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Criminal Conspiracy and the Problem of Agreement: Reassessing the Mens Rea of Conspiracy under Indian Law

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Abstract

Criminal conspiracy occupies an unusual position within the architecture of Indian criminal law because the law criminalises an agreement before the contemplated substantive offence is necessarily attempted or completed. The Bharatiya Nyaya Sanhita, 2023 (BNS) consolidates the former provisions of sections 120A and 120B of the Indian Penal Code, 1860, in section 61 and introduces the expression "common object" into the statutory definition. This textual development raises an important question: what precisely constitutes the mental element of conspiracy, and how should courts distinguish a punishable agreement from mere knowledge, association, discussion, parallel conduct or a shared desire that an offence be committed? This article reassesses the mens rea of criminal conspiracy in Indian law. It argues that conspiracy should not be understood simply as a derivative form of intention or as a loose inference of common criminal purpose. Its distinctive culpability lies in a combination of intentional participation in an agreement and conscious commitment to the unlawful object of that agreement. The article examines the relationship between agreement, intention, knowledge and participation; analyses the significance of "common object" in section 61 BNS; and considers the evidentiary consequences of the largely circumstantial nature of conspiracy prosecutions. It further examines the interaction between section 61 BNS and section 8 of the Bharatiya Sakshya Adhiniyam, 2023. The article contends that courts should maintain a disciplined distinction between proof that an accused shared circumstances with conspirators and proof that the accused intentionally joined the unlawful agreement. A principled approach should require proof of concurrence with the common object, while permitting that concurrence to be established by a coherent body of direct or circumstantial evidence. Such an approach preserves the preventive rationale of conspiracy without allowing the offence to collapse into guilt by association.

Keywords: Criminal Conspiracy; Mens Rea; Agreement; Common Object; Bharatiya Nyaya Sanhita 2023; Circumstantial Evidence

1. Introduction

Criminal law ordinarily distinguishes between a person's thoughts, intentions, and external conduct. A desire to commit a crime is generally not punishable merely because it exists in the mind. Criminal liability normally requires the convergence of a legally prohibited act and the mental state prescribed

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by law. Criminal conspiracy is an important exception to this ordinary sequence. It permits the criminal law to intervene at the stage of collective agreement, before the substantive unlawful objective has necessarily been attempted or achieved.

The justification is familiar. Collective criminality can multiply the capacity of individuals to commit harm. A group can divide tasks, obtain resources, conceal preparation and increase the probability of successful execution. From a preventive perspective, therefore, the law may regard the formation of an unlawful agreement as sufficiently dangerous to justify independent criminalisation. Indian law has long adopted this approach. Under the Indian Penal Code, 1860 (IPC), sections 120A and 120B treated conspiracy as an independent offence, and the Supreme Court repeatedly emphasised that the essence of conspiracy is the agreement rather than the completion of the contemplated crime (Kehar Singh 1988; Ajay Aggarwal 1993; R. Venkatakrishnan 2009).

The enactment of the Bharatiya Nyaya Sanhita, 2023 has not abandoned that basic architecture. Section 61 consolidates the definition and punishment provisions previously contained in sections 120A and 120B IPC. Yet the new provision is not textually identical. It provides that when two or more persons "agree with the common object" to do or cause to be done an illegal act, or an act which is not illegal by illegal means, the agreement is designated a criminal conspiracy. The introduction of the phrase "common object" is significant because it invites renewed attention to the precise mental relationship required between the participants.

The central problem is therefore one of legal characterisation. If agreement is the actus reus of conspiracy, what constitutes its mens rea? Is it enough that an accused knows of an unlawful plan? Is participation in meetings sufficient? Can knowledge of the criminal activities of others be converted into an inference of agreement? Does simultaneous pursuit of the same unlawful end establish conspiracy? Or must the prosecution prove a conscious decision by the accused to associate with and advance the common unlawful object?

Indian case law has repeatedly warned against treating mere knowledge, discussion or association as conspiracy. In Kehar Singh v State (Delhi Administration), the Supreme Court stressed that persons independently pursuing the same end are not necessarily conspirators and that the conduct relied upon must mark concurrence with the unlawful design (Kehar Singh 1988). In R. Venkatakrishnan v CBI, the Court described agreement between two or more persons as the quintessential ingredient and reiterated that a conspiracy may be inferred from circumstantial evidence because it is ordinarily hatched in secrecy (R. Venkatakrishnan 2009). More recently, the Supreme Court has reaffirmed that an accusation of conspiracy must at least disclose a meeting of minds and that agreement on the design or object remains essential (Ram Prakash Chaddha 2024).

This article argues that the most coherent understanding of conspiracy under section 61 BNS is neither purely objective nor excessively subjective. The offence requires a legally relevant agreement and a culpable mental commitment to the unlawful common object. The prosecution need not prove the actual words of the agreement, nor a formal meeting, nor identical knowledge of every detail. But it must establish, beyond reasonable doubt, that the accused intentionally joined the unlawful design rather than merely knowing about it, being present around it, benefiting from it, or independently acting in a manner consistent with it.

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The article proceeds in six principal stages. First, it traces the statutory development from sections 120A and 120B IPC to section 61 BNS. Secondly, it separates actus reus from mens rea and explains why agreement cannot be treated as a purely mental phenomenon. Thirdly, it analyses the significance of "common object" and the forms of culpable mental state relevant to conspiracy. Fourthly, it examines the evidentiary problem created by secret agreements and circumstantial proof, including section 8 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA). Fifthly, it identifies the risks of over-criminalisation and guilt by association. Finally, it proposes a structured judicial test for determining when the evidence establishes conspiracy.

2. Research Questions and Methodology

This article addresses four connected questions:

First, what is the precise mens rea required to establish criminal conspiracy under section 61 BNS?

Secondly, what legal significance should be attached to the statutory expression "agree with the common object," particularly in distinguishing conspiracy from knowledge, common intention, abetment and parallel criminal conduct?

Thirdly, how should courts evaluate circumstantial evidence where the agreement is not expressed in words and no direct evidence of communication exists?

Fourthly, how can the law preserve the preventive value of conspiracy without lowering the threshold of criminal responsibility to guilt by association?

The article adopts a doctrinal and analytical methodology. It examines the statutory language of section 61 BNS alongside the former sections 120A and 120B IPC, the relevant provisions of the BSA, and leading Supreme Court decisions concerning agreement, meeting of minds, circumstantial proof and evidentiary safeguards. The analysis is primarily conceptual: it seeks to clarify the relationship between the external element of agreement and the internal element of intentional participation. The article does not attempt an empirical assessment of conspiracy prosecutions.

3. From Sections 120A and 120B IPC to Section 61 BNS

The law of criminal conspiracy in India historically developed through the IPC's separate definition and punishment provisions. Section 120A IPC defined conspiracy as an agreement between two or more persons to do, or cause to be done, an illegal act or an act which was not illegal in itself by illegal means. Its proviso distinguished agreements to commit an offence from other unlawful agreements by requiring an act in pursuance of the agreement in the latter category. Section 120B supplied the punishment.

The BNS restructures this framework. Section 61 contains both the definition and punishment provisions. Subsection (1) provides that when two or more persons agree "with the common object" to do or cause to be done an illegal act, or an act which is not illegal by illegal means, the agreement constitutes criminal conspiracy. The proviso continues the important distinction between

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agreements to commit an offence and other unlawful agreements. Subsection (2) prescribes the punishment structure.

The continuity is therefore substantial. The core offence remains agreement-based. The substantive offence contemplated by the agreement need not be completed. The Supreme Court's established proposition that conspiracy is complete upon the requisite consensus remains important to the interpretation of the new provision, subject to the precise wording of section 61.

At the same time, "common object" deserves careful treatment. It should not be read mechanically as importing the doctrine of common intention under section 3(5) BNS or the law of unlawful assembly. Those doctrines address different forms of collective liability. Conspiracy concerns the prior or continuing agreement to pursue an unlawful object; common intention concerns joint liability for an act done by several persons in furtherance of a shared intention; unlawful assembly liability rests upon statutory rules concerning a common object and membership of an assembly.

The phrase "common object" in section 61 is better understood as reinforcing the requirement that the agreement must have a shared unlawful destination. It does not eliminate the need for agreement, nor does it make every person who knows of an unlawful object a conspirator. If anything, it supplies a useful textual reminder that the prosecution must identify what the participants agreed to accomplish and demonstrate the accused's concurrence with that object.

The proviso is equally significant. Where the agreement is to commit an offence, the agreement itself is sufficient. Where the agreement concerns an act that is not illegal in itself but is to be achieved by illegal means, the statutory structure requires an act beyond the agreement in pursuance of it. This distinction prevents the offence from becoming entirely detached from external conduct in cases where the object is not itself an offence.

The statutory architecture therefore reflects a graduated conception of criminalisation. At its core is the agreement to pursue an unlawful object. The more the object and means are removed from an independently criminal end, the more the law requires an external act before liability crystallises.

4. The Conceptual Problem: Is Agreement Actus Reus, Mens Rea, or Both?

The language of conspiracy creates an unusual relationship between conduct and mental state. In many offences, the physical act is straightforwardly observable: taking property, causing injury, making a false document or entering prohibited premises. In conspiracy, however, the conduct constituting the offence is itself an agreement. Agreement necessarily involves communication, coordination or some other manifestation of concurrence, and it is usually accompanied by intention.

It is therefore tempting to collapse actus reus and mens rea. That would be analytically undesirable. The legal system must still distinguish between the existence of an agreement and the mental state with which a person participates in it.

The actus reus may be described as the accused's joining or entering into the agreement with at least one other person. It can be express or implied. It may be established through words, communications, conduct, transactions, coordinated acts or other circumstances demonstrating

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concurrence. The Supreme Court has repeatedly held that the actual words of the agreement need not be proved and that the agreement may be inferred from conduct and circumstances (Kehar Singh 1988; R. Venkatakrishnan 2009).

The mens rea is different. The accused must intentionally associate with the agreement and possess the requisite awareness of its unlawful object. A person cannot ordinarily be guilty merely because an unlawful plan exists and the person happens to know about it. Nor should passive presence at a meeting or an innocent commercial or social relationship be converted into intentional participation.

This distinction matters because circumstantial evidence can prove both elements, but the inference must be logically directed to each. Evidence that an accused knew that others intended to commit a crime may establish knowledge. It does not automatically establish agreement. Evidence that the accused performed an act helpful to the conspirators may establish assistance. It does not automatically establish prior agreement. Evidence that the accused shared a desire for the outcome may establish a common wish. It does not necessarily prove a commitment to a particular criminal design.

The Supreme Court's formulation in Kehar Singh remains instructive. It distinguished between persons independently pursuing the same end and persons who have come together to pursue the unlawful object. The former does not render them conspirators; the latter does. The Court also emphasised that conduct must be conscious and sufficiently clear to mark concurrence rather than being a collection of innocuous incidents arranged retrospectively into a theory of guilt (Kehar Singh 1988).

Accordingly, the mens rea of conspiracy should be framed as intentional concurrence. It contains at least two connected dimensions: knowledge of the essential unlawful object and a voluntary decision to join the agreement directed toward that object. The accused need not know every operational detail. A conspiracy can be fluid, and different participants may perform different functions. But there must be proof that the accused consciously became a participant in the common unlawful design.

This approach also explains why conspiracy is different from mere intention. Intention to commit an offence, standing alone, is generally not criminal. Conspiracy adds the relational element of agreement. Conversely, agreement without culpable awareness would be insufficient because an innocent person may participate in conduct that, viewed retrospectively, happens to assist a criminal plan. Criminal liability requires the law to connect the person to the unlawful agreement through a culpable mental state.

5. Agreement and the Requirement of Meeting of Minds

The expression “meeting of minds” is often used in conspiracy jurisprudence. It should not, however, be mistaken for a requirement of a literal meeting. The law does not require conspirators to sit together in a single room, exchange identical words, or formulate a written plan. A conspiracy can arise through separate communications and coordinated conduct.

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Kehar Singh recognised that an express agreement need not be proved and that an actual meeting or the precise words of communication are not indispensable. What must be established is the sharing or transmission of the unlawful design in a manner sufficient to demonstrate concurrence (Kehar Singh 1988). This is a functional rather than formal conception of agreement.

Ajay Aggarwal v Union of India similarly described conspiracy as complete once there is consensus ad idem concerning the unlawful design, irrespective of whether the substantive offence is eventually committed (Ajay Aggarwal 1993). R. Venkatakrishnan subsequently reinforced that agreement between two or more persons is the quintessential ingredient of the offence (R. Venkatakrishnan 2009).

The important qualification is that consensus must be directed toward an unlawful object. A person may share a general interest in another person's success, possess knowledge of a criminal enterprise, or even perform an act that incidentally facilitates it without entering into the criminal agreement. The question is not simply whether the accused's conduct was compatible with the conspiracy; the question is whether the conduct is best explained, in light of the whole evidence, as conscious participation in the unlawful agreement.

The requirement of concurrence should also be distinguished from complete knowledge. Conspirators frequently divide functions. One may arrange finance, another transport, another communication and another execution. It would be unrealistic to require every participant to know every detail. The Supreme Court has recognised this practical reality, while simultaneously insisting that the prosecution establish the common design and the accused's participation in it.

The appropriate standard is therefore not "complete knowledge" but "essential knowledge." The accused should understand the unlawful nature and essential object of the arrangement sufficiently to make the decision to participate culpable. Peripheral ignorance does not necessarily negate conspiracy; ignorance of the essential unlawful object does.

This distinction is especially important in complex criminal enterprises. Consider a person who agrees to transport a package for payment but is unaware that the package contains illegal narcotics. The person's conduct may later be shown to have advanced the conspiracy, but the absence of knowledge of the unlawful object is significant. Conversely, a person who knows the package contains narcotics and intentionally agrees to transport it for the group has crossed the relevant threshold even if the person does not know who supplied the narcotics, who will receive them, or what other crimes the group may commit.

The legal test should therefore focus on the object to which the accused agreed, rather than requiring identical knowledge of the entire conspiracy.

6. Mere Knowledge, Discussion and Association: The Negative Boundaries of Mens Rea

A sound doctrine of conspiracy requires not only positive criteria but also clear negative boundaries. The Supreme Court has consistently stated that mere knowledge or discussion of a criminal plan is not, by itself, conspiracy. This principle protects the distinction between observing a criminal enterprise and joining it.

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Knowledge can arise in many innocent contexts. A lawyer may learn of a client's proposed crime; a journalist may discover information about a criminal group; a family member may become aware of a relative's activities; a business associate may encounter suspicious conduct without sharing its purpose. Criminal conspiracy cannot be established merely by demonstrating that the accused was aware that a crime was planned.

Discussion presents a similar problem. People can discuss criminal conduct for condemnation, curiosity, reporting, academic inquiry, negotiation, prevention or many other reasons. Even a person who expresses sympathy for an unlawful objective does not necessarily enter a conspiracy. The criminal law should distinguish the psychological state of wishing for an outcome from the legal act of agreeing to pursue it.

Association is an even more difficult category. Criminal investigations frequently reveal social, familial, professional or financial relationships between suspects. Such relationships can provide relevant context, but association cannot substitute for agreement. Otherwise, the offence would risk becoming a status-based offence in which proximity to offenders becomes evidence of culpability.

The Supreme Court's insistence that innocuous or inadvertent events should not be artificially arranged into a coherent appearance of conspiracy is therefore a central safeguard (Kehar Singh 1988). Circumstantial evidence is not inherently weak; indeed, conspiracy will often be proved circumstantially. The danger lies in treating each ambiguous circumstance as independently incriminating and then allowing their aggregation to produce an inference that is not actually supported by the evidence.

A disciplined approach should distinguish between evidence of opportunity, evidence of knowledge, evidence of assistance and evidence of agreement. The categories overlap, but they are not interchangeable.

Evidence of opportunity shows that the accused could have participated. Evidence of knowledge shows that the accused knew about the criminal activity. Evidence of assistance shows that the accused performed an act that helped the enterprise. Evidence of agreement demonstrates that the accused intentionally joined the common unlawful design. The first three may support the fourth, but none is automatically equivalent to it.

This distinction becomes particularly important where the prosecution relies upon post-offence conduct. Concealment, destruction of evidence or flight may be relevant to consciousness of guilt, but such conduct generally occurs after the alleged agreement. It may corroborate participation but should not be used to avoid the requirement of proving that the accused actually joined the conspiracy.

The same caution applies to motive. A strong motive can explain why a person might have joined a conspiracy, but motive is not agreement. The law must avoid reasoning backwards from motive to participation.

The correct principle is therefore one of inferential discipline: the prosecution may establish conspiracy through circumstances, but the circumstances must support the specific inference of intentional agreement rather than merely an inference of awareness or association.

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7. "Common Object" under Section 61 BNS and the Mens Rea of Conspiracy

The insertion of "common object" into section 61 BNS deserves particular attention because the phrase may appear to broaden the law of collective criminality. A careful interpretation should instead treat it as a clarifying expression that reinforces the need for a shared unlawful object.

First, the phrase does not displace the statutory requirement of agreement. Section 61 begins with two or more persons who "agree with the common object." Agreement remains the operative legal concept. The common object identifies what the agreement is directed toward.

Secondly, common object should not be equated automatically with common intention. The two concepts perform different functions in criminal law. Common intention generally concerns the joint commission of an act and attribution of liability for an act done in furtherance of that intention. Conspiracy, by contrast, criminalises the agreement itself and may exist even though the substantive offence is never committed.

Thirdly, "common object" should not be interpreted as requiring that all participants have identical motives. Two persons may agree to commit the same offence for different personal reasons. One may seek financial gain while another seeks revenge. Their motives differ, but their unlawful object may be identical. Mens rea should therefore focus on conscious concurrence with the unlawful object, not psychological uniformity.

Fourthly, the object need not necessarily include every detail of the intended execution. The Supreme Court has recognised that conspirators may play separate roles and may not know every detail of the enterprise. What matters is whether their respective acts form part of a shared design to achieve the unlawful object (R. Venkatakrishnan 2009).

The phrase "common object" may nevertheless have an important limiting function. It requires the prosecution to identify the object with reasonable specificity. A vague assertion that several accused persons "were acting together" is insufficient. The prosecution should be able to articulate what they agreed to do or cause to be done and why the evidence demonstrates that each accused consciously joined that object.

This requirement has procedural significance as well. A charge of conspiracy should not be framed at a level of abstraction that makes it impossible for the accused to know the case they must meet. If the alleged common object changes during the trial—from financial fraud to forgery to obstruction, for example—the accused may be confronted with materially different allegations. Identifying the object is therefore connected to fair notice and the presumption of innocence.

The addition of "common object" consequently supports rather than weakens a demanding conception of mens rea. It provides a statutory anchor for asking whether the accused shared the unlawful destination of the agreement.

8. Conspiracy and the Problem of Circumstantial Evidence

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The evidentiary character of conspiracy creates the central practical difficulty. Conspiracies are ordinarily secret. Direct evidence of an agreement may be unavailable because conspirators have no reason to record or publicly announce their arrangement. Courts therefore permit conspiracy to be inferred from circumstances.

This does not create a lower standard of proof. The prosecution still bears the burden of proving guilt beyond reasonable doubt. The circumstantial-evidence rule remains applicable: the circumstances relied upon must be established, must be consistent with the hypothesis of guilt, and must form a coherent chain from which the inference of conspiracy follows.

In R. Venkatakrishnan, the Supreme Court observed that conspiracy is seldom an open affair and that its existence and object are ordinarily deduced from circumstances and conduct. At the same time, it emphasised that each incriminating circumstance must be reliably established and that the circumstances must form a chain from which the only irresistible conclusion is guilt (R. Venkatakrishnan 2009).

This produces an important methodological point. Circumstantial evidence can prove an agreement even when there is no direct evidence of communication, but the court must reason from evidence to agreement rather than from the existence of a crime to presumed agreement. The fact that a crime was carefully planned does not itself prove that every person connected with the crime joined the plan.

A useful analytical sequence is:

(1) identify the alleged common unlawful object;

(2) identify the acts, communications or circumstances connecting each accused to that object;

(3) determine whether each circumstance is independently proved;

(4) distinguish evidence of knowledge or association from evidence of concurrence;

(5) determine whether the totality of the evidence supports intentional participation in the agreement; and

(6) test whether a reasonable innocent explanation remains.

The final step is particularly important. If the evidence is equally compatible with innocent association and intentional participation, the prosecution has not discharged its burden merely because conspiracy is a plausible explanation.

The court should also avoid compartmentalisation and over-generalisation. The acts of one conspirator may be relevant to the conspiracy once the statutory evidentiary conditions are satisfied, but the evidentiary rule cannot itself create the conspiracy. Section 8 BSA makes things said, done or written by one conspirator in reference to the common intention relevant against persons believed to be conspiring, where there is reasonable ground to believe that the conspiracy exists. The provision therefore facilitates proof; it does not abolish the requirement of establishing the foundational conspiracy.

This distinction is constitutionally and doctrinally important. An evidentiary rule cannot be transformed into a substantive presumption that a person's association with one conspirator proves participation. Section 8 BSA should operate after the court has a reasonable evidentiary basis for believing that the relevant conspiracy exists and that the material concerns the common design.

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9. Section 8 BSA and the Evidentiary Reach of the Common Design

The Bharatiya Sakshya Adhiniyam, 2023 carries forward the former section 10 of the Indian Evidence Act through section 8. It provides that where there is reasonable ground to believe that two or more persons have conspired to commit an offence or actionable wrong, anything said, done or written by any one of them in reference to the common intention, after the time when such intention was first entertained by any of them, is a relevant fact against each person believed to be conspiring.

The provision reflects the special evidentiary problem of collective criminality. If conspiracies could be proved only through statements made by all conspirators in the presence of each other, effective prosecution would often be impossible. The law therefore recognises a limited evidentiary connection between the acts and communications of conspirators.

The safeguards are embedded in the structure of the provision. There must be reasonable ground to believe that a conspiracy exists. The statement, act or writing must be in reference to the common intention. The timing requirement connects the evidence to the period after the relevant intention was first entertained. The provision is therefore not a general rule making every statement of one accused admissible against another.

The relationship between section 8 BSA and section 61 BNS also demonstrates why the mens rea inquiry cannot be abandoned. Section 61 determines substantive liability; section 8 assists in proving it. The existence of a common design may make certain communications relevant, but the court must still determine whether the particular accused was a party to the conspiracy.

This is especially important when conspiracies are alleged to include large numbers of persons. The broader the alleged conspiracy, the greater the risk that evidence generated by one participant will be attributed too readily to others. The court should therefore identify the temporal and substantive boundaries of the alleged conspiracy and determine whether the evidence relates to the common object with which the accused is charged.

The doctrine also illustrates the difference between evidentiary relevance and ultimate proof. A fact may be relevant without being sufficient to establish guilt. Section 8 BSA does not reverse the presumption of innocence. The prosecution must still prove the accused's participation in the conspiracy beyond reasonable doubt.

10. Conspiracy, Abetment and Common Intention: Maintaining Doctrinal Boundaries

Criminal conspiracy frequently overlaps factually with abetment and joint liability, but the offences should not be merged conceptually.

Abetment generally focuses on instigation, intentional aid or conspiracy as a mode of abetment where the relevant statutory requirements are met. Conspiracy under section 61 BNS, by contrast, is an independent offence centred upon agreement. The distinction matters because the law of conspiracy can impose liability before the substantive offence is committed, while abetment may

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depend upon the nature of the assistance or instigation and the statutory structure applicable to the underlying offence.

Common intention is similarly distinct. Where several persons jointly participate in an act with a shared intention, the law may attribute the act to each under the applicable provision. But common intention does not mean that every joint act is a conspiracy. Conspiracy requires an agreement directed toward an unlawful object; common intention may be inferred from participation in a single criminal act without requiring proof of a separate conspiracy.

The danger of doctrinal overlap is that courts may unconsciously substitute one form of collective responsibility for another. For example, if two persons commit an offence together, the fact of joint commission may be strong evidence that they shared an intention to commit it, but the court should not automatically infer a separate conspiracy unless the statutory elements of conspiracy are independently satisfied.

Conversely, if a conspiracy is established but the substantive offence is not completed, the independent nature of conspiracy becomes important. The law is concerned with the collective commitment to the unlawful object rather than only the ultimate harm.

The distinction can be represented as follows:

Conspiracy asks: did the accused intentionally agree with another person to pursue an unlawful object?

Common intention asks: did the accused act jointly with the requisite shared intention in the commission of the relevant act?

Abetment asks: did the accused instigate, intentionally aid, or otherwise fall within the statutory modes of abetment?

These questions may have overlapping evidence but they remain legally distinct. A disciplined analysis of mens rea requires courts to identify which question the prosecution has actually proved.

11. The Preventive Rationale and the Risk of Over-Criminalisation

The strongest justification for conspiracy is preventive. The criminal law should be capable of intervening before a coordinated criminal enterprise produces irreversible harm. The agreement itself may create a social danger because it combines intention, cooperation and capacity.

But preventive criminalisation carries a corresponding risk. The earlier the law intervenes, the greater the possibility that it will punish conduct that has not yet produced harm and that might never produce harm. Conspiracy therefore sits close to the boundary between criminal intention and criminal conduct.

The mens rea requirement performs an important limiting function. By requiring intentional participation in the unlawful agreement, the law identifies a form of conduct that is sufficiently blameworthy to justify early intervention. The accused has moved beyond private thought and has entered into a collective arrangement directed toward unlawful action.

If the threshold is reduced to knowledge, however, the preventive rationale can become over-inclusive. Persons who know about criminal plans but do not participate in them could be

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exposed to liability. If the threshold is reduced further to association, the offence risks becoming a proxy for suspicion.

The appropriate balance is therefore neither maximal prevention nor maximal restraint. It is targeted prevention: intervene when there is reliable evidence that the accused has voluntarily joined the collective unlawful design.

This principle is particularly important in prosecutions involving organised crime, terrorism, corruption or financial offences, where conspiracies may involve numerous peripheral actors. Complexity can justify inferential reasoning but should not lower the standard of proof. Indeed, the more expansive the alleged conspiracy, the more carefully the court should define its object and the individual point at which each accused is alleged to have joined.

The doctrine of withdrawal also illustrates the importance of identifying the agreement's temporal boundaries. A person may join an existing conspiracy at a later stage, and a person's subsequent acts may demonstrate continued participation. Conversely, withdrawal may have legal significance depending upon the applicable doctrine and stage of the offence. These questions cannot be answered without first identifying the agreement and its continuing object.

A coherent mens rea doctrine therefore makes conspiracy more, not less, effective. It enables courts to punish genuinely collective criminal planning while preserving the distinction between criminal participation and mere knowledge.

12. Toward a Structured Judicial Test for Conspiracy under Section 61 BNS

The existing case law contains the ingredients of a principled test, but they can be organised more systematically. For prosecutions under section 61 BNS, the following six-stage inquiry would improve consistency.

First: identify the unlawful object.

The prosecution should identify with reasonable specificity the illegal act or the lawful act allegedly to be accomplished by illegal means. The alleged object should not remain at the level of an abstract proposition such as “to commit illegal activities.”

Second: establish plurality and agreement.

There must be at least two persons and an agreement directed toward the identified object. The agreement may be express, implied or partly express and partly implied. A formal meeting, written contract or proof of the precise words is unnecessary.

Third: establish the accused's intentional concurrence.

The prosecution must demonstrate that the particular accused consciously joined the agreement. This is the core mens rea requirement. Knowledge of the conspiracy, sympathy with its objective, association with its participants or incidental assistance should not be treated as automatic substitutes.

Fourth: distinguish essential knowledge from peripheral ignorance.

The accused need not know every detail, every participant or every step. But the accused should have knowledge of the essential unlawful object sufficient to make participation intentional. The

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more central the alleged role, the stronger the inference may be; nevertheless, the inference must arise from evidence rather than from role-based assumptions.

Fifth: evaluate circumstantial evidence cumulatively but rationally.

No single circumstance may be decisive, and no collection of ambiguous circumstances should become decisive merely through repetition. Each circumstance should be proved and should contribute logically to the inference of agreement. Courts should ask whether the evidence distinguishes conspiracy from innocent association or independent pursuit of the same end.

Sixth: test alternative hypotheses.

The court should ask whether a reasonable innocent explanation remains consistent with the established facts. Where two explanations remain reasonably possible, the prosecution has not proved conspiracy beyond reasonable doubt.

This test can be condensed into the proposition:

Knowledge + voluntary concurrence + unlawful common object = the mental foundation of conspiracy; evidence of agreement is the external manifestation.

The formulation also clarifies the significance of "common object" under section 61. The object identifies the content of the agreement; concurrence supplies the culpable mental state; conduct and communications provide the evidentiary manifestation.

Such a test would preserve the flexibility of circumstantial proof without permitting the offence to become a general doctrine of collective suspicion.

13. Reassessing Mens Rea: A Normative Argument

The central normative claim of this article is that conspiracy should be treated as a form of relational culpability. Traditional criminal responsibility is often analysed through the relationship between an individual and an act. Conspiracy adds a third dimension: the relationship between the individual and another person's commitment to an unlawful object.

That relational element explains both the danger and the distinctiveness of conspiracy. The accused is not punished simply for thinking about crime. Nor is the accused punished simply because another person is thinking about crime. Liability arises because the accused intentionally enters a shared project directed toward unlawful conduct.

This conception resolves several apparent tensions in Indian law.

It explains why the agreement need not be formal. Criminal coordination can occur through conduct and communication.

It explains why direct evidence is unnecessary. The relational commitment can be inferred from circumstances.

It explains why complete knowledge is unnecessary. A participant can knowingly join a common object without knowing every operational detail.

It explains why mere knowledge is insufficient. Knowledge lacks the relational commitment that transforms observation into participation.

It explains why the offence is complete before the substantive offence. The legally relevant harm is the formation of a culpable collective commitment, not only the eventual execution of the plan.

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Finally, it explains why "common object" should not be treated as an invitation to broaden liability indiscriminately. The phrase identifies the shared unlawful destination; it does not eliminate the need for intentional participation.

The proposed conception is also compatible with the principle of legality. Criminal offences should give persons fair notice of the conduct that attracts liability. An agreement-based offence necessarily requires some flexibility because conspiracies can take many forms, but the essential elements remain identifiable: plurality, agreement, unlawful object, intentional concurrence and legally sufficient proof.

The judicial challenge is therefore not to eliminate inference but to discipline it.

14. Conclusion

Criminal conspiracy is an essential but potentially expansive component of criminal law. Its justification lies in the special danger of collective criminal planning and in the need to permit preventive intervention before the contemplated substantive offence is completed. Yet precisely because the offence operates at an early stage, the law must preserve a meaningful threshold of culpability.

Section 61 of the Bharatiya Nyaya Sanhita, 2023 retains the agreement-based structure of the former law while expressly referring to agreement "with the common object." Properly interpreted, this language strengthens rather than weakens the requirement of concurrence. The prosecution must identify the unlawful common object and establish that the accused intentionally joined the agreement directed toward that object.

The central distinction is therefore between knowledge and participation. A person may know about a conspiracy without joining it. A person may discuss it without agreeing to it. A person may be associated with its participants without becoming a conspirator. A person may even perform conduct that benefits the enterprise without the requisite mens rea. These possibilities do not make circumstantial evidence inadequate; they make careful inference essential.

Indian Supreme Court jurisprudence has already developed the core principles. Agreement is the essence of conspiracy; direct proof of its precise form is unnecessary; conspiracies may be inferred from circumstances; but mere knowledge, discussion or association is insufficient, and the circumstances must establish conscious concurrence with the unlawful design (Kehar Singh 1988; R. Venkatakrishnan 2009). Recent Supreme Court authority continues to describe meeting of minds and agreement on the design or object as indispensable (Ram Prakash Chaddha 2024).

The BSA's section 8 further recognises the evidentiary realities of conspiracy, but it should not be allowed to transform evidentiary relevance into substantive guilt. The foundational conspiracy must still be established, and the individual accused must still be connected to the common design through proof satisfying the criminal standard.

The preferable approach is consequently a structured one: identify the unlawful object; establish the agreement; establish the accused's intentional concurrence; distinguish essential knowledge from peripheral ignorance; evaluate the circumstantial evidence cumulatively but rationally; and test whether a reasonable innocent explanation remains.

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The ultimate principle is simple but fundamental: criminal conspiracy punishes a person's intentional joining of an unlawful collective design, not mere proximity to that design. The law should intervene when an individual crosses the boundary from knowing about a criminal enterprise to consciously becoming part of it. Maintaining that boundary is necessary not only for doctrinal clarity but also for the legitimacy of preventive criminalisation under the new Indian criminal-law framework.

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