

## DECODING THE WEB OF INTRIGUE: JUDICIAL INTERPRETATION IN SHAPING CONSPIRACY LAWS IN INDIA

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### ABSTRACT

*The Indian judiciary has historically played an extremely important role in the development and establishment of laws. Once the legislative bodies have drafted and passed the laws, it is the duty of the judicial bodies to enact these laws and implement them in society. It can hence be seen that the judiciary plays a major role in the shaping of laws and the application of them in changing times to suit the dynamic and ever-changing needs and interests of the people of India. The paper focuses on the impact of English law on the creation of these pieces of legislation, the key principles of criminal conspiracy and their use in determining the liability of the accused parties, and the role played by the Indian judiciary in establishing and developing the law. Thus, it aims to understand the relationship between the decisions of the judicial bodies and the evolution of laws, and the necessity of such evolution in order for the laws to best serve the needs and demands of society, and do their utmost to protect the people. This paper aims to explore the impact of judicial interpretation on the development of criminal conspiracy laws in India, by analysing the historical roots of the law and the manner of codification, as well as by examining landmark judgements and the role played by them in the evolution of the laws. The principles set down in these judgements will also be discussed.*

**Keywords:** Conspiracy, Legal Evolution, Judiciary, Judicial Decisions.

### OBJECTIVES

To analyse the historical impact of English laws on the development of criminal laws in India

To look into the essential elements of criminal conspiracy according to Indian laws

To understand the impact of judicial decisions on the development of criminal conspiracy law in India

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## METHODOLOGY

This research paper relies on doctrinal and secondary sources, with a significant significance on online resources. The relevant legislations were also referred to, as well as landmark judgements that shaped the development of criminal conspiracy laws in India. In addition to this, secondary sources such as online articles, reports, and statistics were utilised as well. Online platforms, databases, and the websites of reputable organisations were also major resources.

## INTRODUCTION

Criminal Conspiracy is defined in the Indian Penal Code (IPC) under Section 120 A, as an agreement in which two or more people either agree to do or cause an illegal act to be done, or agree to do or cause a legal act to be done by illegal means to be done.<sup>1</sup> Section 61 of the Bharatiya Nyaya Sanhita (BNS) has carried forward this definition, leaving it unchanged.<sup>2</sup> The punishment for the above has also remained the same, stating that a party to a conspiracy to commit an offence that is punishable with death, life imprisonment, or a sentence of rigorous imprisonment for two years or more shall be punished as if they had abetted in the offence unless otherwise explicitly specified. Otherwise, a party to the conspiracy not fulfilling the above conditions shall be punished with either simple or rigorous imprisonment up to 6 months, or a fine, or both.

Journal of Legal Research and Juridical Sciences

Criminal conspiracy stands apart from the offence of abetment in both the IPC and BNS, as abetment is considered a less serious offence than conspiracy. Section 108 defines abetment as instigating a person to commit an offence intentionally aiding them in doing so, or engaging in a conspiracy to commit the offence. Abetment may be committed by a single person instigating or aiding another in the doing of an offence, while conspiracy requires the presence of at least two people. Additionally, abetment requires the act in question to actually have been performed, as opposed to conspiracy, which requires only the agreement to do so as well as an attempt to carry it out in order to be considered an offence. Thus, while conspiracy may appear to be similar to abetment, they are entirely distinct offences with distinct punishments.

The essentials of Criminal Conspiracy under Indian Law are (i) the existence of an agreement, (ii) two or more persons, and (iii) the doing of an illegal act, or a legal act by illegal means. All

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<sup>1</sup> Indian Penal Code, 1860

<sup>2</sup> Bharatiya Nyaya Sanhita, 2024

of these elements must be present in order for the offence to be classified under the charge of criminal conspiracy in India.

## RESEARCH QUESTIONS

How has English law influenced the development of conspiracy laws in India?

What are the key principles of criminal conspiracy as established in Indian legislation?

How have Indian courts defined the essential elements of criminal conspiracy under Section 120 A, B of the Indian Penal Code?

## INFLUENCE OF ENGLISH LAW ON THE DEVELOPMENT OF CONSPIRACY LAW IN INDIA

Pre-Independence, the English codified and implemented various pieces of legislation for the country of India, which were developed in accordance with their own legal system and followed their principles. Thus, the roots of Indian law are deeply entrenched in England, though many have taken on their own forms to better suit Indian society and cultural norms. The Indian legal system still tends to follow the laws that have been enacted by the English rule.<sup>3</sup> Some of the laws that we still follow are the Police Act, of 1861 (which governs the duties of the executive/police), the Transfer of Property Act, of 1882 (which establishes guidelines for the transfer of property), the Foreign Act, of 1946 (which establishes rules and regulations for the foreigners in India), the Indian Contract Act, 1872 (which establishes the principles and enforcement of contracts in India), the Specific Relief Act, 1877 (which helps to recover or get relief for the immovable property), the Indian Partnership Act, 1932 (which establishes principles and guidelines for the smooth functioning of partners in a firm), and the Indian Ports Act, 1908 (which governs the ports of India). The Indian Penal Code 1860 (which defines the criminal liabilities) and the Indian Evidence Act, 1872 (which regulates the admissibility of evidence in courts) did fall under this category until recently, when they were repealed and replaced by the Bharatiya Nyaya Sanhita and Bharatiya Sakshya Adhiniyam respectively in July 2024.

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<sup>3</sup> Richa Taneja, 'Independence Day Special: Legal System under British Colonial Rule in India' (Bar and Bench, 15 August 2021) <https://www.barandbench.com/columns/independence-day-special-legal-system-british-colonial-rule-in-india> (Accessed 17 July 2024.)

The history of criminal conspiracy developed in the case of Poulterer's Case, (K.B. 1611). This case acts as a cornerstone in the legal understanding of criminal conspiracy. This landmark judgement explained the definition of criminal conspiracy and was decided in the Star Chamber of England in the year 1611. The basic definition and principles of conspiracy were decided in this case. It was said that “an agreement between two or more people to commit an unlawful act or to commit a lawful act by unlawful means is known as criminal conspiracy”. This is the first historical case that gave birth to the term criminal conspiracy. It set a precedent in English law and the principles laid down in this case acted as a foundation for the development of criminal conspiracy law.<sup>4</sup> Later, these principles were cited in various landmark judgments.

The law of conspiracy was developed by the British Empire in India. Despite the fact that colonial rule in India came to an end in late 1947, the legal system of India still has its roots in English legislation.

The principles were elaborated further in the case of *Kehar Singh v Delhi Administrative* [1988] (3) SCC 609<sup>5</sup>. In this landmark judgement, the apex court ruled that agreement between the conspirators constituted criminal conspiracy under section 120B of IPC 1860, and it was also said that even if the planned offence was not executed, it would still amount to criminal conspiracy.

## ESSENTIALS OF CRIMINAL CONSPIRACY IN INDIA

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The word ‘conspiracy’ has its roots in Latin the n ‘conspire’, meaning to ‘be in harmony’. Thus, conspiracy has been defined as two or more people coming to an agreement to do an illegal act or do a legal act in an illegal manner. A conspiracy cannot exist without the existence of the agreement, and the intention of that agreement must lie in the minds of all parties. Criminal Conspiracy as defined in Indian law comprises three elements: an agreement, two or more people, and the doing of an illegal act or a legal act illegally.

### **An Agreement**

In order to prove the existence of a conspiracy, it is essential to prove the existence of an agreement reached between the accused parties. Such agreement must also be proved to have

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<sup>4</sup> Surya Deva, 'Understanding Criminal Conspiracy under IPC Section 120B' (SSRN, 2024) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4873984](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4873984) (Accessed 17 July 2024.)

<sup>5</sup> *Kehar Singh v Delhi Administrative* [1988] (3) SCC 609 (Accessed 17 July 2024.)

given rise to the doing of the act in question. Though each individual may not be aware of every minute detail, they all must have knowledge of the overall intention to do the task and intend to cooperate to achieve that goal. It must be proved that the agreement exists beyond reasonable doubt, as mere suspicion of an agreement does not amount to proof of a conspiracy, though direct evidence of the same may not always be necessary.

### **Two or More People**

By its very nature, conspiracy requires the cooperation of at least two people. An agreement cannot be reached with a lone person, and thus any offence committed in such a manner cannot fall under conspiracy. Additionally, all parties must have willingly and knowingly been a part of this agreement, or their involvement would not render them liable under a conspiracy. All conspirators must be aware of their involvement and the intention to do the act, which may either be an illegal act or a legal act done illegally. If it is found that not all the individuals were in truth part of the agreement, and only one remains, the offence cannot be termed a conspiracy.

### **Doing an Illegal Act or a Legal Act Done Illegally**

The final element of conspiracy is the act itself. A conspiracy cannot be termed as such if the final act is to do an entirely lawful act in a lawful manner, even if the other essentials are satisfied. The would-be conspirators must possess the intention to commit an act that is either naturally legal or ordinarily legal but is planned to be done in a way that is illegal. Each of them must possess knowledge of the overarching intention and willingly contribute to it.<sup>6</sup> A conspiracy only exists once the agreement has been made and the conspirators begin to act in accordance with their plans.<sup>7</sup> Thus, in order for the existence of a criminal conspiracy to be proved, it is necessary to establish the applicability of each of the elements explained above. Without the presence of all of these, the offence may not be termed a conspiracy. Conspiracies are also often carried out along with other crimes, in which case the offence would be read with the other relevant sections

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<sup>6</sup> 'Understanding IPC Section 120B: Criminal Conspiracy and Its Implications' (De Facto Law, 23 October 2020) <https://www.defactolaw.in/post/understanding-ipc-section-120b-criminal-conspiracy-and-its-implications> (Accessed 17 July 2024.)

<sup>7</sup> 'Understanding IPC Section 120B: Criminal Conspiracy and Its Implications' (De Facto Law, 23 October 2020) <https://www.defactolaw.in/post/understanding-ipc-section-120b-criminal-conspiracy-and-its-implications> accessed 17 July 2024.

## **ROLE PLAYED BY COURTS IN INDIA IN DEFINING CRIMINAL CONSPIRACY**

The Indian judicial system has defined the various elements of criminal conspiracy with the help of established case laws or precedents, let's delve into some case laws to see the judicial interpretation of criminal conspiracy law.

In the instant case of *Ram Narain Popli v Central Bureau of Investigation* [2003] AIR 2003 SUPREME COURT 2748, the apex court held that evidence of the agreement between two or more individuals to do an illegal act or an act by illegal means is sufficient to make the individuals liable under the provisions of section 120B, it also stated that circumstantial evidence may also be a necessary element to make persons liable under this provision<sup>8</sup>. Subsequently in the case of *Kehar Singh and Ors v The State (Delhi Administration)* [1998], AIR (1988) SC 1883, the apex court of India explained that the circumstantial evidence be used to prove the conspiracy and that it was not necessary for a person to show an explicit agreement to make person under the provisions of conspiracy, nor were the exact words of communication is necessary to act as evidence. It was also said in the instant case that the court determined whether the parties involved were pursuing a common unlawful act, and if proved that the above was true, they would be held liable under the said provision.<sup>9</sup>

Also, in the case *State of Bihar v Paramhans* [1987] (35)BLJR 127, the Patna High Court held that in order to make a person liable under the provisions of conspiracy, the parties involved should have knowledge of the illegal act. The intent to use goods or services unlawfully could be determined from this knowledge, and it was not necessary to prove that the specific unlawful use was intended.<sup>10</sup>

Later, in the case *State of Maharashtra v Som Nath Thapa* [1996] AIR 1744, the Apex Court held that if conspiracy involved multiple actions it was not necessary for every conspirator to know each and every detail of the plan, and it was sufficient evidence if it was shown that each conspirator knew that their actions would contribute to unlawful purposes. The Apex court also held that if a person is contributing to an individual to commit an offence even then he will be charged under criminal conspiracy though the contribution is not major still he will be held

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<sup>8</sup> *Ram Narain Popli v Central Bureau of Investigation* [2003] AIR 2003 SUPREME COURT 2748 (Accessed on 17.07.2024)

<sup>9</sup> *Kehar Singh and Ors v The State (Delhi Administration)* [1998], AIR (1988) SC 1883 (Accessed on 17.07.2024)

<sup>10</sup> *State of Bihar v Paramhans* [1987] (35)BLJR 127 (Accessed on 17.07.2024)

liable for the same <sup>11</sup>this principle was sighted in the case of Mohd Arif v State of NCT of Delhi, JT 2011 (9) SC 563 this case is also famously known as “Red Fort Attack Case” in this case the Apex Court found that it was a well-planned attack which is not done by a sole person but also involved various other persons so the question of fact was whether the persons who contribute partially will be charged under the provisions of criminal conspiracy it was that people who contributed to an offence will be charged under the provisions of criminal conspiracy, this case law leaves a landmark principle that partially contributing to an illegal act can be charged under the provisions of criminal conspiracy<sup>12</sup>. With the help of various case laws interpreted by the courts above we can clearly understand the scope and meaning of criminal conspiracy laws.

## CONCLUSION

It is an undeniable fact that the judicial system plays an integral role in the development of laws, and part of its duty lies in ensuring that the coded legislation continues to serve the interests and needs of the people as best possible. As India follows a common law system, judgements made by courts act as protected and can act as codified laws for the future. Thus, the legal system is ever-changing and ever-changing and is able to meet the requirements of society.

As seen in the paper, both the English courts and Indian courts have played an important part in the creation and development of criminal conspiracy laws in India, and their influence is clearly visible. Though the laws have their genesis in England, they have been adapted and modified to fit the Indian context, and they aim to serve the Indian public. In addition to this, the essentials of criminal conspiracy have time and again been specified and adhered to. If the essentials are not satisfied, the offence cannot be termed a conspiracy. This also aids in the promotion of justice and fairness and ensures that no one is punished unfairly, and each person is given their just treatment.

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<sup>11</sup> State of Maharashtra v Som Nath Thapa [1996] AIR 1744 (Accessed on 17.07.2024)

<sup>12</sup> Mohd Arif v State of NCT of Delhi, JT 2011 (9) SC 563(Accessed on 17.07.2024)