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LECTURE-28

Criminal Conspiracy

Criminal Conspiracy can be defined as an act when two or more persons agree to do or cause to do:

1. Any illegal act.
2. Any act which is done through illegal means.

It is important to note that the objective to do such a crime is very important in this act. In the case of [Mulcahy v. Regina](#), it was said that the criminal intent of doing an act is very indispensable from constituting an act of conspiracy. In [Rex v. Jones](#), it was first held that “Criminal Conspiracy ought to charge a conspiracy, either to do an unlawful act or a lawful act by unlawful means”. The idea of intent extends in various cases in national and international law. Many have argued on the constitution of the ‘unlawful’ act. The real meaning to that is still getting scrutinised by the courts, however, we can still count that as anything which is against the law.

Brief History of the Law of Conspiracy in India

Criminal conspiracy was considered a civil offence, initially. The idea behind this was two-fold:

1. Abetment in any offence; or
2. Conspiracy with criminal intent.

But later on, it began to be considered as a criminal offence. In 1868, the scope was widened by adding it to Section 121A of the Indian Penal Code, 1862. The history of criminal conspiracy has evolved through a series of cases.

Ingredients of Section 120A, Indian Penal Code 1860

In [Rajiv Kumar v State of UP](#), the court took out some basic necessary ingredients in order to constitute conspiracy,

1. There must be two or more persons;
2. There must be an illegal act or an act in an illegal way;
3. There must be a meeting of minds;
4. There must be an agreement regarding the same thing.

The ingredients must be present in any act in order to constitute it as a crime of criminal conspiracy. In Pratapbhai Hamirbhai Solanki v. State of Gujarat and another, the apex court held that the most important ingredient is the intent to cause an illegal act.

Nature and Scope of the Law of Conspiracy in Section 120A, Indian Penal Code 1860

The nature and scope of Criminal Conspiracy are limited to conspiring to do an illegal act by two or more persons. No one person can constitute the offence. It requires two or more persons to agree to do some act. The underlying purpose of the Sections was to prevent any illegal act from happening before the constitution of a criminal act. The nature of the sections is preventive. It helps in the prevention of any criminal activity. The next step after this stage is the performance of the act. So, the scope of the law is only limited to agreement and meeting of minds with regards to a criminal act.

In Ram Narayan Popli v CBI, the court laid down several aspects 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.

Proof of Conspiracy

The crime is inherently psychological in nature. The proof of such an act is also difficult. It can be ascertained by the fact that some act was kept a secret. However, this does not constitute an essential element of the conspiracy. It can be done through:

1. Direct Evidence or;
2. Circumstantial Evidence

It was held in the case of Quinn v. Leathern, that inference is generally deduced from the acts of the parties in pursuance of the predetermined acts. In such a crime, circumstantial evidence and direct evidence turn out to be the same because there has not been an act, yet. The act is only being conspired.

The Doctrine of Agency also comes into play in this scenario. The fact that there was an agency in the conspiracy may prove that there was involvement of this person in the act. This was held in Bhagwan Swaroop Lai Bishan Lai v. State of Maharashtra.

Nature and Scope of Section 120B

Section 120B specifies the punishment given to the persons convicted for the crime of conspiracy. They may be punished with death or rigorous imprisonment. The nature of this section is punitive. The scope of this section is limited to providing punishments after the accused has been convicted.

Effect of Acquittal of Accused

In the case of Topan Das v State of Bombay, the court held that the person must not be alone in conspiring for the offence. The accused was acquitted from the case because he was the sole person who had conspired for the crime. The acquittal of this case meant that the person was liable for all the other offences that had been committed and proved.

Framing of Charge

Charges are framed on the basis of the nature and magnitude of the crime. The accused is often charged with a substantive offence and along with that, is also charged for criminal conspiracy. In State of Maharashtra & Ors. v. Som Nath Thapa & Ors., it was said that the charges will be framed only if the person was aware of the co-conspirators and their motives. Since there is no way that the crime can be proved beyond a reasonable doubt, it is necessary to understand that there is a deemed presumption of the offence if there are overt actions to prove it.

Difference between Section 120B and Section 107, Indian Penal Code 1860

Section 107 of the Indian Penal Code, 1860 states the offence of Abetment. The section states that:

1. If a person is aiding in an illegal act;
2. Instigates a person to do an illegal act;
3. Engages in a conspiracy and an act is performed in pursuance of the conspiracy.

Section 120B is suggestive of the punishment of conspiracy. The basic difference lies in the fact that in one case, there just needs to be a meeting of minds in order to do an illegal act, abetment requires an act in pursuance of the agreement.

Another point is that abetment involves aiding in a crime or a conspiracy, whereas criminal conspiracy just requires a meeting of minds.

MCQs-

i. In which of the following cases did the jury find D had done an act which was more than merely preparatory to the commission of the offence?

- a. Jones (1990)
- b. Gullefer (1990)
- c. Geddes (1996)
- d. Campbell (1991)

ii. What is the mens rea of attempted murder?

- a. Recklessness to kill.
- b. Recklessness to kill or cause serious harm.
- c. Intention to kill or cause serious harm.
- d. Intention to kill.

iii. For the element of agreement to be met for the crime of conspiracy, there must be:

- A written contract that the conspirators will work together to accomplish the goals of the conspiracy
- An agreement to work together to accomplish an illegal or criminal goal

- An overt act
- At least four criminal actions

iv. The overt act element of a conspiracy must be:

- Completed in the presence of a witness
- Participated in by every member of the conspiracy
- An actual step toward achieving the goal of the conspiracy
- A substantial step toward achieving the goal of the conspiracy

v. A unilateral conspiracy occurs when:

- There is only one person in the conspiracy
- One party doesn't actually agree with the conspiracy's goals, but the other conspirator believes that there was in fact an agreement
- A conspirator enlists the help of another country

- Only one conspirator is brought to trial for the crimes committed