
CRIMINAL CONSPIRACY AND INVESTIGATIVE JOURNALISM: WHEN REPORTING IS MISTAKEN FOR PARTICIPATION

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ABSTRACT

In recent times, investigative journalism has played an important role in revealing crimes, corruption, organised crime, political misconduct and abuse. The very techniques that make investigative reporting work require access to the underworld, communication with criminals and suspects, and participation in secret meetings or even brief concealment of information; these activities sometimes draw innocent journalists into the ambit of offences under criminal law. Therefore, I present to you this article, which studies the bitter relationship between the criminal conspiracy offence and investigative journalism. This article will focus on **Section 61** – Criminal Conspiracy under the Bhartiya Nyaya Sanhita, 2023 and aims to answer questions such as when does reporting on crime by journalists become participation in crime? Via thorough analysis of Section 61 of BNS, 2023, and protections for press freedom under Article 19(1)(a), this article argues that mere access, documentation, or communication with offenders cannot amount to conspiracy unless there is clear proof of intentional agreement to further the illegal objective.

I. Introduction

Investigative journalism can be anything but comfortable because it often upsets those in power and challenges the manipulated version of events. For example, a journalist investigating a corruption scandal may have to hold talks with middlemen, often referred to as “*Human Sources*”¹ in the media industry, but this is not just it; there are times when a reporter investigating human trafficking has to pretend to be a customer. The journalist investigating the crime may also have to receive and analyse confidential documents.² Thus, making it difficult to distinguish between witnessing a crime and becoming a party to it.

Criminal conspiracy, as defined under Section 61 of the *Bhartiya Nyaya Sanhita 2023*, is an offence to agree to commit an illegal act or to commit a legal act through illegal means.³ This particular definition, when interpreted, causes ambiguity, especially when the same is interpreted keeping a journalist in mind, and raises a question: would a journalist who talks to criminals or pays money to gain information and records or records illegal transactions be said to make an “*agreement*” to commit an offence under Section 61 of *Bhartiya Nyaya Sanhita, 2023*?⁴

This article emphasizes that offence under criminal conspiracy in order to be proved requires a clear and provable intention to further the unlawful objective which is absent in most of the cases when a journalist is involved. Mere presence, passive observation, or documentation, if not accompanied by an agreement of the suspect to commit an unlawful act, cannot amount to conspiracy. As stated in Section 61 of the BNS, 2023, the agreement should be to perform an illegal act, not another agreement. “This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy”⁵.

II. Criminal Conspiracy

Bhartiya Nyaya Sanhita, 2023, in Section 61(1), defines criminal conspiracy as “when two or

¹ How to Plan an Investigation, *Investigative Manual, Chapter 1*, <https://www.investigative-manual.org/chapters/making-a-plan/1-how-to-plan-an-investigation/> (last visited Feb. 27, 2026).

² Roy Greenslade, *Journalism: To Sting or not to sting?*, THE GUARDIAN, (June 2, 2013)

³ The *Bhartiya Nyaya Sanhita, 2023*, No. 45 of 2023, Ministry of Home Affairs, Government of India, published in The Gazette of India (25 Dec. 2023), https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf (last visited Feb. 27, 2026).

⁴ *Editors Guild of India, Statements Issued*, <https://editorsguild.in/statements-issued/> (last visited Feb. 27, 2026)

⁵ *Kehar Singh v. State (Delhi Administration)*, (1988) 3 SCC 609.

more persons agree with the common object to do, or cause to be done

(a) an illegal act; or

(b) an act which is not illegal by illegal means; such an agreement is designated a criminal conspiracy”⁶

Section 61(2) prescribes punishment to be given for criminal conspiracy.⁷ It is further stated that the offence of criminal conspiracy lies in the agreement among the offenders to commit the crime; however, the completion of the agreement is irrelevant because once the agreement is formed, the offence is committed, as held by Supreme Court.⁸

The Courts in India have repeatedly emphasized that conspiracy is usually done in private far away from the eyes of law⁹ and therefore circumstantial evidence which is type of evidence that does not, on its face, prove a fact in issue but instead gives rise to a logical inference that the fact exists,¹⁰ plays crucial role in proving criminal conspiracy. The Supreme has also observed that direct evidence of conspiracy is rare and the courts must infer agreement from conduct and surrounding circumstances¹¹. Similarly, it was also held that the meeting of minds is the first and primary ingredient of conspiracy.¹²

Following two elements are crucial to prove criminal conspiracy:

1. **Agreement** – There must be a meeting of minds to pursue an unlawful objective.
2. **Mens rea** – The accused must intend to achieve the illegal purpose.

The mere knowledge of a crime is insufficient to prove offence under criminal conspiracy because knowledge without agreement does not constitute as conspiracy.¹³ Hence proving that

⁶ Roy Greenslade, *Journalism: To Sting or Not to Sting?*, supra note 2.

⁷ Pooja R. Dubey, Priya G. Singha & Priya A. Tiwari, *Section 61 of the Bharatiya Nyaya Sanhita, 2023 — Criminal Conspiracy: Its Elements*, Whiteblack Legal (Apr. 2024), <https://www.whiteblacklegal.co.in/details/section-61-of-bhartiya-nyaya-sanhita-2023-criminal-conspiracy-its-elements-by---pooja-r-dubey-priya-g-singha-priya-a-tiwari> (last visited Feb. 27, 2026).

⁸ *Editors Guild of India, Statements Issued*, supra note 4

⁹ *Shivanarayan Lakshminarayan Joshi v. State of Maharashtra* 1980 2 SCC 465

¹⁰ Circumstantial Evidence, Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/wex/circumstantial_evidence (last visited Feb. 27, 2026).

¹¹ *Mohammad Usman Maniyar v. State of Maharashtra* 1981 2 SCC 443

¹² *K.R. Purushothaman v. State of Kerala*, (2005) 12 SCC 631, 636-38 (paras 11 & 13).

¹³ *State vs. Nalini*, 1999 (5) SCC 253

the association with offenders or suspects charged under Section 61 of *Bhartiya Nyaya Sanhita*, 2023, with no proof of an agreement to commit any unlawful act is not enough to hold a journalist liable.⁸ Moreover, knowledge alone cannot translate into criminal liability; therefore, for a journalist, knowing of an illegal act for the purpose of reporting is not the grounds for a journalist to be dragged into criminal proceedings.

III. Investigative Journalism

The investigative journalism is distinct from reporting because it involves rigorous months and years of research, an ample amount of confidential sources, secret operations, and often personal risk as well as danger to one's life. All this hardship a journalist acquires because they aim not only to inform but to uncover truths and reality which are intentionally concealed from the public. There are several high-profile secret operations that have exposed corruption in India. One such case was the infamous Harshad Mehta case, where the journalist Sucheta Dalal exposed a scam that was lingering right under the nose of the Indian government.¹⁴ In these kinds of operations, journalists posed as an interested party for uncovering truth, which involved offering money to the sources or recording conversations secretly. Though these methods are ethically wrong,¹⁵ these methods are often defended and considered as necessary tools for exposing wrongdoing to the public at large. However, globally, investigative reporting has changed and evolved, especially after the Pentagon Papers, a big revelation in the United States about government deception during the Vietnam War and the Panama Papers, which exposed international financial secrecy.¹⁶ These exposes determine one thing: the media's ability to find truth about things which officials in uniform fail to identify. However, the methods used by the journalist in pursuance of truth raise moral questions, such as, 'Is deception permissible?' Can journalists pay money to gain access? Should they intervene to prevent harm or maintain neutrality? And from legal perspectives, though the questions seem many, all point to one simple question: do these techniques used by the journalist amount to their participation in crime?

¹⁴ The 1992 Harshad Mehta Scam Story, Kuvera (Dec. 11, 2019), <https://kuvera.in/blog/scam-1992-harshad-mehta-scam-story/> (last visited Feb. 27, 2026).

¹⁵ Nicole Carroll, *Should Journalists Pay Sources?* Poynter (Aug. 9, 2023), <https://www.poynter.org/commentary/2023/should-journalists-pay-sources/> (last visited Feb. 27, 2026).

¹⁶ *History & Evolution of Investigative Journalism*, Fiveable (2026), <https://fiveable.me/reporting-in-depth/unit-1/history-evolution-investigative-journalism/study-guide/scVzjoWbfBKIP7I> (last visited Feb. 27, 2026).

IV. When Reporting Becomes Participation

The difference between reporting and participation is based on intention and contribution of the journalist.

1. Mere Presence

If a journalist is only present when a crime occurs for the purpose of documentation then such presence alone cannot be called criminal conspiracy because criminal liability requires agreement with the offenders¹⁷.

2. Communication

Journalists communicate with suspects to get information as a part of their job; therefore, such communication cannot be called conspiracy unless it is regarding an agreement having a criminal objective. It has been held that mere association or contact is insufficient to prove criminal conspiracy without proof of common intention.¹⁸

3. Payment for Access

When journalists pay money in order to gain access to criminal networks and information. Whether or not such payment implies agreement depends upon the purpose for such payment because if payment is made with the intention to solely document unlawful acts and not with the intention for furtherance of such an unlawful act, then the possibility of a crime being committed by the journalist is absent. However, if such a payment facilitates the commission of such an offence, for example, funding its execution, then we can say the journalist has crossed a legal line and has committed a crime.

4. Encouragement or Enticement

If a journalist intentionally has been encouraging and instigating the commission of a crime just for the sake of sensational footage, then such conduct by the journalist amounts to abetment or conspiracy because the law does not shield the intentional encouragement to crime under the ambit of freedom of the press.

¹⁷ *Editors Guild of India, Statements Issued*, supra note 4

¹⁸ *Gadadhar Rana v. State of West Bengal*, 2021 SCC OnLine Cal 2934 (Cal HC).

5. Delay in Reporting

The journalists who delay reporting to complete an investigation are said to be aiding the crime indirectly.¹⁹ Such reasoning in the eyes of the law is considered unsound because delayed reporting by the journalist does not establish an agreement to carry out unlawful activity, as we know investigation requires time and effort and cannot be rushed.

Below are the questions that one should ask before deciding whether the journalist role amount to criminal conspiracy.

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- **Did the journalist have the intention to commit the said crime or had the intention for the crime to succeed?**
- **How close was the journalist's conduct to the execution of the offence?**
- **Did the journalist's actions significantly facilitate the crime?**
- **Was the primary purpose of the journalist exposure of crime or participation in crime?**

V. Constitutional Protection and Press Freedom in India

The Constitution of India under Article 19(1)(a)²⁰ guarantees freedom of speech and expression, which also includes freedom of the press. Though the same is not mentioned, the Supreme Court has recognised press freedom within the ambit of Article 19(1)(a), wherein it was held that the freedom of the press is essential to democracy.²¹ Furthermore, very recently the Court unapologetically struck down Section 66A of the Information Technology Act for restricting free speech. It was also held that the ambiguous and vague provisions restrict

¹⁹ Media must regulate itself when reporting on a criminal trial, says Supreme Court judge, *Scroll.in* (Jun. 29, 2018), <https://scroll.in/latest/893724/media-must-regulate-itself-when-reporting-on-a-criminal-trial-says-supreme-court-judge#:~:text=The%20press%20must%20regulate%20itself,in%20the%20court%2C%20he%20said> (last visited Feb. 27, 2026).

²⁰ Constitution of India, art 19(1)(a).

²¹ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

authentic and genuine expression, which the masses deserve to hear, because such laws have a chilling effect on free speech, due to which masses may self-censor out of fear. Thus, when applying the logical extension of the Court's decision, it won't be wrong to state that if the criminal conspiracy law is applied against journalists, it may produce a chilling effect. And that the reporters may stop investigating subjects of immense importance to the masses due to fear of wrongful prosecution.

The Article 19(2) of Constitution of India allows reasonable restrictions in the interests of public order, sovereignty, and morality.²² However, it is important to note that the immunity to journalists is not absolute. The Constitution protects exposure of crime but not collaboration of crime.

VI. The Danger of Over-Criminalisation

Immense use of conspiracy charges against journalists can have following courses that will affect the society at large:

1. **Chilling Effect** – Fear of prosecution discourages investigative reporting.
2. **Selective Enforcement** – Governments may target specific media houses.
3. **Democratic Loss** – Corruption and abuse remain hidden.

The criminal conspiracy laws, as per Indian jurisprudence, in nature are broad, and with their reliance on indirect evidence to prove agreement among the offenders, they make it more likely to be misused. Thus, when such charges are framed on journalists, the courts must be careful in their reasoning.

VII. Conclusion

The media is the fourth pillar of democracy, and journalists form a huge class of working officials in the media. Thus, the tension between criminal conspiracy and investigative journalism poses a very critical question: how to punish crime without silencing its exposure.

The Indian law, when interpreted carefully, can offer protections to innocent accused for crimes

²² Article 19(1)(a) and Public Order, *Vidhi Centre for Legal Policy* (May 22, 2020), <https://vidhilegalpolicy.in/blog/article-192-and-public-order/> (last visited Feb. 27, 2026).

they didn't commit. However, an offence under criminal conspiracy can only be proved when agreement and intention for furtherance of unlawful activity exist. Thus, mere presence, knowledge, or communication is not enough to prove criminal conspiracy under Section 61 of BNS, 2023. When journalists enter criminal spaces to uncover truth and expose the wrong, their objective is different from that of offenders because the former intention is good, which is to benefit the public by exposing the truth. Therefore, the law must punish collaboration in crime, but it must never punish the courage to reveal it.