

Abetment under the Indian Penal Code

Law keeps a check on human behaviour. It categorizes them into criminal and non-criminal behaviours. However, every non-criminal behaviour even something as simple as buying a knife for your kitchen becomes criminal when there are criminal intentions behind it.

The concept of abetment widens the horizons of criminal law to incorporate these criminal intentions and penalize them even when the person who bought the knife did not actually kill anyone but handed it over to someone else to do it. To explain the concept of abetment, the word 'abet' should be given a deep scrutiny. In general use, it means to aid, advance, assist, help and promote.

In the case of ***Sanju v. State of Madhya Pradesh***[1] the honorable Supreme court defined 'abet' as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to countenance, to encourage, or encourage or to set another one to commit.[2] The definition of 'abet' as laid down, makes it clear that abetment only occurs when there are at least two person involved, which further directs us towards the *arrangement* and *operation* of the act.

In usual parlance(in simple words), a person is held to be liable only if he or she has personally committed a crime. Detouring(taking another route) from the usual concept, the concept of Abetment says, that he who has helped the criminal or provided him with any assistance in any form can also be held to be liable. This article will discuss at length, the nitty-gritty (most important aspect) of Abetment laws in India.

Meaning of Abetment

In common parlance, the word '*abet*' signifies help, co-activity and support and incorporates within its ambit, illegitimate reason to commit the crime. So as to bring an individual abetting the doing of a thing under any of the conditions specified under [Section 107 of the Indian Penal Code](#), it isn't just important to demonstrate that the individual who has abetted has participated in the means of the transactions yet additionally has been associated with those means of the transaction which are criminal.

Abetment under the Indian Penal Code

Abetment is constituted by:

1. Instigating a person to commit an offence; or
2. Engaging in a conspiracy to commit it; or
3. Intentionally aiding a person to commit it.

The offense of abetment by instigation relies on the intention of the individual who abets and not upon the act which is finished by the individual who has abetted. The abetment might be by instigation, connivance or purposeful aid as given under Section 107 of the Indian Penal Code. However, the words **articulated(expressed in fluency)** in an angry state or omission without any intention cannot be termed as instigation.

For an individual to be called liable for Abetment, and so as to proceed against an individual for a criminal offense under Section 107, prosecution must claim the component of mens rea. Negligence or carelessness can't be named to be abetment in order to punish the liable, according to the arrangement of penal laws.

So as to establish abetment, the abettor must have appeared to "deliberately" support the commission of the wrongdoing. In such a case we need to just

prove that the wrongdoing charged couldn't have been done without the association as well as intervention of the supposed abettor isn't sufficient with the prerequisites (necessary/important/required conditions) of Section 107.

When we talk about a sting operation which is typically carried out in public interest, it must be noted that the same is done by instigating the accused.

Thus the person in question, who is generally honest, is tricked into carrying out a wrongdoing on the confirmation of secrecy and confidentiality of the transaction bringing up the potential issues with respect to how such a victim can be considered in-charge of wrongdoing, which he would not have done had he not been given the assurance. In such conditions, should the individual, i.e., the sting administrator be held criminally liable for commission of the offense? This is a bewildering(confusing) question when there is a claim that the sting administrator is asserted to have committed the abetment of the offense.

The Supreme Court in [Rajat Prasad v. C.B.I](#) saw that a wrongdoing does not stand crushed or exonerated(not guilty) just in light of the fact that its benefit extends to the general public at large.

Suppose an individual failed to prevent an offense from taking place, so the inquiry emerges as to whether this failure will add up to Abetment or not. This situation of law later has been attested by the Supreme Court, which anyway held that even though he isn't an accomplice, the Court would even now need proof on material specifics, as he is the main observer of the wrongdoing and as it is dangerous to hang the accused on his sole declaration, except if the Court feels persuaded that he is talking reality.

Such confirmation need not, be that as it may be, on the subject of the actual commission of the offense; what the law requires is that there ought to be such support of the material piece of the story connecting the person who is blamed with the wrongdoing as will assure a reasonable man that the man can be

viewed as an honest person and his statement can be relied upon. Often, abetment may also consist of a passive assistance.

For example, in a case where the accused was found with a spear (bhala, shool etc) on the scene of the fight, his participation in the fight was proved. It was immaterial whether or not they actually made use of their weapons, they were still held liable for the injuries caused to the defendant party.

In the case of Tuck v. Robson, a publican(the person who manages a pub or a bar) by not making any effort to make his customers leave the premises after the pub was closed, was said to have aided the crime of abetment of consumption of the liquor after the hours in which it was permitted. Similarly, let's talk of a situation wherein an owner of a car who was not driving on that particular instance and had entrusted the task of driving the car to his friend that day. The friend was involved in driving in a very haphazard manner and the owner of the car was charged with abetment because he had failed to stop the driver from indulging in such driving.

On having analysed the law, It was seen that an act involving any sort of assistance or inducement was needed in order to book a person for abetment. Thus if we talk about a case wherein mere abstention from preventing an offence is said to have happened, it is generally not considered enough in order to book a person for abetment. But in a case where a person is in direct control of the conduct of the other person and then he fails to prevent the other person from committing the offence, it will constitute abetting.

The aforementioned provision of law hypothesizes the presence of one, who perpetrated the offense. It is important to talk about, in a nutshell, the ramifications of the articulation 'Perpetrator'(who done horrific crime). For the most part it is clear who the culprit is, he is the person who, with the significant mens rea, shot the deadly shot in the homicide, or indulges in sexual intercourse or appropriates the property in robbery. Obviously, there can be

more than one perpetrator, as where two men by their joint violence murder the other individual.

Two individuals may likewise be joint culprits, where each with the relevant mens rea does acts which together comprise an adequate representation of the actus reus of an offense; for instance, in an offense including driving, A and B have been held both to drive, where A was inclining over and controlling the steering while B worked the foot pedals the gears. On the off chance that an individual makes use of an innocent agent so as to obtain the commission of an offense, that individual, not the agent, is the culprit, despite the fact that he is absent at the location of the wrongdoing and does nothing with his very own hands.

An innocent agent is one who performs the actus reus of an offense yet is himself lacking responsibility, either by reason of inadequacy or infancy or in light of the fact that he needs mens rea or has a safeguard, for example, pressure.

A striking case of innocent agency is the case where a girl, following up on her mom's guidelines, gave some powder to her dad to calm his cold. Obscure to the little girl, it was a toxic substance and consequently the father died.

It was held that the mother was the culprit of the wrongdoing since the little girl who was coming up short on the mens rea, was an innocent agent by means of whom, the mother had carried out the wrongdoing. Obviously if, as the report takes note of, the little girl had realized that the powder was poison, she would have been blameworthy as culprit and the mother as an accessory.

A bribe-giver is an accessory, just when he gives it with the aim of acquiring some favour which was not possible to acquire by legitimate means, yet the person who offers it to aid detention of a crime is not an accessory, the

important mens rea being missing. People giving unlawful gratification under stress, dread and compulsion are not accomplices.

It isn't vital for each situation that the key wrongdoer put up at the same trial must be indicted for the offense charged, before the abettor can be sentenced for abetment of that offense. Each case must be decided keeping in mind its own set of facts.

By and large(samnyata,adhikansh taur par), the facts demonstrate that there can be no conviction for abetment when the prosecution has neglected to substantiate the commission of the essential offense, but conviction of the abettor for his act of abetment would be perfectly justified, even when the principal offender is acquitted, provided the evidence on record satisfactorily establishes that the offence was committed in consequence of abettor's act of abetment.

A case may arise in which, on the evidence of the same witness, whose evidence has been found to be insufficient for the conviction of the principal offender, the conviction of the abettor would be quite proper.

So far as the principal offender is concerned, the same evidence may be suffering from an infirmity from which it may not suffer so far as the abettor is concerned, and in such a case, though the Court may have acquitted the principal offender by giving him the benefit of doubt, it would be perfectly justified in convicting the abettor, by reason of the fact that the same considerations which applied to the principal offender do not apply equally to the case against the abettor.

Punishment for Abetment under the Indian Penal Code

For the public at large, the very concept of Abetment being tried as a separate offence and being punishable might sound really bizarre because it is so imbibed in most people that only the perpetrators of the crime will be punished. The Penal Code in its abetment laws clearly lays down the sections, explaining extensively, the different walks of punishments that the abetment laws notify. They are covered as follows:

In [Section 109 of the Indian Penal Code](#), the one who abets an offence is given the same punishment as that of the principal perpetrator of the crime if the actus reus of the principal offender has occurred as a result of the inducement made by the abettor. Section 109 of the Penal Code is applicable in case no separate provision is made for the punishment of such an abetment.

Section 109 of the Penal Code ends up being relevant regardless of whether the abettor is absent when the offense abetted is committed given that he has instigated the commission of the offense or has connected with at least one or more different people in a conspiracy to commit an offense and in accordance with that conspiracy, some unlawful act or unlawful exclusion happens or has purposefully helped the commission of an offense by an act or illicit oversight.

This section explains that if the Penal Code has not independently accommodated the punishment of abetment as such then it is punishable with the discipline accommodated for the original offense. Law does not expect instigation to be in a specific structure or that it should just be in words. The instigation might be by behaviour or conduct. Whether there was instigation or not, is an inquiry to be settled on the distinct facts of each case.

It isn't essential in law for the prosecution to demonstrate that the real intention in the brain of the individual abetting was instigation and that was it, provided there was instigation and the offense has been committed or the offense would have been committed if the individual who was the main offender had the same

intention and knowledge as the thing that was likely to have been done by the person who is instigated.

It is only if this condition is satisfied that an individual can be blameworthy of abetment by instigation. Further the actus reus abetted ought to be done as a consequence of the abetment or in pursuance as given in the Explanation to this Section.

[Section 110 of the Indian Penal Code](#) gives that even if the individual abetted commits the offense with an intention different than the intention possessed by the main perpetrator of the crime, yet the abettor will be charged with the punishment provided for the offence abetted. The liability of the individual abetted isn't influenced by this section.

[Section 111 of the Indian Penal Code](#) continues the development on abetment laws around the phrase "each man is deemed to intend the corollary outcomes of his act." If one man actuates another to execute a specific wrongdoing, and that other, in pursuance of such instigation, executes not just that wrongdoing but carries out another wrongdoing in advancement of it, the former is criminally liable as an abettor in regard of such last mentioned wrongdoing, in the event that it is one which, as a person with the intelligence of a reasonable man, at the time of inducement would have known to be committed in order to carry out the original crime.

[Section 112 of the Indian Penal Code](#) expands the guidelines articulated in the previous section. Under it, the abettor is held liable for the offense abetted and also the offense committed. A joint scrutiny of Sections 111, 112 and 133 make it richly evident that if an individual abets another in the commission of an offense and the chief goes further from there on and accomplishes something more which has an alternative outcome from that planned by the abettor and makes the offense an aggravated one, the abettor is liable for the consequences of the acts of his principal.

The essence of the issue is an enquiry of this sort is whether the abettor as a sensible man at the time that he is being instigated or has been purposefully supporting the main perpetrator would have predicted the likely results of his abetment.

[Section 113 of the Indian Penal Code](#) ought to be read together with Section 111. Section 111 accommodates the doing of the actus reus which is not the same as the one abetted, though this section manages the situation when the actus reus done is equivalent to the guilty act abetted however its impact is not the same.

[Section 114 of the Indian Penal Code](#) is possibly only brought into activity when conditions adding up to abetment of a specific wrongdoing have first been proved, and after that the presence of the accused at the commission for that wrongdoing is demonstrated furthermore. Section 114 talks about the case, where there has been the wrongdoing of abetment, however where additionally there has been real commission of the wrongdoing abetted and the abettor has been present there, and the manner by which it manages such a case is this. Rather than the wrongdoing being still abetment with circumstances of aggravation, the wrongdoing turns into the very wrongdoing abetted. The section is clearly not punitory.

Section 114 isn't relevant for each situation in which the abettor is present at the commission of the offense abetted. While Section 109 is a section which talks about abetment, Section 114 applies to those cases in which not only is the abettor present at the time of the commission of the offense but abetment was done beforehand and done independently of his presence.

There is a very fine line between Section 34 of the Indian Penal Code and Section 114 of the Indian Penal Code. As per Section 34, where a criminal act is done by numerous people, in promotion of the basic aim of all, every one of them is liable as though it were finished by himself alone; so that if at least two

or more people are present, helping and abetting in the commission of the murder, each will be tried as the main perpetrator of the crime, however it probably won't be clear which of them really perpetrated the crime.

Section 114 alludes to the situation where an individual by abetment, prior to the commission of the wrongful act, renders himself obligated as an abettor, is present when the actus reus takes place, however takes no active part in its doing. A joint act falling under Section 34 however does not include a mere order from one person to another and the carrying out of that order by the other which may only be instigation of the latter's act.

Section 115 of the Indian Penal Code criminalises the abetment of specific offenses which are either not committed at all, or not committed in pursuance of abetment or only in part committed.

The detainment discussed in this section is for a term which may stretch out to seven years, and will likewise be obligated to fine. What's more is that, if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years and shall also be liable to fine.

'Express Provision' alludes to sections in which explicit instances of abetment of offenses punishable with death or detainment for life are talked about.

'Such Abetment' alludes to the abetment of the offense indicated in the section itself, to be specific, an offense culpable with death or detainment for life.

Section 116 of the Indian Penal Code accommodates the abetment of an offense punishable with detainment. There is no corresponding section in the Code identifying with abetment of an offense culpable with fine only.

Three distinct conditions of fact may emerge after an abetment:

1. No offense might be committed. For this situation, the wrongdoer is culpable under Section 115 and 116 of the Penal Code for mere abetment to perpetrate a wrongdoing.
2. The very act at which abetment is targeted may be committed, and will be culpable under Sections 109 and 110 of the Penal Code.
3. Some act extraordinary however corollary from the act which was abetted might take place in which case the abettor will be tried under the punishments of Sections 111, 112 and 113.

Sections 116 and 306 of the Penal Code

[Section 116 of the Penal Code](#) is "abetment of offense culpable with detainment if offense not committed." But the core of the offense under [Section 306](#) itself is abetment. To put it in other words, if there is no abetment there is no doubt of the offense under Section 306 becoming an integral factor. It is not foreseeable to have abetment of an abetment. Thus there can't be an offense under Section 116 read with Section 306.

The Supreme Court has never set down in *Satvir Singh v. State of Punjab* that under no condition an offense under Section 306 read with Section 511 of the Penal Code can be committed. Suicide and its attempt from one perspective and abetment of commission of suicide and its attempts on the other are dealt with diversely by law and hence the person who abets the commission of a failed attempt of suicide can't be held to be liable only under Section 309 read with Section 116 of the Penal Code. To actualize the scheme of law, he must be held to be culpable under Section 306 coupled with Section 511 of the Penal Code.

[Section 117 of the Penal Code](#) discusses abetment by the general public or in excess of ten people. Abetment has a reference both to the individual or

individuals abetted, and to the offense or offenses the commission of which is abetted. This section manages the previous, whatever might be the idea of the offense abetted while Section 115 deals with the latter without regards to the person abetted.

Under this section it will be adequate to demonstrate any instigation or other method of abetment, however neither the impact proposed, nor some other impact pursues from it. The gravamen of a charge under this section is simply the abetment, the instigation to general wilderness, not the specific offense of which the commission is induced. The section covers all offenses and is a general arrangement for abetment of any number of people surpassing ten.

In a situation where excess of ten people are induced to commit an offense punishable with death, the offence goes under Section 115 just like it comes under this section. Abetment of the commission of murder, regardless of whether by a solitary individual or by a class of individuals surpassing ten falls under Section 115.

In the latter case it might fall under this section also, however as this section recommends a lesser punishment, Section 115 is the more fitting arrangement for such an offense. Albeit both the sections are relevant, there can't be discrete sentences under the two sections for a similar criminal act, and the conviction ought to appropriately be under that section which delivers the higher punishment.

The previous Chief Court of Oudh had held and set out that it is illicit to continue under this section which allows for a higher punishment of an offense for the discipline of which a lighter and separate penalty is given by the provisions of [Section 9 of the Indian Salt Act](#).

A mere intention or preparation to instigate is neither instigation not abetment. In order to constitute an offence under this section by pasting leaflets, it is

necessary that either the public should have read the leaflets or they should have been exposed to public gaze.

Chapter V

One needs to understand the stages of the commission of a crime in criminal law, before tackling abetment. The four stages of a crime are-

1. Formation of mens rea.
2. Preparatory phase.
3. Acting in accordance with the preparation or 'Attempt'
4. Injury caused.[3]

Different Penal Codes will pick a different path in order to decide the guilt gradations for different stages and subsequently the punishment. Sometimes one person commits an offence at the instigation of another person, while some other person may only be present there for help at the time of the commission of the offence, and still, some other person might help the principal culprit in procuring the tools. Therefore, it becomes necessary to mark the nature and degree of participation. Like the other inchoate offences, abetment is a preliminary crime and not a self-contained offence.

'Abetment' simply cannot be called an offence. It is more of a concept providing a premise to the construction of offences like abetment to do a thing and abetment to suicide.[4] The rationale is to widen the scope of criminal law so that there are some penal sanctions to the preparatory stages of a crime also. Chapter V of the IPC on abetment covers the different gradations of a criminal act considering the abettor is a different person and not directly involved in the act.

Section 107-120 in Chapter V relates to the definition of the crime, punishment duration and other particulars mentioned in the Indian Penal Code. Section 107

of IPC defines abetment to do a thing which was further interpreted in the case of ***Kishori Lal v. State of M.P***[5]

- *Section 108* talks about as to when the offence of abetment is complete. *Section 108-A* gives the code extra territorial jurisdiction for an offence committed in a foreign country.
- *Section 109* state the term of punishment whereas *section 110* prescribes the punishment for a criminal act which is abetted with a different set of knowledge and intentions and committed with a different set of knowledge and intention.
- *Section 111* penalizes the unintended probable consequence of abetment which is supplemented by *section 113*.
- *Section 114* makes the abettor liable for the main offence if he is present at the time of the commission of an offence.
- *Section 115 and 116* penalizes abetment distinctively, in case the offence is not committed.
- *Section 117* deals with abetment of offences by the public generally or large groups of persons.
- *Section 118* prescribes the penalty for concealing the existence of a design in another to commit a grave offence.
- *Sections 119 and 120* provide for punishment in the case of public servants and others respectively for concealment of a design in another person to commit the offence not covered by S. 118.

The offence of abetment is a *separate and distinct offence*[6] provided in IPC. A person abets the doing of a thing when (1) he ***instigates*** any person to do that thing; or (2) ***engages*** with one or more other persons in any conspiracy for the doing of that thing; or (3) ***intentionally aids***, by act or illegal omission, the doing of that thing, These things are the essentials of abetment as a complete crime. The meaning of abetment being a separate and distinct offence is the reiteration of the rationale behind punishing the preparatory stages of a crime so that the law is a deterrence not only in theory but also in practice.[7]

Elements of Abetment

The offence of abetment depends upon the intention of the person who abets, and not upon the act which is actually done by the person who he abets.

For the purposes of the first two clauses of this section, it is immaterial whether the person instigated commits the offence or not or the persons conspiring together actually carry out the object of the conspiracy. It is only in the case of a person abetting an offence by intentionally aiding the other to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.

The court noted that in [Faguna Kanta Nath v. State of Assam](#), the appellant was tried for an offence under Section 165 A for having abetted the commission of an offence by an officer, who was acquitted, and it was held that the appellant's conviction for abetment was also not maintainable. But subsequently in *Jamuna Singh v. State of Bihar*, it was considered not desirable to hold that an abettor cannot be punished if the person actually committing the offence is acquitted. The court said that the abettor's guilt depends upon the nature of the offence abetted and the manner of abetment.

It is only in cases of intentional aiding that the abettor would have to be acquitted with the principal offender. Following this state of the ruling, the Supreme Court ordered the acquittal of the single abettor when the main offender as also all other abettors already stood acquitted.

The Supreme Court has reiterated that before anybody can be punished for abetment of suicide; it must be proved that the death in question was a suicidal death. The Supreme Court held that the offence of abetment is a separate and independent offence. Where the offence is committed in consequence of the

abetment but there is no provision for punishment of such abetment, the abettor is to be punished along with the offender for the original offence.

Abettor

Abetment under the Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of that offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to give effect to the criminal act or purpose, is punishable under the Code.

The definition of an Abettor is laid out in [Section 108 of the Indian Penal Code](#). Abettor under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act, which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section, he must be an instigator or a conspirator or an intentional helper. Merely because the accused's brother was carrying out criminal activities in her house, the appellant cannot be held guilty unless there is some material to show her complicity. The section is coupled with five explanations which are discussed below:

Explanation 1

If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2

The question regarding the abettor's guilt depends on the nature of the act abetted and the manner in which abetment was made. Commission of the act abetted is not necessary for the offence of abetment. The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

Explanation 3

This explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment. The offence of abetment depends upon the intention of the person he employs to act for him.

Explanation 4

The explanation is to be read as follows: "When the abetment of an offence, is an offence, the abetment of such an abetment is also an offence". In view of Explanation 4 appended under Section 108 of the Penal Code, the contention of the accused that there cannot be any abetment of an abetment is unknown to criminal jurisprudence, holds no merits and consideration.

Rationale of Punishing those involved in an Abetment

It goes without saying that a threat by a group of criminals is greater than a threat by a single person. If we dive deeper into this scenario, we can make out why a team or a gang of criminals is more likely to succeed than a single criminal. First off, a single person committing a crime would be limited in terms of execution of the crime as he would not be able to foresee everything beforehand. He would try to act around his plan which will proceed with a very narrow sighted execution.

As opposed to a single perpetrator, imagine how many possibilities a gang of criminals might open. Each one could think of his/her idea and all of them in conjunction could come up with a totally foolproof plan. Also, an aspect that may be grossly overlooked is the encouragement side of the crime. When someone is acting all by himself, there is little he can do to uplift his encouragement but when a bunch of people are on a mission together, losing motivation will be a rare sight.

Differences between Abetment and a Common Intention

- Abetment is a stand alone offence and can be punished all by itself but having a common intention is no offence on its own and has to be read with in consonance of other crimes.
- For Abetment, the accused may not be present at the crime scene but under Common Intention, his presence is an indispensable element and participate whether actively or passively.

- For Abetment, the crime need not be committed but for Common Intention, the crime must be committed.

Types of Abetment under the Indian Penal Code

Abetment by Instigation

A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.

The law does not require that instigation, in a case of abetment by instigation, should be in particular form or that it should be only in words and may not be by conduct; for instance, a mere gesture indicating beating or a mere offering of money by an arrested person to the constable who arrests him, may be regarded as instigation, in the one case to beat and in the other to take a bribe. Whether there was instigation or not, is a question to be decided on the facts of each case. It is, however, not necessary in law, for the prosecution to prove that the actual operative cause in the mind of the person abetted was the instigation, and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed, if the person committing the act had the same knowledge and intention as the abettor. It is impossible for any human tribunal to decide exactly how much the instigation actually weighed in the mind of the person abetted, when he committed the act or offence. The mere commission to bring the notice of the higher authorities, offences committed by other persons, may form the foundation for disciplinary action against him in a departmental way, but it cannot in law amount to abetment of the offence committed by his fellow clerk.

Instigation is to urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or 'urging forward'. In order to hold a person guilty of abetting it must be established that he had intentionally done something which amounted to instigating another to do a thing. Instigation may also be of an unknown person. A mere permission does not amount to instigation.

Wilful Misrepresentation or Wilful Concealment

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done is said to instigate the doing of that thing. Instigation by 'wilful concealment' is where some duty exists which obliges a person to disclose a fact.

Harassment from the Superior Officers

Deceased was a qualified engineer who had suffered persistent harassment and humiliation and also had to endure continuous illegal demands made by the

accused and upon non-fulfilment of which he would be mercilessly harassed by the accused by a prolonged period of time. Such harassment coupled with the utterance of words to the effect that, had there been any other person in his place, he would certainly have committed suicide. In [Madan Mohan Singh v. State of Gujarat](#), the deceased was a driver in the Microwave Project Department.

He had undergone a bypass surgery for his heart, just before the occurrence of such incident, his doctor had advised him against performing any stressful duties. The accused was a superior officer to the deceased. When the deceased failed to comply with the orders of the accused, the accused became very angry and threatened to suspend the deceased, rebuking him harshly for not listening to him. The accused also asked the deceased how he still found the will to live, despite being insulted so. The driver committed suicide.

For the purpose of bringing home any charge against the accused, the Supreme Court stated that there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide, or engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. If the making of observations by a superior officer, regarding the work of his subordinate, is termed as abetment to suicide, it would become almost impossible, for superior officers to discharge their duties as senior employees.

No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether the circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

Abetment by Conspiracy

'Conspiracy' consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means. So long as such design rests in intention only, it is not indictable. When two carry it into effect, the very plot is an act itself, and the act of each of the parties, promise against promise, capable of being enforced, if lawful, is punishable if for a criminal object or for the use of criminal means. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. Where parties concert together, and have a common object, the act of one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of all.

Before the introduction of conspiracy, except in cases provided for by [Section 121A, 311, 400, 401, 402](#) of the Code, was a mere species of abetment when an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.

For an offence under the second clause of this section a mere combination of persons or agreement is not enough; an act or illegal omission must take place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.

For an offence under the second clause of this section, a mere combination of persons or agreement is not enough; an act or illegal omission must take place in pursuance of the conspiracy. But for an offence under [section 120 A of the Indian Penal Code](#), a mere agreement is enough if the agreement is to commit an offence.

Let us discuss the difference between Abetment and Conspiracy. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, An illegal act or an act which is not illegal by illegal means. It differs from other offences because mere agreement is made an offence even if no step is taken to carry out that agreement.

Though there is close association of conspiracy with incitement and abetment, the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated under [Section 107 of the Indian Penal Code](#). There is no analogy between [Section 120 B](#) and [Section 109](#) of the Indian Penal Code. There may be an element of abetment in a conspiracy; but conspiracy is something more than an abetment.

By illegal omission

The definition of abetment as given in Section 107 of the Penal Code not only includes instigation but also intentional aiding by an illegal omission. Accordingly, the appellant, being the person responsible for creating circumstances provoking or forcing the victim to take the extreme step to avoid a more miserable life and not making any attempt to save her life, was liable to be convicted for the offence of abetment of suicide.

In a case where a lady advocate was attending the chamber of her senior advocate, the accused. On the day of the incident she was talking with the accused at her residence. At that moment in his presence, she poured kerosene on her and set herself on fire. The accused did nothing to save her. It was held that this did not amount to "illegal omission" and he was not held guilty of abetment to suicide.

Abetment of offences under other laws

The offence of aiding and abetting is applicable to all statutory offences unless specifically excluded by statute and accordingly it was held to apply to offences created by the English Public Order Act 1986. Abetment of an offence under the Prevention of Corruption Act, 1988 can be made by a non-public servant. Abettors are to be prosecuted through trial under the Prevention of Corruption Act.

Attempt

Merely because the section opens with the words " if any person commits suicide" it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt, on the one hand, and abetment of commission of suicide and its attempt on the other are treated differently by law and therefore the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under [Section 309](#) read with [Section 116 of the IPC](#).

To implement the scheme of law he has got to be held punishable under [Section 306 of the Indian Penal Code](#) read with [Section 511 of the Penal Code](#). The Supreme Court has never laid down in [Satvir Singh v. State of Punjab](#) that under no circumstance, an offence under Section 306 of the Penal Code read with Section 511 of the Penal Code can be committed. The Supreme Court did not have the occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under Section 306 read with Section 511 of the Penal Code.

Act done with Criminal Intimidation is not Abetment

Illegal gratification, unfortunately, is a normalized practice in the system. Now this, practice makes the bribe giver an accomplice to some illegal act even if the

bribe is extorted from them. The honourable Supreme Court clarified this dilemma in the case of ***Dalpat Singh v. State of Rajasthan***[8] by stating that :

Those who gave illegal gratification to the appellants (Reserve Police constables) cannot be considered as accomplices as the same (bribe) was extorted from them.[9]

Broadly it can be said that the three strategies of committing the crime of *Abetment* are by

- **Instigating**
- Engaging
- Intentional Aiding

Instigating

Instigating someone literally means to incite, provoke, urge or bring about by persuasion to do anything. The word 'instigate' has been interpreted in the case of ***Sanju v. State of M.P***[10] One might argue that the actus reus and the mens reus do not merge to a single person, therefore, abetment to do a thing should not be an offence. *In abetment by instigation, there has to be some active involvement of the abettor towards the preparatory phase of the crime.*

This is broadly considered as the actus reus in the crime of abetment, combined with the intention of getting something done or illegally omitted would constitute a complete criminal offence. However, there needs to be sufficient proof that the individual has willfully influenced and coerced the individual to commit a crime[11] but at the same time, it is not necessary for the person abetted to have the same guilty intention or knowledge.[12] The person abetted can totally have a different set of intention and knowledge, still, the offence is

committed because the preparatory phase is being dealt with in isolation to the execution phase.[13]

The entire liability of the abettor is decided within the first two stages of the crime. Now even if the execution gets a different result, the crime has been committed. Advice amounts to instigation only when intended to actively suggest or stimulate the commission of an offence. Mere acquiescence does not amount to instigation. **Presence of mens reus is a necessary concomitant of instigation.**[14]

In any event, in determining the criminal responsibility of the defendant in the case, it becomes necessary to determine not only the criminality of an order/suggestion/proposition in itself but also as to whether or not such an order was criminal on its face. Criminal law also rests on the fact that most times people have a free will.[15]

Lord Kenyon in the case of *Higgins*[16] said that, "*a mere intent to commit evil is not indictable, without an act done; but is there not an act done, when it is charged that the defendant solicited another to commit a felony? The solicitation is an act sufficient to constitute an overt act of high treason.*"

Commission of the offence is not necessary for the first two clauses of Section 107

- It is immaterial whether the person instigated goes ahead to commit the crime or a group conspiring together executes the object of the conspiracy.[17] Abetment as an offence is complete in itself a distinct.[18] When the alleged abettor has instigated another or engaged with another in a conspiracy to commit an offence. It is not necessary for the offence of abetment that the act abetted must be committed.[19]

Mere verbal permission or silent assent would not constitute instigation

- If A tells B that he intends to loot a bank C, B says **do as you like**, A succeeds in looting the bank C, here B cannot be said to have instigated.

Willful misrepresentation or Concealment is sufficient to constitute abetment

- A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Direct or Indirect Instigation

- Where a person gives to an unlawful assembly a general order to beat, it is a case of a direct instigation. The instigation would be indirect when instead of such an order a person raises a slogan "Cowards die many times before their death, the valiant die but once" will intend to provoke. This is direct instigation whereas indirect instigation would be A instigating B to commit a crime not by saying so but by harping upon the wrongs he has suffered.

Engaging

Means being actively involved in the suggestion or stimulation of the commission of the crime such as in a conspiracy. The sections 120A and 107 of the Indian Penal Code dealing with the offences of conspiracy have clearly stated the difference between the two. The case of **Noor Mohammad Momin**

v. State of Maharashtra[20] shows the difference between criminal conspiracy and abetment to conspiracy. Criminal conspiracy has a wider jurisdiction than abetment by a conspiracy. An individual is guilty of conspiracy with the mere agreement between a group of people to commit an offence.

Ingredients of Abetment by Conspiracy

1. A conspiracy between two or more person.
2. An act or illegal omission may take place in furtherance of that conspiracy.

Under chapter V a mere combination of person or agreement is not enough, an act or illegal omission must also take place in pursuance of the conspiracy and the act or illegal omission must also be in order to the doing of the thing agreed upon between them.[21] Explanation 2 of Section 107 has to be read together with Explanation 5 of section 108, which provides that it is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It would be sufficient if he engages in the conspiracy in pursuance of which the offence is committed. It has been held that where a criminal conspiracy amounts to an abetment under Section 107, it is unnecessary to invoke the provisions of Section 120A and 120B, as the Indian Penal Code makes specific provision for the punishment of such a conspiracy.[22]

- A, a servant enters into an agreement with thieves to keep the door of his master's house open in the night so that they might commit theft. A, according to the agreed plan keeps the doors open and the thieves take away the master's property. A is guilty of abetment by the conspiracy for the offence of theft. But should the thieves not come; A will not be liable under this section.

Intentional Aiding

A person is said to abet the commission of an offence if he intentionally renders assistance or gives aid by doing an act or omitting to do an act. Mere intention to render assistance is not sufficient.

Ingredients

- Doing an act that directly assists the commission of the crime, or
- Illegal omission of a duty you are bound to do, or
- Doing any act facilitates the commission of a crime.[23]

For instance, two factory workers begin quarrelling and the owner in a fit of anger shouts that if he had a weapon he would teach them a lesson. Now, if another labourer in the factory on hearing this hands him a weapon and the owner subsequently injures them with it, the labourer who supplied the weapon which facilitated the act is guilty of abetment through assistance.[24]

A person, it is trite, abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends to facilitate and does in fact facilitate the commission thereof, would attract the third clause of Section 107 of the Penal Code. Doing something for the offender is not abetment.

Doing something with the knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment. In order to constitute abetment by aiding within the meaning of the third paragraph of Section 107, the abettor must be shown to have intentionally aided the commission of the crime.

A person may invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But, unless it is shown that the invitation was extended with a view to facilitate the commission of the murder, it cannot be said that person extending the invitation had abetted the murder.

The language used in this section is "intentionally aids" and therefore, active complicity is the gist of the offence of abetment under the third paragraph of Section 107 of the Indian Penal Code. Abetment includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing.

On facts held, in the instant case, there was no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide.

Where the principal offender killed the victim with a knife provided by the defendant who later claimed that he thought the knife would be used only to threaten, the defendant's conviction for murder was upheld, the Court of Appeal saying that the trial judge was correct to direct the jury that the defendant could be so convicted if he contemplated that the principal offender might kill or cause serious bodily harm to the victim as part of their joint enterprise.

It is also not necessary to show that the secondary party to a conspiracy to murder intended the victim to be killed provided it is proved that he contemplated or foresaw the event as a real or substantial risk.

Mere absence from the scene of the crime cannot amount to unequivocal communication of withdrawal from the enterprise. The accused was recruited with certain others by a person to kill his wife. At a predetermined time she was taken to the agreed place and killed. The accused was not present when the killing took place. It was held that he was rightly convicted in that he had lent encouragement and assistance before the commission of the crime.

Merely being present at the crime scene does not amount to aiding

- Unless the intention was to have an effect by being present or the person was aware that an offence is about to be committed or he actively supports or holds some position, rank in committing of the offence.

Chapter VII

This chapter relates to the offences against an officer, soldier, sailor or airman in the army, navy or air force of Government of India. In addition, these words are common to all the sections right from Section 131 to 140.

Ingredients

1. Abetment of committing a mutiny by an officer(officer, soldier, sailor or airman in the army, navy or air force of Government of India)
2. Attempting to seduce any officer from his allegiance or his duty.

Mutiny is the uprising against the lawful authorities in the army. It can be very well compared to sedition. The concept of abetment in this chapter is analogous to Chapter V and Chapter XVI. The only difference being Chapter VII comes under the category of offences against the state, hence severe penal sanctions.

Chapter XVI

Abetment to Suicide

Instigation as a form of abetment has generally been the most essential consideration in cases of abetment to suicide and dowry death. Another

important consideration to charge anyone for abetment to suicide is to prove beyond doubt that the death in question is a suicidal death.[25] Section 306, IPC reads as *if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term, which may extend to ten years, and shall be liable to fine*. The definition of abetment in section 306 needs to conform with the definition given under section 107 of the IPC.

If A persuades B to kill himself and he does it, then according to this section, A would be liable as an abettor. Proving the direct involvement [26] by the accused in such abetment to suicide is necessary.[27] However, abetment of suicide is a long mental process and rarely easy to prove. A conviction cannot be handed over under 306 unless clear mens rea is proved. The elements that need to be satisfied in order for an offence to come under section 306 IPC are suicidal death, and abetment thereof held in ***Sangarabonia Sreenu v. State of Andhra Pradesh***. [28]

Let us look at some of the recent developments regarding Abetment to Suicide which put forth the ingredients of the offence as well.

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Deceased committed suicide by hanging himself because of the alleged illicit relationship between his wife and the accused. Accused took the wife of deceased away from the house of her brother and kept her with him for four days. There is definitely a proximity and nexus between the conduct and behaviour of the accused and wife of deceased with that of suicide committed by the deceased.

Where a married girl committed suicide by burning herself in her in-law's house, her in-laws were held guilty of abetment because they were persistently

torturing her for inadequate dowry and had gone to the extent of accusing her of illegitimate pregnancy. The judge in this case held that all these tortures and taunts caused depression in her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on herself and setting it afire.

Section [306 of the Penal Code](#) prescribes punishment for abetment of suicide while [Section 309 of the Penal Code](#) punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of Section 306 of the Penal Code.

In another case of the same kind, a husband persistently demanded more money from his wife, quarrelling with her everyday. On the fateful day when she happened to say that death would have been better than this, she heard only this in reply that her husband would feel relieved if she ended her life. Immediately thereafter he set herself on fire. The husband was held guilty of instigating her to commit suicide. Where the deceased committed suicide within 35 days from the date of her marriage, and the allegation of cruelty was also fully established, accused is found guilty.

- ***Clear mens rea to commit the offence is a sine qua non for conviction under Section 306 IPC***[29]
- Merely because wife committed suicide in matrimonial house, husband and in-laws can't be charged for abetment to suicide.[30]
- In order to convict a person for abetment of suicide, there has to be a clear mens rea to commit an offence. [31]

Relevant Case Laws

The law of abetment has undergone major changes very recently. The changes are laid out by the landmark cases below:

- In [Pramod Shriram Telgote v. State of Maharashtra](#) , it was held that “clear mens rea to commit the offence is a sine qua non for conviction under Section 306 IPC”.
- In [Channu v. State of Chattisgarh](#), it was held that “merely because wife committed suicide in matrimonial house, husband and in-laws can’t be charged for abetment to suicide.”
- In [Gurucharan Singh v. State of Punjab](#), it was held that “in order to convict a person for abetment of suicide, there has to be a clear mens rea to commit an offence.”

Conclusion

Thus, contrary to popular belief, not only the perpetrator of the crime but also his or her accomplice will be liable in the case.