CRIMINAL CONSPIRACY
[SECTION 120 A- 120B]

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• In 1913, by amendment criminal conspiracy added as a general offence.
• Earlier abetment by conspiracy was there before the 1913 but criminal conspiracy as a general offence was not there.
• Section 120 A-

\[
\begin{align*}
\text{Agree to do} & \quad \text{cause to be done} \\
\text{By themselves} & \quad \text{done by some other 3rd person}
\end{align*}
\]

- OFFENCE
  - ILLEGAL ACT
  - PROHIBITED BY LAW
  - GROUND FOR CIVIL ACTION
• **Prohibited by Law:**
  1. They agree to demand dowry.
  2. They agree to smuggle gold in India.
  3. They agree to atrocities against weaker.

• **Civil action:**
  1. Tort
  2. Offence under IPC: Agreement to commit criminal act and agreement to commit civil wrong.
  3. Act is not illegal but the means is illegal. E.g. A landlord wants to vacate the premises by the tenant since tenancy period is over. Landlord may go to court. But landlord make agreement with street gundas to throw out his belongings. So, the act is not illegal but the means he adopted is illegal. Hence it come under criminal conspiracy.
• Explanation: for a criminal conspiracy it is not necessary that the ultimate object of the act is illegal rather even if the means to which they have agreed is illegal, it will amount to a criminal conspiracy.

• Explanation:
  - Mere agreement to commit the offence is sufficient. Proviso will not be applied.
  - Apart from agreement it is also to be proved that one of the conspirator did an act in pursuance of that agreement.
• In general in cases of criminal conspiracy it is said that agreement is a gist of criminal conspiracy i.e. Agreement is actus reus for criminal conspiracy that is the mere agreement would be sufficient for criminal conspiracy. However it is not true about all criminal conspiracy. As per the proviso this would be true only about the conspiracy to commit an offence. But if the conspiracy is to commit an act prohibited by law or to do a civil wrong then in such case some act or omission should have been done by either of the parties in pursuance of the conspiracy. It can be any preparatory act towards the object of agreement and not necessarily the ultimate object.

• E.g. To buy the music system (preparation) for creating nuisance as A & B were agreed to create nuisance against C.

• In case of an agreement to commit an offence the actus reus is the agreement itself but in the case of civil wrong or something prohibited by law, the actus reus is some act or omission committed in pursuance of that agreement.

And when you say an agreement, common intention is implicit in it.
• Mens Rea- common intention
• E.g. A & B agreed to do an offence. Essentials: agreement (actus reus), common intention (mens rea)
• Difference between section 34 and section 120 A:
• Whenever two or more person agree to commit an offence, it will be said that they have formed a common intention to commit that offence and even nothing more is done by either of them they will all be held liable for criminal conspiracy on the basis of mere agreement and common intention.
• On the other hand for section 34, there should be common intention between two or more persons and one of them in furtherance of that common intention has committed that offence whereas the others were actively participation at the time of the commission of the offence then all the others will be held constructively liable for the main offence read with section 34.
• Criminal conspiracy [There has to be clear agreement between the parties and not by conduct]
A: Murder (in the house)
B: Guarding from outside
C: Waiting for A & B standing on road (bike)

A commits offence himself
B - C [U/Sec. 120B]

(Criminal Conspiracy)
A-B-C [U/Sec. 120B]

B & C actively participated
as B & C are constructively liable for murder. Hence section 302 shall charged.
Both party should have intention. Mere knowledge is not sufficient to held

intention & not knowledge

Abdul Gilani acquitted as there was no evidence against him for criminal

intention.

Parliament attack case (2001): Knowledge is distinct from common

knowledge and not intention.

For e.g. A used to say daily that I am going to kill C. B is the room partner

preparation. B shall not be liable for criminal conspiracy. B had mere

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parliament attack case. Knowledge is distinct from common intention.
• A mere knowledge is not sufficient for common intention. Common intention requires a distinct agreement i.e. Meeting of mind to do the thing together whereas a mere knowledge does not manifest meeting of minds to do that things together. Knowledge on its own cannot create a liability for its criminal conspiracy.

• Thus, it is clear that mere knowledge is not sufficient for criminal conspiracy rather there has to be common intention.

• Burden lies upon prosecution to prove that there was not merely knowledge that offence may be committed rather there has to be a clear proof of common intention (agreement) to commit the offence together or committed by someone else.
• Section 107 [Secondly]- abetment by criminal conspiracy.
• Engages in conspiracy [not criminal conspiracy] means engages in an agreement.
• Two or more persons agrees to do an act
• Doing of that thing means offence [abetment shall always be of offence and not of any civil wrong or any prohibition by law].
• E.g. A & B make an agreement to kill X in 1905. whether they are punishable for an agreement or not? Answer is no because for abetment of conspiracy there should be an act or illegal omission in pursuance of that conspiracy. Before 1913, no criminal liability for any conspiracy of an act prohibited by law or any civil wrong.
• So to broaden the scope of criminal conspiracy, section 120 A was inserted.
• This law made for the purpose of colonial agenda. Just agreement led to crime.
Difference between Section 107 (secondly) & Section 120A

- Criminal conspiracy under Section 120A is broader as compared to section 107 (secondly) read with section 108. In section 107 (secondly) the agreement can be only for an offence and the criminal liability for abetment by conspiracy will arise only upon some act or illegal omission committed by either of them in pursuance of criminal conspiracy. Moreover section 107 (secondly) does not include the cases of agreement to do an act prohibited by law or a civil wrong. Whereas section 120A includes both of them and also it punishes the criminal conspiracy to commit an offence per se even if no illegal act or omission has been committed in pursuance thereof. In the cases of criminal conspiracy to commit a civil wrong or an act prohibited by law, it is essential that one of the party should have committed some act or illegal omission in pursuance thereof.
Procedural Aspects

• Section 196(2) CrPC- If the conspiracy is of offence punishable with 2 years rigorous imprisonment or more or death sentence or life imprisonment then no consent shall be required. [Punishable as if he has abetted the offence section 120B]

• For other offences- consent is required by State Government or District Magistrate.

• < 2yrs of rigorous imprisonment or >/ 2yrs simple imprisonment or prohibited by law or civil wrong.
Section 120 B

120B (1)

>/ 2YRS/ L.I/ death/ rigorous

No consent is required

Punishable as if he has abetted the offence

120B (2)

< 2yrs rigorous/ > 2yrs simple/ prohibited by law/ civil wrong

Consent of SG or DM is required

Punishment- 6months.
• Offences which are incomplete but still the offender will be liable and offence shall be punishable.
• Inchoate offences are those offences which are incomplete offences and accused is made liable as a matter of policy even though the offence is not complete.

• DECISION- There may be some circumstances which are a step before the desired offence but still the policy of law is to punish the accused for that much of act only so as to prevent some bigger offence from being committing. In case of criminal conspiracy, the purpose of section 120A & 120B is to prevent the uncontrollable power that the combination of persons acquires for the purpose of committing an offence.

• Policy of criminal conspiracy- Combination of persons+ To stop it at initial stage.
• Can a single person commit criminal conspiracy with himself? No.
• 5 accused in this case [A, B, C, D & E]. C, D & E acquitted on ground of alibi. B turned Government approver under Section 306 of CrPC and grant pardon. Now A single tried and convict for conspiracy. The court held that A alone convicted for criminal conspiracy.
• Thus, a person cannot alone be convicted for criminal conspiracy as he cannot conspire with himself but if it is proved that the accused had conspired with someone else even though that other person is not in trial and cannot be convicted for some technical reason, a single accused can be convicted for criminal conspiracy.
• E.g. A and B criminal conspired together. B absconded. Trial conduct only against A and if it is proved that he was involved with B in criminal conspiracy then he alone will be punished.
• A make an agreement as such to enter into a criminal conspiracy with B who is of unsound mind. Here A took defence that minor cannot give consent for any agreement. In this case also, it will be seen whether A was agreed for criminal conspiracy or not? If yes then he will be liable for alone.

• Even an agreement with minor or unsound person will amount to a criminal conspiracy and the fact that the minor or unsound person technically was incapable of giving consent and hence in the real sense no agreement could have been formed, will not play any role and the other party will be held liable for criminal conspiracy. [As a matter of policy, he should be punished].
General and Particular Conspiracy

- Big Conspiracy (General)
- Conspiracy for let’s say A & B (Particular)

It may be possible that one of the group or person have no link with other person and had agreed with just one person. Even if they have no knowledge of larger goal then also liable for supplying weapons.
• Case: **Nalini v. State of Tamil Nadu [1994 SC]**- Rajeev Gandhi Assassination case- It was held that even if a person did not know all the details of the conspiracy and did not know all the other members of conspiracy, if he has engaged himself in some pert of the conspiracy with the knowledge and intention of some criminal purpose of the agreement then he will be held liable for the main conspiracy.

• Common intention under section 120 A: There should be distinct and express agreement. There should be express exchange of communication.

• Common intention under section 34: can be even through conduct at the spot.
In those cases, where agreement was formed on the spot by conduct and there was no distinct formal entering into agreement by them, then section 34 may apply but section 120A will not apply. In order to make a person liable for criminal conspiracy, it is essential that there should be some proof of distinct oral or written agreement between the parties by exchange of communications to commit the wrong.