

125. Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

126. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

# **THE INDIAN PENAL CODE**

## **CHAPTER V OF ABETMENT**

### **[s 120] Concealing design to commit offence punishable with imprisonment.**

**Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,**

**If offence be committed—if offence be not committed.**

**voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,**

**shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term for such imprisonment, or with such fine as is provided for the offence, or with both.**

### **COMMENT—**

**Punishment for concealing design.**—The basic principle of this section and section 118 is one and the same. Section 118 deals with offences punishable with death or imprisonment for life; this section deals with offences punishable with imprisonment. All offences except those punishable only with fine are included in these two sections.

## THE INDIAN PENAL CODE

### 1. CHAPTER V-A CRIMINAL CONSPIRACY

#### [s 120A] Definition of criminal conspiracy.

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.

#### COMMENT—

Criminal conspiracy.—This chapter has introduced into the criminal law of India a new offence, viz., the offence of criminal conspiracy. It came into existence by the Criminal Law (Amendment) Act, 1913. Offence of criminal conspiracy is an 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.<sup>2.</sup> Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. 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 by unlawful means.<sup>3.</sup> A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.<sup>4.</sup>

#### [s 120A.1] 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.<sup>5.</sup> Meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.<sup>6.</sup>

The most important ingredient of the offence being, the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them as conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under [section 120-B of the Indian Penal Code, 1860](#) (IPC, 1860).<sup>7.</sup>

### **[s 120A.2] Elements of Criminal Conspiracy.—**

- (a) an object to be accomplished,
- (b) a plan or scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.<sup>8.</sup>

**1. Two or more persons 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 v State of Bombay*,<sup>9.</sup> which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty v UOI*,<sup>10.</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." The question of a single person being convicted for an offence of conspiracy was considered in *Bimbadhar Pradhan v The State of Orissa*,<sup>11., 12.</sup> and held that It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. In the Red fort Attack Case<sup>13.</sup> the Supreme Court found that it was nothing but a well-planned conspiracy, in which apart from sole appellant, some others were also involved and convicted the sole appellant for criminal conspiracy.<sup>14.</sup> 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>15.</sup> "It seems rather odd that though husband and wife by

themselves alone cannot be convicted of an offence of conspiracy for agreeing to commit an offence but if two of them commit the self-same substantive offence they can be convicted of that offence".<sup>16</sup> Fortunately this state of law does not exist in India, where husband and wife by themselves alone can be parties to a criminal conspiracy. Where the husband is a party with some others in a conspiracy and his wife joined him in that with knowledge that he was involved with others to commit an unlawful act, she would be guilty of the conspiracy.<sup>17</sup> Since conspiracy requires at least two persons, where two or more named persons only were charged and all but one of them were acquitted, the remaining accused could not be convicted under [section 120B, IPC, 1860](#), as he could not have conspired with himself.<sup>18</sup> In a similar case before the Supreme Court, a military major was tried for theft of military goods along with nine others who were supposed to have abetted him. He was found guilty along with one more accused and the rest were acquitted. On his appeal, the High Court quashed the judgment of the Court martial because there was no proof that he had removed the wheel drums. He was reinstated. In view of the acquittal and reinstatement of the main accused, the matter of his co-accused came before the Supreme Court. He too was ordered to be acquitted and reinstated.<sup>19</sup> The same rule obtained under the English common law provided two named persons were tried together.<sup>20</sup> This rule has now been abolished by section 5(8) of the Criminal Law Act, 1977 which provides that 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 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 [section 197, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), 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>21</sup>

The circumstances in which a single person can be tried and convicted have been thus, stated in *Kenny*.<sup>22</sup> "But though there must be plurality of conspirators, it is not necessary that all should be brought to trial together. One person may be indicted, alone, for conspiring with other persons who are not in custody, or who are even unknown to the indictors. Indeed, some of the conspirators may be unknown to the rest, provided all are acting under the directions of one leader. There need not be communication between each conspirator and every other, provided there be a design common to all."<sup>23</sup> Thus, a wife knowing that her husband was involved with others in a conspiracy, agreed with him that she would join the conspiracy and play her part, it was held that she thereby became guilty of conspiracy notwithstanding that the only person with whom she actually concluded the agreement was her husband.<sup>24</sup>

**2. 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>25</sup> Meeting of minds is essential. Mere knowledge or discussion is not sufficient.<sup>26</sup> It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but the presence of an agreement to carry out the object of the intention, 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.<sup>27</sup> In the absence of an agreement, a mere thought to commit a crime does not constitute the offence.<sup>28</sup> The offence of conspiracy is a substantive offence. It renders the mere agreement to commit an offence punishable even if no offence takes place pursuant to the illegal agreement.<sup>29</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 case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter, there must be some act done by one or more of the parties to the agreement to give effect to the object thereof, that is, there must be an overt act. An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.<sup>30</sup> A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.<sup>31</sup> A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.<sup>32</sup>

The meeting of the minds to form a criminal conspiracy has to be proved by adducing substantive evidence, in cases where the circumstantial evidence is incomplete or vague.<sup>33</sup>

### **[s 120A.3] *Actus reus*.—**

The *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 a meeting of minds, a consensus to give effect to an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.<sup>34</sup>

### **[s 120A.4] Participation.—**

It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.<sup>35</sup> To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act.<sup>36</sup> Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.<sup>37</sup> The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.<sup>38</sup>

### [s 120A.5] Overt act.—

No overt act is necessary.<sup>39</sup> Where the allegation against the third accused was that he was merely standing nearby when the other accused committed the murder, he cannot be charged for an offence under [sections 302/120B, IPC, 1860](#), in the absence of any other reliable evidence.<sup>40</sup> In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement.<sup>41</sup> When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.<sup>42</sup> Where the conspiracy alleged is with regard to the commission of a serious crime as contemplated by section 120-B read with the proviso to sub-section (2) of section 120A, then the mere proof of an agreement is enough to bring about conviction under section 120B and the proof of any overt act by the accused or by any of them would not be necessary.<sup>43</sup> The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable.<sup>44</sup>

It is not an ingredient of the offence under this section that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.<sup>45</sup> Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.<sup>46</sup> It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy.<sup>47</sup> It is also not necessary that every conspirator must have taken part in each and every act done in pursuance of a conspiracy.<sup>48</sup> It is, however, necessary that a charge of conspiracy should contain particulars of the names of the place or places where it was hatched, persons hatching it, how was it hatched and what the purpose of the conspiracy was.<sup>49</sup>

In the matter<sup>50</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, 1872](#) and to bring them within the jacket of punishment of all for the act of one.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.<sup>51</sup> Thus, a conspiracy is an inference from circumstances. There cannot always be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.<sup>52</sup> It is manifest that the meeting of minds of two or more persons is a *sine qua non* but it may not be possible to establish by direct evidence. Its existence and objective can be inferred from the surrounding circumstances and parties conduct. It is necessary that the incriminating circumstances must form a chain of events, from which a conclusion about the accused's guilt could be drawn. The help of circumstantial evidence is necessary because a conspiracy is always hatched in secrecy. It becomes difficult to locate any direct evidence.<sup>53</sup> A businessman was in great need of money for completing the construction of a theatre complex. He was approached by a person who told him that his financier friend would help him with money. This was followed by a number of meetings between him and the team of financiers during which documents were executed and money released in cash which cash was found to be counterfeit currency. Every member of the team was held to be guilty of conspiracy and of cheating under section 420.<sup>54</sup> Seizure of unexplained currency notes from the possession of a person who claimed to be the owner of the money was held to be not sufficient to connect him with the person who was the main accused of smuggling currency, though he was a relative of the main accused.<sup>55</sup>

Where a bank accountant dishonestly agreed with others to conceal dishonour of cheques purchased by the bank and thus, causing risk to the economic interests of the bank, he was held guilty of conspiring to defraud whatever his motive or underlying purpose might have been (he contended that he acted in the interest of the bank) and even though he had no desire to harm the victim and no loss was actually caused.<sup>56</sup> Officials of a nationalised bank, in violation of departmental instructions, allowing advance credits on banker's cheques to the account of a customer dealing in securities. Advance credits were allowed before the cheques were sent for clearance and in some cases even before the cheques were received. This allowed the customer to take pecuniary advantage by overdrawing money from his account which he was not entitled to. Public funds were thus, misused. It was held that a criminal conspiracy between bank officials and the customer stood proved. One of them was acquitted because no conclusive evidence could be found against him.<sup>57</sup>

A criminal conspiracy can be proved by circumstantial evidence or by necessary implication. A smaller conspiracy may be the part of a larger conspiracy. It was held on facts that a criminal conspiracy was established when officials of two public sector banks acted in such a way that the transaction appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself but the transaction was in fact meant to help a private party to use public funds for private purpose.<sup>58</sup> Where the accused, an LIC agent, was charged with cheating the LIC by entering into conspiracy with the co-accused, a Development Officer, on the allegation that insurance policies were got issued on the basis of fake and forged documents and he received premium commission and bonus in respect of those policies, the accused was entitled to be acquitted because the forging was done by the co-accused without the knowledge and consent of the accused. Bonus, Commission, etc., in respect of those policies were credited to his account only in the normal course.<sup>59</sup> A 'vaid' and an 'up-vaid' who, in conspiracy with others made bogus



medical bills for government servants and got them duly passed through their Ayurvedic *Aushadhalaya* for payment of 30 per cent of the amount of the bills, were caught in a trap and the tainted money was recovered from the accused. One of the accused died during the pendency of appeal. Conviction of the other under sections 120B/468 was held to be proper.<sup>60.</sup>

A group of friends went to a club for fun and frolic. One of them (the main accused) suddenly fired at the bar mate for her refusal to serve drinks. The others were unaware of the accused carrying a loaded pistol. They had stayed at the club for about two and a half hours. The Court said that this could not constitute an evidence of conspiracy. The Court also said that the fact that the group members dispersed separately and also helped to retrieve the murder weapon would not suggest conspiracy for murder.<sup>61.</sup>

#### **[s 120A.6] Same verdict in respect of each not necessary.—**

It has been held that the rule that both parties to a conspiracy had to be convicted or acquitted has been abrogated by the Criminal Law Act, 1977 (English). The important question is whether there is a material difference in the evidence against the two.<sup>62.</sup>

#### **[s 120A.7] Sections 34 and 120A.—**

There is not much substantial difference between conspiracy as defined in section 120A and acting on a common intention, as contemplated in section 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 section 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>63.</sup> Another point of difference is that a single person cannot be convicted under section 120A and, therefore, where all the accused except one were acquitted, the Supreme Court ordered his acquittal also,<sup>64.</sup> whereas under section 34, read with some other specific offence, a single person can be convicted because each is responsible for the acts of all others.

#### **[s 120A.8] 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 section 107 an act or illegal omission must take place in pursuance of the conspiracy and a mere agreement is not enough.<sup>65.</sup>

**3. How proved ([section 120A IPC, 1860](#) and [section 10 Evidence Act, 1872-Doctrine of agency](#)).—**There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct evidence or by circumstantial evidence. But [section 10 of the Evidence Act](#) introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another and have made a partnership in crime. The said section reads: "Where there is reasonable ground to believe that two or more persons 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."

The section can be analysed as follows: "(1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a coconspirator and not in his favour."<sup>66</sup>.

Since conspiracy is often hatched up in utmost secrecy it is mostly impossible to prove conspiracy by direct evidence. It has, oftener than not, to be inferred from the acts, statements and conduct of the parties to the conspiracy.<sup>67</sup> The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.<sup>68</sup> If it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object.<sup>69</sup> It should, however, be remembered that where there is no direct evidence, for example through the evidence of an approver, and the case for the prosecution is dependent on circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy and rule out the theory of innocence.<sup>70</sup> Thus, chairman of a large cooperative society cannot be punished vicariously for the acts of others as *mens rea* cannot be excluded in a criminal case. As a chairman he had to deal with various matters and it would have been impossible for him to look into every detail to find out if someone was committing any criminal breach of trust.<sup>71</sup> Similarly, a case of conspiracy to misappropriate cash entrusted to the accused is not made out merely from the audit report without any evidence of shortage on actual verification of cash as mistakes and even double entries may be made *bona fide* while preparing the account.<sup>72</sup> The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.<sup>73</sup> One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.<sup>74</sup>

### **[s 120A.9] Inference of conspiracy.—**

It is a matter of common experience that direct evidence to prove conspiracy is rarely available.<sup>75</sup> Thus, it is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.<sup>76</sup> It can be a matter of inference drawn by the Court after considering whether the basic facts and circumstances on the basis of which inference is drawn have been