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REFERENCE & FURTHERANCE IN INDIAN CONSPIRACY EVIDENCE

~Pal Meena

ABSTRACT

Section 10 of the Indian Evidence Act 1872, now Section 8 of the Bharatiya Sakshya Adhiniyam 2023, deals with the admissibility of evidence in a conspiracy case and is based on the theory of implied agency, i.e., each conspirator is an agent of this association in carrying out the objects of the conspiracy. The special feature of this section is that anything said, done or written by any member of the conspiracy is evidence and admissible against the other if it relates to the conspiracy. It has been deliberately enacted in order to make the acts and statements of a co-conspirator admissible against the whole body of conspirators because of the nature of crime. The phrase is clearly wider than the English formula “in furtherance of", a common design, which in itself contains the temporal limit, as one cannot say, do or write anything in furtherance of something which has ceased to exist. Yet *Mirza Akbar* v. *King Emperor* read section 10 through the lens of that older doctrine and excluded statements made after the conspiracy had ended. “In reference to”, on the other hand, does not literally contain any kind of such limit. Although it was a deliberate codifying choice, it did not abolish time. The temporal limit comes from the phrase “their common intention"; an item can be in reference to a common intention only while that intention exists. The issue lies in treating “reference” as a wholesale substitution of “furtherance”. The interpretation adopted by the courts preserves the statutory breadth during the time when conspiracy is alive while excluding retrospective narratives after its end.

THE HIDDEN QUESTION

The usual proposition is that a conspirator’s words or acts are admissible against the other co-conspirators only when the conspiracy is “on foot” and the material is in furtherance of their common design. The vocabulary of this proposition conceals the interpretive problem. The Indian legislature did not enact “in furtherance of"; it enacted “in reference to their

common intention". The section also provides one express temporal marker: the material must belong to the time after such intention was first entertained by any conspirator. However, it does not expressly provide for the terminal time.

The distinction matters because the section is an exception to the ordinary rule against using one person's out-of-court statements to prove another's liability; hence, it authorises a different kind of attribution. Once there is reasonable ground to believe in the existence of conspiracy, an item by one conspirator may be relevant against each person believed to be so conspiring, for the purpose of proving the conspiracy as well as to establish membership. A construction that silently converts "reference" into "furtherance" changes the breadth of that exception. A construction that ignores its temporal and fairness limits turns it into a vehicle for untested retrospective accusation.

The question, therefore, is why the codifier selected language wider than the common-law formula and how far a court may narrow it in the name of that prior doctrine.

THE SOURCE OF THE TEMPORAL LIMIT

The section has four important elements. First, there must be reasonable ground to believe that two or more persons conspired to commit an offence or actionable wrong. Second, the offered material must be something said, done or written by one of them. Third, it must be "in reference to their common intention." And fourth, it must occur after the time when that intention was first entertained by any one of them. The statute is relevant against each person believed to be conspiring for proving both the existence of the conspiracy and their participation in it.

The opening temporal clause says that only material that appears after the shared intention first comes into play and can be used as evidence, even if a specific accused joined the conspiracy later or left it earlier. This illustration shows that acts can still matter even if they happened before one conspirator joined or after that conspirator left. This rule stops membership from acting as a personal time limit once the shared intention of the conspirators has started.

However, just because the law does not set an upper limit does not mean there is no limit at all. The phrase "their common intention" means an intention that all conspirators share. When the goal is reached, abandoned, stopped or otherwise ended, that shared intention of the conspirators also ends. A confession made after that only tells about an action and mentions an earlier intention but does not refer to the shared intention of the conspirators in the proper

grammatical and functional sense is not allowed as evidence. Therefore, the end point is inside the phrase “their common intention" and not only derived from the word "furtherance”.

CODIFICATION WAS A CHOICE, NOT AN ACCIDENT

The final Evidence Act was drafted under Sir James Fitzjames Stephen, who at that time served as a law member of the Governor General’s Council. An earlier evidence bill that circulated in 1868 was rejected because it assumed that all officials could read English and because it made officials rely on English treatises. Stephen then prepared a draft, which a committee considered during 1870–71, circulated for comment, and was enacted as Act I of 1872. In Stephen’s account, Stephen described himself not as the sole author but as the draftsman and secretary of a committee that settled the important working details. The Evidence Act was therefore a project of compression, selection and adaptation, not a careless transcription of English cases.

Stephen’s later Digest makes the contrast unusually sharp. The Digest statement of conspiracy evidence used "in the execution or furtherance of their common purpose". Section 10 of the Evidence Act used instead "in reference to their intention". The Law Commission’s 69th Report expressly recognised the difference. A letter by a conspirator to a friend giving details of the conspiracy would not be admissible in England if the letter did not advance the enterprise; read the letter literally, it would be admissible under the provision because the letter had reference to the common intention. The Report also acknowledged that Section 10 was wider than the rule in *R* v. *Blake*.

That evidence makes it difficult to say that the Indian phrase merely copied the condition in different words. The Indian phrase was selected in a code whose central innovation was to state positively which facts are relevant. The relational word "reference" fits the code’s architecture. The word "reference" permits not only a step that advances the plan but also a communicative or explanatory act that bears on a living common intention and helps prove the agreement or a person’s participation.

THE JUDICIAL NARROWING AND ITS LIMITS

In *Mirza Akbar* v. *King Emperor*, the Privy Council ruled that a statement made by one conspirator after the crime was completed could not be admitted under this section. It based its decision on *R* v. *Blake*, emphasising that the material must be something done while carrying out the conspiracy. The court noted that the phrase "in reference to their common intention" may carry the same weight as the word "related" in English legal judgements. The

key point was that "common intention" means a shared intention that existed at the time the statement was made, done or written. A statement made after the crime has ended is excluded because the intention is no longer active, and there is no common intention to which it can be connected.

Such interpretation protects an accused from a co-conspirator's untested confession after the joint project has ended. It has been repeatedly followed in cases like *Sardul Singh Caveeshar* and *State* v. Nalini. These decisions show that the time limit is not just a judge's invention. It comes from the need for a connection between the evidence and the shared intention.

The difficulty arises when Mirza Akbar's protective rationale becomes a verbal replacement rule. In Bhagwan Swarup Lal Bishan Lal, the court described "in reference to" as broad and possibly broader than "in furtherance of" in English law. Similarly, in *Suresh* v. *State of Uttar Pradesh,* the court said the difference between section 10's "in reference to" and Section 34 of the Penal Code's "in furtherance of the common intention" is important. That makes it hard to support a view that every piece of evidence under section 10 must itself further the conspiracy.

A clear understanding can separate the two. "In furtherance" tests purpose: was the act meant to help achieve the goal? "In reference to" tests connection: does the statement concern, show, explain or operationalise the common intention? Even though there must be an existing conspiracy, the evidence still needs a link to that common intention and a reasonable belief that a conspiracy took place. A simple story or a later accusation does not become relevant just because it mentions a plan.

A USABLE CONSTRUCTION FOR SECTION 8

Section 8 of the BSA must be considered in three parts. In the first part, the court looks for independent material that is enough to create a reasonable belief that a conspiracy was happening. The rule cannot be used in a way that builds the threshold from the hearsay it is trying to let in. In the second part, the court checks if the item offered happened while the shared plan was still going. The question is about the goal that was agreed on and whether it was completely stopped, made impossible or kept going through hiding or another agreed step. In the third part, the court checks if the item is connected to that ongoing plan. An item can still count even if it does not push the plan forward, as long as it is a real expression or message about the shared project and not just a later story about it.

In order to help explain cases, a secret message that assigns a role clearly fits. So can a message to someone at the same time that names the people involved or talks about an action if it directly relates to the ongoing plan? A statement made after being arrested usually does not fit, because being arrested might end the shared plan and the statement is likely looking back. Although being arrested is not an exhaustive end in itself. For the conspiracy includes an agreement to hide things, destroy evidence or share money, the court must check if that later agreement is proved on its own and not just assume every act of hiding keeps every conspiracy alive.

This method also respects the rights of the person on trial. A wide test should never replace proof about who said what if it was voluntary the situation, around it and how useful it is. There should be adequate proof for the courts to establish that the conspiracy is still going and the exact shared plan is that the item refers to.

CONCLUSION

The historical anomaly is genuine. The Indian code did not accidentally retain the phrase “in furtherance"; it actually chose to replace it with "in reference to". Stephen’s own explanation of law, the careful design behind the codification and later court rulings all confirm this decision. Still, the statute has a natural time limit, and it is materially tied to a shared intention while that intention is still active. It does not use a person’s actions after a conspiracy ends to build a case against others.

Mirza Akbar should therefore be understood as a case about the end of a common intention, not as a licence to erase the difference between reference and furtherance. Reading it this way protects people from being punished based on confessions made after a conspiracy has ended. It also respects the meaning of the law. Section 8 of the BSA lets courts make the distinction clear: the conspiracy must still be alive in time; not every act must be part of furtherance.

Authorities and references

1. The Bharatiya Sakshya Adhiniyam 2023, s 8, Act 47 of 2023 (official text, India Code).
2. The Indian Evidence Act 1872, s 10 (repealed); Indian Penal Code 1860, s 34 (repealed).
3. *Mirza Akbar* v. *King Emperor* (1940) 67 IA 336 (PC).
4. *R* v. *Blake* (1844) 6 QB 126; 115 ER 49.
5. *Sardul Singh Caveeshar* v. *State of Bombay*, AIR 1957 SC 747.

6. *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*, AIR 1965 SC 682.

7. *Suresh* v. *State of Uttar Pradesh*, (2001) 3 SCC 673.

8. *State* v. *Nalini*, (1999) 5 SCC 253.

9. Law Commission of India, 69th Report, The Indian Evidence Act 1872 (1977), paras 7.111–7.145.

10. Law Commission of India, 185th Report, Review of the Indian Evidence Act 1872 (2003), ch 10.