Govt Co at a low price, but the bids made by the alleged conspirators reflected a fair price. Ingredients of the section not made out. *Hardeep Singh Sohal v State of Punjab*, AIR 2004 SC 4716 [LNIND 2004 SC 902] : (2004) 11 SCC 612 [LNIND 2004 SC 1006] conspiracy for murder not proved. Another charge of conspiracy for murder was rejected in *Hem Raj v State of Punjab*, AIR 2003 SC 4259 [LNIND 2003 SC 759] : 2003 Cr LJ 4987 : (2003) 12 SCC 241 [LNIND 2003 SC 759] . *State of HP v Satya Dev Sharma*, (2002) 10 SCC 601 , criminal conspiracy between timber merchants and private landowners and Government officials for falling and misappropriating trees standing on Government land.

99. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 . Under TADA (repealed) such confession had the status of evidence. *Ram Singh v State of HP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 AIR SCW 1331 : 1997 Cr LJ 4091 , in a murder by some persons, the accused persons assisted them in causing disappearance of the dead body secretly in furtherance of their conspiracy, their conviction under sections 201-120B was held to be proper. *Subhash Harnarayanji Laddha v State of Maharashtra*, (2006) 12 SCC 545 [LNIND 2006 SC 1088] , conspiracy not proved. *Mallanna v State of Karnataka*, (2007) 8 SCC 523 [LNIND 2007 SC 1526] , conspiracy not proved.

100. *R Balkrishna Pillai v State of Kerala*, 1996 Cr LJ 757 (Ker); *Devender Pal Singh v State (NCT) of Delhi*, 2002 Cr LJ 2034 (SC), acquittal of a co-accused on the ground of non-corroboration of the confessional statement did not have the effect of demolishing the prosecution regarding conspiracy *Saju v State of Kerala*, 2001 Cr LJ 102 (SC), no evidence to show that the accused was responsible for pregnancy or insisted upon its termination. The accused and co-accused were fellow workers and seemed to be hired killers. They were seen together at the place of the incident both before and after it. That was held to be not sufficient to prove charge of conspiracy against them. *State of HP v Jai Lal*, AIR 1999 SC 3318 [LNIND 1999 SC 798] : 1999 Cr LJ 4294 State Government scheme of purchasing infected apples from growers and destroying them. Allegations that some of them over charged by inflating weight. But no evidence of experts about overweight, etc., charge not proved. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a charge-sheet was not quashed where there was evidence to believe that the two accused persons had conspired to produce a document for fulfilling the eligibility criteria for an appointment. *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 , the prosecution could not prove that one of the two accused was a party to the conspiracy. *Arun Gulab Gawli v State of Maharashtra*, 1998 Cr LJ 4481 (Bom) mere inference cannot invite punishment.

101. *Mohd Amin v CBI*, (2008) 15 SCC 49 [LNIND 2008 SC 2255] : (2009) 3 SCC (Cr) 693.

102. *Soma Chakravarty v State*, AIR 2007 SC 2149 [LNIND 2007 SC 632] : (2007) 5 SCC 403 [LNIND 2007 SC 632] .

103. *T Shankar Prasad v State of AP*, AIR 2004 SC 1242 [LNIND 2004 SC 41] : 2004 Cr LJ 884 : (2004) 3 SCC 753 [LNIND 2004 SC 41] .

104. *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 . See also *Vinod Kumar Jain v State through CBI*, 1991 Cr LJ 669 (Del); *State of Bihar v Simranjit Singh Mann*, 1987 Cr LJ 999 (Pat).

105. *Nirmal Puri (Lt Gen Retd) v UOI*, 2002 Cr LJ 158 (Del).
106. *Iridium India Telecom Ltd v Motorola Incorporated*, AIR 2011 SC 20 [LNIND 2010 SC 1012] : 2010 AIR (SCW) 6738 : JT 2010 (11) SC 492 [LNIND 2010 SC 1012] : (2011) 1 SCC 74 [LNIND 2010 SC 1012] : (2010) 3 SCC(Cr) 1201 : 2010 (11) Scale 417 ; relied on *Standard Chartered Bank v Directorate of Enforcement*, AIR 2005 SC 2622 [LNIND 2005 SC 476] : (2005) 4 SCC 530 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961.
107. *Padam Chand v The State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .
108. *Sanjiv Rajendra Bhatt v UOI*, 2016 Cr LJ 185 : (2016) 1 SCC 1 [LNIND 2015 SC 596] .
109. *Chandran v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] : (2011) 2 SCC(Cr) 551 : (2011) 8 SCR 273 [LNIND 2011 SC 358] ; Also see *Ravinder Singh @ Ravi Pavar v State of Gujarat*, AIR 2013 SC 1915 2013 Cr LJ 1832.
110. *State of Karnataka v Selvi J Jayalalitha*, 2017 (2) Scale 375 [LNIND 2017 SC 72] : 2017 (1) RCR (Criminal) 802.
111. Section 196(2) of Code of Criminal Procedure, 1973.
112. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
113. *State of Orissa v Bishnu Charan Muduli*, 1985 Cr LJ 1573 (Ori).
114. *CR Mehta v State of Maharashtra*, 1993 Cr LJ 2863 (Bom). The Court referred to *Rameshwar Dayal v State of UP*, 1971 (3) SCC 924 : 1972 SCC (Cr) 172.
115. *BN Narasimha Rao v Govt of AP*, 1995 Cr LJ 4181 (SC), reversing AP High Court. See also *Sayed Mohd Owais v State of Maharashtra*, 2003 Cr LJ 303 (Bom).
116. *Bilal Hajar v State*, AIR 2018 SC 4780 [LNIND 2018 SC 520] .
117. *R v Chee Kew Ong*, (2001) 1 Cr App R (S) 117 [CA (Crim Div)].

THE INDIAN PENAL CODE

CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

[s 121] Waging, or attempting to wage war or abetting waging of war, against the Government of India.

Whoever, wages war¹, against the ¹[Government of India]², or attempts, to wage such war, or abets the waging of such war³, shall be punished with death, or ²[imprisonment for life] ³[and shall also be liable to fine].

⁴[ILLUSTRATIONS]

- ⁵[***] (a) A joins an insurrection against the ⁶[Government of India]. A has committed the offence defined in this section.

⁷[***]COMMENT—

Earlier the word used in section 121 was "Queen". After the formation of the republic under the [Constitution](#) it was substituted by the expression "Government of India" by the Adaption of Laws Order of 1950. In a republic, sovereignty vests in the people of the country and the lawfully elected government is simply the representative and a manifestation of the sovereign, that is, the people. Thus, the expression "Government of India", as appearing in section 121, must be held to mean the State or interchangeably the people of the country as the repository of the sovereignty of India which is manifested and expressed through the elected Government.⁸

[s 121.1] Waging war against Government.—

The concept of war embedded in section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence

days, the Illustration to section 121 itself makes it clear that "war" contemplated by section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war.⁹

Neither the number of persons nor the manner in which they are assembled or armed is material to constitute an offence under this section. The true criterion is the purpose or intention with which the gathering is assembled. The object of the gathering must be to attain by force and violence an object of a general public nature thereby striking directly against the Government's authority.¹⁰

In *Md Jamiluddin Nasir v State of WB*,¹¹ while enumerating what principles are to be kept in mind in cases, involving application of [sections 121, 122, 121A](#) read with [section 120B IPC, 1860](#) as well as [section 302 IPC, 1860](#), the Supreme Court, observed *inter alia* that not all violent behaviour would fall within the prescription of waging war as contemplated under sections 121, 121A, 122 read with section 120B. It was also found that the object sought to be achieved to make a case for the application of section 121, should be directed against the sovereignty of the State and not merely commission of a crime, even if that happens to be of higher magnitude. The concept of 'waging war' should not be stretched too far. A balanced and realistic approach should be maintained while construing the offence committed, to find out whether it amounts to waging of war against the State.

1. 'Wages war'.—The expression "waging war" means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the Government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of Government or those in possession of it yielded to the demands of their leaders.¹² An illuminating discussion on the issue of "Waging war against the Government of India" is to be found in this Court's decision in *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*.¹³ In para 272 of the judgment *P Venkatarama Reddi, J*, speaking for the Court, referred to the report of the Indian Law Commission that examined the draft [Penal Code](#) in 1847 and quoted the following passage from the report:

We conceive the term 'wages war against the Government' naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous.

The expression, "in like manner and by like means as a foreign enemy", is very significant to understand the nature of the violent acts that would amount to waging war. In "waging war", the intent of the foreign enemy is not only to disturb public peace or law and order or to kill many people. A foreign enemy strikes at the sovereignty of the State, and his conspiracy and actions are motivated by that animus.¹⁴

[s 121.2] New concept of "Waging war" and Caution against using old authorities.—

The concept of war in section 121 which includes insurrection or a civilian uprising should not be understood in the sense of conventional war between two nations or sovereign entities. The normative phenomenon of war as understood in the