


Subject: LAW

Production of Courseware

 - Content for Post Graduate Courses



Paper : SUBSTANTIVE CRIMINAL LAW

Module : ABETMENT



ज्ञान-विज्ञान विमुक्तये



## ABETMENT

### Quadrant I: Description of Module

Description of Module	
Subject Name	Law
Paper Name	Substantive Criminal Law
Module Name/Title	Abetment
Module Id	21
Pre-requisites	A general understanding of the fundamental principles of criminal law.
Objectives	<ul style="list-style-type: none"><li>➤ To introduce theoretical analysis of law</li><li>➤ To enable students to acquaint students with the diversity of conceptual perspectives informing the discipline of law</li></ul>
Key Words	Abetment, Intentional Aid, Instigation, Conspiracy, Suicide, Sati

### Quadrant II: E-Text

#### INTRODUCTION

Abetment which leads to crime is penalised under Chapter V of the Indian Penal Code, 1860 (“IPC”). Many crimes would be impossible but for support and encouragement received from others, who, though not actively co-operating in the crime, still prepare the ground and facilitates its commission.<sup>1</sup> The objective behind inclusion of Chapter relating to Abetment was to punish all those who may have lent their support and assistance to the commission of a crime.

**Abetment of a Thing:** Section 107 defines Abetment of a thing.<sup>2</sup>

Illustration: 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.

<sup>1</sup> Hari Singh Gour, Penal Law of India, Vol. 1, 11<sup>th</sup> Edition, 1997, Law Publishers, Allahabad, p. 970

<sup>2</sup> A person abets the doing of a thing, who— **First** — Instigates any person to do that thing; or **Secondly** — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or **Thirdly** — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or 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.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.



Section 107 does not define any offence but only explain the meaning of ‘abetment’. Abetment is a preparatory act and denotes active complicity on the part of the abettor at a point of time prior to actual commission of the offence.<sup>3</sup> The doing of an act with knowledge of facilitation to commit the crime would constitute abetment. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing.<sup>4</sup> An act of abetment may take place in one or more of the following ways: (1) instigation, (2) conspiracy, or (c) intentional aid.<sup>5</sup> ‘Instigates’ denotes illegal solicitation. A mere request to do a thing may amount to an abetment. Also, it is not necessary that a person instigated must be known to the instigator. ‘Conspiracy’ is an agreement between two or more persons to do an illegal act or a legal act in an illegal manner. Merely taking part in the deliberations for conspiracy is not abetment unless one engages in it, i.e., unless one approves or furthers its objects.<sup>6</sup> Further, there must take place “an act or omission in pursuance of that conspiracy. ‘Aid’ is defined in explanation 2 which provides that anyone who facilitates commission of an act is said to aid the doing of that act. A person who abets to do an offence is equally liable for the offence which is done by the person who was abetted as he must have intended all the results that follow by such abetment.<sup>7</sup> There can be no abetment without intention or knowledge. However, mere knowledge of offence being committed by others is not covered by the definition of abetment. Also, it is not required that the abettor should be present at the place where the offence is being committed.

**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.<sup>8</sup> ‘Instigate’ literally means to goad or urge forward or to provoke. A person instigates with intention to incite or encourage doing of an act by another.<sup>9</sup> Instigation involves a physical act or omission as well as a mental act. A mere acquiescence or permission does not amount to instigation. Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself.<sup>10</sup> It implies knowledge of the criminality of an act. For abetment by instigation, the instigation

<sup>3</sup> Muthammal v. Maruthathal, 1981 MLJ 287

<sup>4</sup> State of Gujarat v. P.R.Mehta, 1999 Cr LJ 736 (Guj) (DB)

<sup>5</sup> Malan v. State of Bombay, AIR 1960 Bom 393

<sup>6</sup> Hari Singh Gour, Penal Law of India, Vol. 1, 11<sup>th</sup> Edition, 1997, Law Publishers, Allahabad, p. 971

<sup>7</sup> S.K.Sarvaria, RA Nelson’s Indian Penal Code, Vol.1, 10<sup>th</sup> Edition, 2008, LexisNexis, Delhi, p.857

<sup>8</sup> Ratanlal & Dhirajlal, The Indian Penal Code, 32<sup>nd</sup> Edition, 2010, LexisNexis, Gurgaon, p.549

<sup>9</sup> Cyriac v. S.I. of Police, Kaduthuruthy, 2005 Cr LJ 4322 (Ker)

<sup>10</sup> Nazir v. Emperer, AIR 1927 All 730



must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Under section 107, IPC, it is the instigation to the commission of the act itself which constitutes the offence which is regarded as abetment. Instigation does not merely mean the placing of temptation to do a forbidden thing, but the actively stimulating a person to do it. There is no instigation unless it is communicated to the author of the act in some form or the other. Instigation may be personal or through a letter or a third party. The act of causing humiliation is not instigation. The instigation may be direct or indirect, but in either case it is necessary to show that the mind of person instigated was affected thereby. If the instigation is by means of a letter sent through post, the offence of abetment by instigation is completed as soon as the contents of such letter become known to the addressee, and the offence is triable at the place where such letter is received.<sup>11</sup> An advice per se cannot necessarily be instigation. Advice can become instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence. In *Jai Narain v. State of Bihar*,<sup>12</sup> where the persons who were members of an unlawful assembly set fire to a hut in consequence of the order of the accused, the Court that it would be too unreal to hold that the persons who set fire to the hut did so irrespective or independently of the order given by the accused. In another case, where accused persons went to the house of the deceased, hurled abuses at her, the words used by them were highly provocative and stimulating, the deceased as a result committed suicide, the acts of the accused persons amounted to instigation and they were held liable to be convicted under section 306 read with section 107, IPC.<sup>13</sup> A wilful misrepresentation of a fact amounts to an abetment of an act within the meaning of section 107, explanation 1.<sup>14</sup> There has to be a reasonable certainty in regard to the meaning of the words used by the instigator in order to determine whether or not there was instigation, but it is not necessary to prove the actual words used for the incitement.<sup>15</sup>

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<sup>11</sup> R. v. Sheo Dial, 16 ILR All 389

<sup>12</sup> AIR 1972 SC 1764

<sup>13</sup> C.P. Malik v. State, 1999 Cr LJ 4525 (Del)

<sup>14</sup> Lakshminarayan v. State, (1962) MPLJ 246

<sup>15</sup> Prem Narain v. State, AIR 1957 All 177



**Abetment by Conspiracy:** Conspiracy consists in a combination and agreement by persons to do some illegal act or effect a legal purpose by illegal means.<sup>16</sup> A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more 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.<sup>17</sup> Conspiracy is a species of association or union of two or more persons for some common purpose. The gist of abetment by conspiracy lies in the forming of the scheme or agreement between the parties. In order to constitute abetment by conspiracy four things are essential: (a) there must be at least two persons, (b) they must 'engage' in the commission of an act, (c) an act or omission must take place in pursuance of that conspiracy, and (d) that act or omission must have taken place 'in order to the doing of that thing'. All these elements must combine to constitute abetment by conspiracy. To constitute conspiracy, there must be at least two persons engaged therein and it must be proved that there was another person engaged beside the accused and if one of the two persons charged is acquitted, the conviction of the other for conspiracy cannot stand.<sup>18</sup> 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. It is not necessary that all the conspirators should be equally informed of all the details of the scheme. But there must be mutual consent to a common purpose. It is also not necessary that all persons should have joined in the scheme from the first, but those who come in at a later stage are equally guilty, provided the agreement is proved.<sup>19</sup> In the case of abetment by conspiracy a person can be said to abet the doing of a thing only if the conspiracy is for the doing of that particular thing.

*Illustration:* If A and B conspire to rob C, and B not only robs but even kill C, A cannot be said to abet the killing unless it can be said that A must have foreseen it as a probable consequences of the conspiracy.

It is important that for abetment by conspiracy, not only must the person abetting engage in a conspiracy, but there must be an overt act or illegal omission in furtherance of the conspiracy and for doing of the thing abetted. If a conspirator

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<sup>16</sup> Emperor v. Abdul Hamid, AIR 1944 Lah 380

<sup>17</sup> Ratanlal & Dhirajlal, The Indian Penal Code, 32<sup>nd</sup> Edition, 2010, LexisNexis, Gurgaon, p.553

<sup>18</sup> Topandas v. State of Bombay, AIR 1956 SC 33

<sup>19</sup> Barindra Kumar v. R., 37 ILR 467 Cal



withdraws from the conspiracy before the offence which is the object thereof is effected by the other parties thereto, he is not liable.<sup>20</sup>

**Abetment by Aiding:** In order to constitute abetment, the abettor must be shown to have ‘intentionally’ aided the commission of an offence. Mere proof that the offence charged could not have been committed without the interposition of alleged abettor is not enough.<sup>21</sup> For example, a person may invite another for a friendly purpose or casually and that may facilitate the murder of invitee, but unless the invitation is extended with the intention to facilitate the murder, the host cannot be said to have abetted the murder.<sup>22</sup> Intention to aid the commission of offence is the gist of offence of abetment by aid.<sup>23</sup> Such intention when is found lacking the delinquent cannot be roped by a charge of abetment. A person abets by aiding when by commission of an act he intends to facilitate and does facilitate the commission thereof. An act which merely amounts to aiding the commission of an offence is not an abetment. In order to amount to abetment by aid, the aid must be given with the intention to aid the commission of the offence. The mere giving of the aid will not make the act of abetment an offence if the person who gave the aid did not know that an offence was being committed or contemplated.<sup>24</sup> ‘Illegal’ means against or not authorised by law and ‘omission’ is something that has not been done either deliberately or accidentally. To prove an act by ‘illegal omission’, it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference. In a case of custodial rape by co-accused, the victim was forcibly taken to the police station by the accused who kept watch over the husband of the victim while she was being raped by the co-accused. The accused did not do anything and turned a deaf ear towards the cries of the victim. The Supreme Court upheld the conviction of accused for abetting commission of rape with the aid under section 107.<sup>25</sup> However, mere silence is not necessarily an illegal omission. Simply doing nothing is not an act, and unless there is a duty to do something, it cannot be said that it is an illegal omission. Also, mere failure to prevent commission of an offence is not, by itself, an abetment in the absence of anything to show that the accused helped in, or instigated, the commission

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<sup>20</sup> S.K.Sarvaria, RA Nelson’s Indian Penal Code, Vol.1, 10<sup>th</sup> Edition, 2008, LexisNexis, Delhi, p.876

<sup>21</sup> Ratanlal & Dhirajlal, The Indian Penal Code, 32<sup>nd</sup> Edition, 2010, LexisNexis, Gurgaon, p.557

<sup>22</sup> Ram v. State of U.P., AIR 1975 SC 175

<sup>23</sup> Trilok v. State of Delhi, AIR 1977 SC 666

<sup>24</sup> Ramnath v. Emperor, 1926 Cr LJ 362

<sup>25</sup> Ram Kumar v. State of Himachal Pradesh, AIR 1995 SC 1965



of the offence.<sup>26</sup> The editor of a newspaper inserted advertisement not obscene in themselves but, as he knew, relating to the sale of obscene books and photographs. He abetted their sale.<sup>27</sup> The act or omission must take place either prior to or at the time of, the commission of offence. There can be no abetment of an offence after it has been committed.<sup>28</sup> The person who, without any demand, express or implied, on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under general rule as instigator. But a person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty instigating that public servant to receive bribe.<sup>29</sup>



**Figure 1: Abetment**

**Abettor:** Section 108 defines Abettor<sup>30</sup> as 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.<sup>31</sup>

*Explanation 1:* The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act. The explanation relates to the same person and shows that he may be guilty as an abettor though as a principal he may be innocent.

*Illustration:* A, a private person, instigates B, a police officer, to leave the scene of a cognisable offence which it is his duty to prevent. If, in consequence, B illegally omits

<sup>26</sup> Shyam Bahadur v. State of Bihar, AIR 1967 Pat 312

<sup>27</sup> R. v. Marny, LR (1907) 1 KB 338

<sup>28</sup> Harji v. State of Rajasthan, (1978) Raj LW 1

<sup>29</sup> Statement of Framers of the Code, Note B cited in Emperor v. C.D.Rao AIR 1933 All 513

<sup>30</sup> Section 108, IPC: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with same intention or knowledge as that of the abettor.

<sup>31</sup> Hari Singh Gour, Penal Law of India, Vol. 1, 11<sup>th</sup> Edition, 1997, Law Publishers, Allahabad, p. 997



to prevent the commission of the cognisable offence, he would be guilty of abetting the offence but *A* would not be guilty of abetting the abetment committed by *B* by his illegal omission, which is also an offence under the explanation 4 of section 108, IPC.

*Explanation 2: To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.* The offence of abetment is complete notwithstanding that the person abetted involuntarily fails in doing the act abetted or is interrupted before the act is complete. It depends upon the intention of the person who abets and not upon the act which is actually done by the person abetted.

*Illustration: A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.*

*Illustration: A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.*

*Explanation 3: It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.* 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. The offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he employs to act for him.

*Illustration: A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here, A, whether the act be committed or not, is guilty of abetting an offence.*

*Illustration: A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does, the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence. A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.*

*Illustration: A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's*





instigation. *B* has committed no offence, but *A* is guilty of abetting the offence of setting fire to dwelling-house, and is liable to the punishment, provided for that offence.

*Illustration:* *A*, intending to cause a theft to be committed, instigates *B* to take property belonging to *Z* out of *Z*'s possession. *A* induces *B* to believe that the property belongs to *A*. *B* takes the property out of *Z*'s possession, in good faith, believing it to be *A*'s property. *B*, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But *A* is guilty of abetting theft, and is liable to the same punishment as if *B* had committed theft.

*Explanation 4:* *The abetment of an offence being an offence, the abetment of such an abetment is also an offence.* The abetment of an abetment of an offence is no more and not less than the abetment of that offence. In view of this explanation, abetment of an abetment of an offence is itself punishable. The first line of explanation postulates that abetment of an offence itself is a substantive offence and second line clarifies that abetment to commit abetment of an offence is also an offence.

*Illustration:* *A* instigates *B* to instigate *C* to murder *Z*. *B* accordingly instigates *C* to murder *Z*, and *C* commits that offence in consequence of *B*'s instigation. *B* is liable to be punished for his offence with the punishment of murder; and, as *A* instigated *B* to commit offence, *A* is also liable to the same punishment.

*Explanation 5:* *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 is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.* This explanation applies only to abetment by conspiracy. Abetment relates not to an offender but to an offence. In case of abetment by conspiracy, 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.

*Illustration:* *A* concert with *B* a plan for poisoning *Z*. It is agreed that *A* shall administer the poison. *B* then explains the plan to *C* mentioning that a third person is to administer the poison, but without mentioning *A*'s name. *C* agrees to procure the poison, and procures and delivers it to *B* for the purpose of its being used in the manner explained. *A* administers the poison; *Z* dies in consequence. Here, though *A*



and *C* have not conspired together, yet *C* has been engaged in the conspiracy in pursuance of which *Z* has been murdered. *C* has therefore committed the offence defined in this section and is liable to punishment for murder.

**Abetment in India of offences outside India:**<sup>32</sup> Section 108A puts abetment of offences to be committed outside India on the same footing as the abetment of offences to be committed in India. Under this section, although the offence abetted may be committed outside India, the abetment itself must be committed in India.

*Illustration:* *A*, in India, instigates *B*, a foreigner in Nepal, to commit a murder in Nepal. *A* is guilty of abetting murder.

**Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment:**<sup>33</sup> Section 109 is of general nature and contemplates active abetment at the time of offence being committed.

However, presence of abettor is not necessary for invoking this section. To invoke section 109, the following three things are required: (a) there must be abetment of an offence, (b) the act abetted must have been committed in consequence of the abetment, and (c) there must be no express provision in the Code for punishment of such abetment.

*Illustration:* *A* offers a bribe to *B*, a public servant, as reward for showing *A* some favour in exercise of *B*'s official functions. *B* accepts the bribe. *A* has abetted the offence defined in section 161, IPC.

*Illustration:* *A* instigates *B* to give false evidence. *B*, in consequence of the instigation, commits that offence. *A* is guilty of abetting that offence, and is liable to the same punishment as *B*.

*Illustration:* *A* and *B* conspire to poison *Z*. *A* in pursuance of the conspiracy, procures the poison and delivers it to *B* in order that he may administer it to *Z*. *B*, in pursuance of the conspiracy, administers the poison to *Z* in *A*'s absence and thereby causes *Z*'s death. Here *B* is guilty of murder. *A* is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

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<sup>32</sup> Section 108A, IPC: *A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.*

<sup>33</sup> Section 109, IPC: *Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no expression provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.* Explanation: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.



If a person abets commission of murder by public, the murder is committed in consequence of the abetment; the appropriate provision for such an offence would be section 109, IPC.<sup>34</sup>

**Punishment of abetment if person abetted does act with different intention from that of abettor:**<sup>35</sup> Section 110 enacts that the variation between the intention and knowledge of the abettor and those of the person abetted is of no significance for fixing liability so long as the act done is the same as the act abetted, i.e., variation in intention or knowledge of the persons abetted does not effect the liability of the abettor.

**Liability of abettor when one act abetted and different act done:**<sup>36</sup> Section 111 provides for the liability of the abettor when the act done is different from the act abetted. It lays down that in such a case the abettor is liable for the act committed. The section proceeds on the maxim 'every man is presumed to know the natural consequences of his act'. The test in these cases must always be whether, having regard to the immediate object of the abetment, the act done by principal is one, which according to ordinary experience and commonsense, the abettor must have foreseen as possible. A probable consequence of an act is one which is likely, or which can reasonably be expected, to follow from such an act.

*Illustration:* A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put poison into the food of Y.

*Illustration:* A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of the property there. A, though guilty of abetting the burning of

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<sup>34</sup> Emperor v. Lavji Mahajan, AIR 1939 Bom 452

<sup>35</sup> Section 110, IPC: *Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.*

<sup>36</sup> Section 111, IPC: *When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it. Proviso. - Provided that the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.*



the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

*Illustration:* A instigates B and C to break into an inhabited house at midnight for purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to punishment provided for murder.

**Abettor when liable to cumulative punishment for act abetted and for act done.**<sup>37</sup>

Under section 112 an abettor may render himself liable for two offences, when he only intended to bring about one, if the one which he intended caused another which he ought to have anticipated, and if the two are distinct offences so as to be subject to distinct punishments.

*Illustration:* A instigates B to resist by force a distress made by public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

**Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.**<sup>38</sup>

Under the terms section 113, the liability of abettor depends on the question of the abettor's knowledge.<sup>39</sup> Where a certain act is abetted with the object of producing a certain effect but it causes a different one, the abettor is liable for it, if he knew that the act which he abetted was likely to cause that effect.<sup>40</sup>

*Illustration:* A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder

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<sup>37</sup> Sec 112, IPC: *If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.*

<sup>38</sup> Section 113, IPC: *When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, caused a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.*

<sup>39</sup> R. v. Mathura Das, 6 ILR 491 All

<sup>40</sup> Rajwant Singh v. State of Kerala, AIR 1966 SC 1874



**Abettor present when offence is committed:**<sup>41</sup> Section 114 deals with the case, where there has been the crime of abetment, but where also there has been actual commission of crime abetted and the abettor has been present thereat. If a person is present, who if absent would have been liable to be punished as an abettor, is deemed under section 114 to have committed the crime.<sup>42</sup> A presumption of participation may be construed as when the abettor is near enough to afford assistance, should the occasion arise. The meaning of the section is that, if the nature of the act done constitutes abetment, then if present, the abettor is deemed to have committed the offence, though in point of fact another person actually committed it. The ground of liability is participation in the crime, and that is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing but participation.

**Abetment of offence punishable with death or imprisonment for life—if offence not committed:**<sup>43</sup> Section 115 punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of the abetment or only in part committed. It applies only when the abetment is not punishable under another provision of the Code.

*Illustration:* A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

**Abetment of offence punishable with imprisonment—if offence be not committed:**<sup>44</sup> Section 116 provides for the abetment of an offence punishable with

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<sup>41</sup> Section 114, IPC: *Whenever any person, who is absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.*

<sup>42</sup> Barendra Kumar Ghosh, 27 Bom LR 148

<sup>43</sup> Section 115, IPC: *Whoever abets the commission of an offence punishable with death or 1[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; If act causing harm be done in consequence.—and 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.*

<sup>44</sup> Section 116, IPC: *Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both; If abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence,*



imprisonment. This section makes a distinction with respect to punishment in the case of a private person and for a police officer involved in the abetment of a crime. It imposes greater responsibility in the case of public servants whose duty is to prevent crime as compared to ordinary individuals.

*Illustration:* A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

*Illustration:* A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

*Illustration:* A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

*Illustration:* B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

**Abetting commission of offence by the public or by more than ten persons:**<sup>45</sup>

Section 117 provides punishment for abetment of an offence by the public or by any member or class of persons exceeding ten. It deals with an aggravated form of abetment and refers to offences abetted by the public generally.

*Illustration:* A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

**Concealing design to commit offence punishable with death or imprisonment for life:**<sup>46</sup> Sections 118, 119 and 120 all contemplate the concealment of a design by

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*the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.*

<sup>45</sup> Section 117, IPC: *Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

<sup>46</sup> Section 118, IPC: *Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life;*





persons other than the accused to commit the offence charged. These sections apply to the concealment of all offences except those punishable with fine only. These sections deal with concealment prior to commission of an offence. Concealment must be the result of an active conduct as distinguished from passive non-disclosure. Thus, mere denial of the existence of design to commit an offence does not constitute concealment. There must be an obligation on the person concealing the offence to disclose it. Concealment to be criminal must be intentional or, at least, with knowledge that it will facilitate the commission of an offence. Where the conduct consists of an omission, the omission must be 'illegal'; it must be in itself either an offence, or prohibited by law, or furnishing ground for a civil action.

*Illustration:* A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

**Public servant concealing design to commit offence which it is his duty to prevent.**<sup>47</sup> Section 119 is an adaptation of section 118 and it applies to public servants, whose duty, as such public servants, is to prevent the commission of offences, and prescribes an enhanced punishment in their case.

*Illustration:* A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the

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*voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,*

***If offence be committed — if offence be not committed.*** —shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

<sup>47</sup> Section 119, IPC: *Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent; voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design;*

***If offence be committed.*** —shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

***If offence be punishable with death, etc.*** —or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

***If offence be not committed.*** —or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.



commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section

**Concealing design to commit offence punishable with imprisonment:**<sup>48</sup> Section 120 supplements the provision of section 118. The basic principle of both the sections is one and the same. Section 120 applies to offences punishable with imprisonment only. Thus, according to section 120, when an offence is committed in pursuance of abetment, the accused may be punished with one-fourth of the longest term of imprisonment, and if not committed, to one-eighth of the punishment prescribed for that offence.

**Abetment of Suicide:**<sup>49</sup> Section 306, IPC punishes abetment of suicide. Suicide is an act of taking one's own life voluntarily and intentionally. This section was inserted in order to prevent *sati* which was a prevalent custom in those days. The relatives of the widows used to instigate them to commit *sati*. In the matter of an offence under section 306, IPC abetment must attract the definition thereof in section 107, IPC. Section 306 creates a specific offence and the liability arises only when the suicide is committed. It will not apply in case of an attempted suicide. Section 113A of Indian Evidence Act, 1882 lays down provision for the presumption as to abetment of suicide by a married woman, when it is shown that the suicide is committed within seven years from the date of her marriage and she was subjected to cruelty.

However, the Commission of Sati (Prevention) Act, 1987 provides very stringent punishment in case of Abetment of Sati. The object of enacting this Act was to provide for the more effective prevention of the commission of sati and its glorification as the preamble stated that *sati* or the burning or burying alive of widows or women is revolting to the feelings of human nature and nowhere enjoined by any of the religions of India as an imperative duty. Under the Sati Act, any person abetting the commission of sati, either directly or indirectly, shall be punishable with death or

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<sup>48</sup> Section 120, IPC: *Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,*

***If offence be committed—if offence be not committed.***—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

<sup>49</sup> Section 306, IPC: *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 also be liable to fine.*



imprisonment for life and shall also be liable to fine.<sup>50</sup> It is very disappointing to state that even today in 21<sup>st</sup> century, there are cases of sati reported in newspapers.

In *Neni v. State of Rajasthan*,<sup>51</sup> the deceased was being harassed by her in laws for not bringing sufficient dowry and this became the cause of her committing suicide. The dead body was hurriedly cremated without informing her parents. It was held that presumption of abetment under the Evidence Act was attracted and the conviction of accused persons under section 306 read with section 201 was held proper.

In *Ram Kumar v. State of M.P.*,<sup>52</sup> where the wife committed suicide by consuming poison after twenty years of marriage and the evidence showed that accused husband prior to the incident threatened her, forced her to divorce and treated her with cruelty. The court held that although the presumption of abetment under the Evidence Act is not applicable but an inference can be drawn that such a cruel conduct of accused led and provoked her to commit suicide and hence the conviction of accused under section 306, IPC is proper.

In *Madia v. State of M.P.*,<sup>53</sup> the accused was alleged to have tried to outrage the modesty of deceased who had committed suicide two days after the happening of the incident because she felt ashamed. It was held that the accused could not be held guilty of offence under section 306 as the period of two days that elapsed between the two incidents showed that act of accused did not instigate her to commit suicide.

In *A.K.Chaudhary v. State of Gujarat*,<sup>54</sup> when the deceased was suspended by the accused officer in charge he committed suicide. There was no direct and cogent action of the accused that prompted the deceased to commit suicide as the accused was not present on the spot. It was held that there was no abetment on the part of any of the accused to commit suicide by the deceased.

In *Supchand v. State of Maharashtra*,<sup>55</sup> the mere fact that the accused husband had performed second marriage and the first wife, who was living separately, and who committed suicide, had to struggle for existence, were held to be not sufficient to convict the accused husband for the offence under 306, IPC.

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<sup>50</sup> Section 4, Commission of Sati (Prevention) Act, 1987.

<sup>51</sup> 2003 Cr LJ 2181 (Bom)

<sup>52</sup> 1998 Cr LJ 952 (MP)

<sup>53</sup> 2006 Cr LJ 1963 (MP)

<sup>54</sup> 2006 Cr LJ 726 (Guj)

<sup>55</sup> 1995 Cr LJ 3939 (Bom)



In *Alka v. State of M.P.*,<sup>56</sup> where the suicide note of a husband hinted at the immoral character of his wife, it was held that it was not sufficient to infer that the wife abetted suicide. She could be a cause of suicide but not abettor.

In *Manish v. State of Rajasthan*,<sup>57</sup> where the accused had lent a certain amount to a lady and he was persistently demanding repayment from her, which was no offence, the accused did not know that she had purchased poisonous tablets and might commit suicide, he was held not liable for abetment of suicide.

<b>Abetment of Suicide, IPC</b>	<b>Abetment of Sati, Sati Act</b>
Imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	Sentence of Death or imprisonment for life and liable to fine

**Punishment for abetment of Sati**

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<sup>56</sup> 2000 Cr LJ 672 (MP)

<sup>57</sup> 1995 Cr LJ 3066 (Raj)