

## Evaluation of Abetment theory in Indian Criminal Justice System

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Best Citation - Tanvi Damle, Evaluation of Abetment  
theory in Indian Criminal Justice System, 2 (2) LIU & 43  
(2021)

### Abstract

In human culture, law and crime have a long history. Crime is an action or omission which constitutes an offense and is punishable by law. The law punishes the person who has committed the said crime, but also the person who has instigated, or encouraged or aided the other person in the commitment of the crime. This is where the concept of abetment comes into play. It broadens the scope of criminal law to include offenses of criminal intensions and penalize them even if they have not directly committed the offense. Abetment has its basis in the Indian Penal Code of 1860. The offence of abatement is committed when a person does not commit the crime he wishes to commit, by himself, but urges or persuades another to commit the act. This paper aims to analyze the offense of Abetment in the Indian Criminal justice system and seeks to understand its various theories.

### I. Introduction

The definition and notion of crime vary not only according on a group's and society's values, beliefs, faith, religious attitudes, customs, traditions, and taboos, but also depending on the society's style of governance, political and economic structure, and a variety of other elements. In a socialist society, for example, what is a crime against property in a capitalist society may be a legal way of life. People may assume that if they intend to conduct a crime but do not really carry it out, they will not be held accountable. This

<sup>86</sup> Sanju v. State of Madhya Pradesh, (2002) 5 SCC 371

assumption is incorrect, because there are laws in place for particular offences known as "inchoate" offences. The term "inchoate" refers to a criminal conduct that was planned but not carried out. The following are the primary offences that are covered: Conspiracy and Abetment

The Indian Penal Code is a comprehensive piece of law. The code incorporates the country's general penal legislation and is the exclusive authority in terms of basic working conditions, definitions of individual offences in the Code, and circumstances of exclusions from criminal responsibility. Some crimes are punishable, while others are not. Traditional and customary crimes are steeped in time and conventions, and the Indian Penal Code is at the heart of them. The Code punishes crimes against people and their property that are widely recognised as harmful to all civilised communities, as well as acts that violate fundamental ideals that underpin human existence as a civilization. These essentials are more or less permanent in nature and will last for a long period. In the case of Sanju v The state of Madhya Pradesh<sup>86</sup>, the 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.<sup>87</sup> The established term of 'abet' makes it apparent that abetment only happens when at least two people are engaged, which further points us to the act's planning and execution. In criminal law, the word 'abettor' denotes a distinction between the person who aids and abets the commission of a crime (or abettor) and the actual perpetrator of the offence (or primary offender). Anyone who does anything before to or during the performance of an act to enable the commission of that act, and hence facilitate the commission of that act, is said to help the doing of that act.

### II. Abetment under the Indian Penal Code

<sup>87</sup> Kartar Singh v. State of Punjab, 1994 Cri LJ 3319

In Indian Penal Code, Abetment is defined under section 107<sup>88</sup> as;

Abetment of a thing - A person abets the doing of a thing, who: -

- A. Instigates any person to do that thing; or
- B. 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;
- C. Intentionally aids, by any act or illegal omission, the doing of that thing.

Prosecution must allege the component of mens rea in order to hold an individual accountable for Abetment and prosecute them for a criminal crime under Section 107. According to the organization of criminal laws, negligence or carelessness cannot be named as abetment in order to penalize the liable. To be found guilty of abetment, the abettor must have seemed to "deliberately" aid and abet the conduct. In such a situation, proving that the alleged violation could not have occurred without the affiliation and action of the alleged abettor is insufficient to meet Section 107's requirements<sup>89</sup>. After reviewing the legislation, it was determined that an act involving any kind of help or encouragement was required in order to charge someone with abetment. Thus, in a circumstance where a person's simple failure to prevent an offence is claimed to have occurred, it is often not regarded sufficient to charge them with abetment. However, abetting occurs when a person has direct influence over the behaviour of another person and fails to prevent the other person from committing the offence.

The aforementioned legal requirement presumes the presence of one who committed the crime. In a nutshell, it's critical to discuss the implications of the articulation

'Perpetrator.' For the most part, the perpetrator is obvious; he is the one who, with considerable mens rea, fires the fatal shot in a homicide, engages in sexual intercourse, or appropriates goods in a robbery. Obviously, there can be more than one offender, such as when two guys collaborate to murder the other. Two people can also be joint criminals if each has the relevant mens rea and does acts that together represent the actus reus of an offence; for example, in a case involving driving, A and B were both charged with driving, with A inclining over and controlling the steering and B working the foot pedals and gears. Even though he is not present at the scene of the infraction and does nothing with his own hands, a guy who uses an innocent agent to acquire the commission of a violation is the perpetrator, not the agent.

An innocent agent is one who commits the actus reus of a crime but lacks responsibility himself, either due to insufficiency or immaturity, or because he requires mens rea or has a safeguard, such as coercion. A bribe-giver is an accessory only if he gives it with the intent of obtaining a favour that could not be obtained by legal methods; however, someone who offers it to help in the custody of a criminal is not an accessory since the necessary mens rea is lacking. Complicity does not apply to anyone who provide illegal satisfaction under duress, dread, or coercion. Before the abettor may be punished for abetment of that offence, the principal offender brought up at the same trial does not have to be indicted for the offence accused. Each case must be decided based on its particular set of circumstances.

In general, the facts show that there can be no abetment conviction when the prosecution fails to substantiate the commission of the essential offence, but conviction of the abettor for his act of abetment would be perfectly justified even if the principal offender is acquitted, if the evidence on record satisfactorily establishes that the offence was

<sup>88</sup> Section 107, Indian Penal Code, 1860

<sup>89</sup> Pathshala, Substantive criminal law, NME-ICT, (15 Dec. 2021, 22:04)

committed as a result of the abettor's act of abetment. It is possible that a situation will develop in which the conviction of the abettor would be appropriate based on the testimony of the same witness whose testimony was determined to be insufficient for the conviction of the major criminal. In the case of the principal offender, the same evidence may have an infirmity that it does not have in the case of the abettor, and in such a case, the Court would be perfectly justified in convicting the abettor, even if the principal offender had been acquitted by giving him the benefit of the doubt, because the same considerations that applied to the principal offender do not apply equally to the case against the abettor.

### III. Punishment for abetment under the IPC

In its abetment laws, the Penal Code carefully lays out the sections, outlining in detail the many types of sanctions that the abetment laws announce. They are covered as follows:

According to Section 109 of the Indian Penal Code, an abettor receives the same sentence as the major perpetrator of the crime if the principal offender's actus reus happened as a consequence of the abettor's encouragement. If no other provision for the punishment of such abetment exists, Section 109 of the Penal Code<sup>90</sup> applies.

Regardless of whether the abettor is present at the time the offence is committed, Section 109 of the Penal Code applies because he has instigated the commission of the offence or has connected with at least one or more different people in a conspiracy to commit an offence, and in accordance with that conspiracy, some unlawful act or unlawful exclusion occurs, or has purposefully assisted the commission of an offence by an act or illicit oversight. This section specifies that if the Penal Code has not separately accommodated abetment as a penalty, it is prosecuted with the same discipline as the initial offence. Instigation is not expected to be in a precise structure or to be expressed solely in words, according to the law. The incitement might come in the form of behaviour or

conduct. Whether there was incitement or not is a question that must be answered based on the facts of each instance. It isn't necessary for the prosecution to show that the real intention in the mind of the person abetting was instigation and nothing else, as long as there was instigation and the offence was committed or would have been committed if the main offender had the same intention and knowledge as the person who was instigated.

An individual can only be found guilty of abetment through incitement if this criterion is met<sup>91</sup>. Furthermore, the abetted actus reus must be performed as a result of the abetment or in accordance with the Explanation to this Section. Section 110 of the IPC states that Even if the abettor commits the offence with a different purpose than the principal offender, the abettor shall be prosecuted with the sentence specified for the offence aided. This clause has no bearing on the aided individual's responsibility.

Section 111 of the IPC continues to build on the statement "each individual is presumed to intend the consequent results of his conduct" in abetment statutes. If one man instigates another to commit a specific wrongdoing, and the latter, in response to such instigation, commits not only that wrongdoing but also another wrongdoing in furtherance of it, the former is criminally liable as an abettor in regard to the latter, if it is one that a reasonable person with the intelligence of a reasonable man would have known to be committed at the time of inducement. Section 112 of the IPC builds on the principles laid down in the preceding section. It holds the abettor responsible for both the abetted and the committed offence. A close examination of Sections 111, 112, and 133 reveals that if an individual aids and abets another in the commission of an offence, and the chief goes on to do something else that has a different outcome than the abettor intended, thereby aggravating the offence, the abettor is liable for the consequences of his principal's actions. The essential question in such an investigation is whether the

<sup>90</sup> Section 109, Indian Penal Code, 1860

<sup>91</sup> Hema Modi, Abetment: important pointers you must know about, Ipleaders, Dec. 15, 2021, 22:12,

abettor, if he had been a reasonable man at the time he was being provoked or if he had been actively aiding the principal criminal, could have forecast the likely outcomes of his abetment. Section 113 of the IPC must be read together with the section 111. Section 111 deals with the performing of an actus reus that isn't the same as the one abetted, while it also deals with the circumstance when the actus reus is comparable to the abetted criminal conduct but has a different consequence.

Section 114 of the Indian Penal Code is likely to be activated only once conditions indicating abetment of a specific crime have been established, and then the presence of the accused at the commission of that wrongdoing has been established. Section 114 deals with the situation in which there has been an abetment wrongdoing, but there has also been an actual commission of the wrongdoing abetted and the abettor is present, and the way it handles such a case is as follows. Rather of the wrongdoing being assisted by aggravating circumstances, the transgression becomes the exact wrongdoing abetted. Clearly, the provision is not punitive. Section 114 of the IPC does not apply in every case where the abettor is present during the commission of the abetted offence. While Section 109 refers to abetment, Section 114 refers to circumstances in which the abettor was not only present at the moment of the crime's conduct, but also abetment was carried out prior to his presence. Section 115 of the IPC says that Abetment of certain offences that are either not committed at all, not committed in the course of abetment, or just partially done is illegal. Section 116 of the IPC allows for the aiding and abetting of a crime that is punishable by detention. There is no part of the Code that deals with abetment of an offence punishable simply by a fine.

Section 117 of the IPC states that abetment by the general public or groups of more than 10 persons is discussed. Abetment refers to both the individual or individuals abetted

and the act or offences aided in their conduct. This section deals with the first, regardless of the nature of the offence aided, whereas Section 115 deals with the second, regardless of the person assisted.

To understand the punishments under abetment, one needs to understand the four stages of crime<sup>92</sup> –

- A. Formation of mens rea.
- B. Preparatory phase.
- C. Acting in accordance with the preparation or 'Attempt'
- D. Injury caused.

Different Penal Codes will take a different path in determining the degrees of guilt for various phases and, as a result, the sentence. As a result, it becomes vital to document the type and extent of engagement. Abetment, like the other inchoate offences, is a predicate crime rather than a standalone offence. 'Abetment' cannot be considered a crime. It's more of a notion that serves as a foundation for offences like abetment to do something and abetment to commit suicide. The objective is to broaden the scope of criminal law so that some penalties can be applied to the planning phases of a crime as well. Abetment is covered in Chapter V of the IPC, which considers the different gradations of a criminal conduct where the abettor is a separate person who is not directly participating in the crime. The offence of abetment is defined in the IPC as a unique and distinct offence. Abetment as a full crime occurs when a person (1) instigates another person to do anything; (2) engages in any conspiracy for the purpose of doing that thing with one or more other individuals; or (3) actively supports the doing of that thing by an act or illegal omission. The logic behind penalising the preliminary steps of a crime so that the law is a deterrent not only in theory but also in fact is reaffirmed by abetment being a separate and distinct offence.

#### IV. Abettor

<sup>92</sup> Dhruv Bhardwaj, Abetment under the Indian Penal Code, Ipleaders, (Dec. 15, 2021, 22:01 PM),

A person becomes liable as an abettor if he instigates another to commit a crime or engages in a conspiracy with another to commit a crime and some act is done in furtherance of such conspiracy, or if he intentionally aids another in order to facilitate the commission of a crime, according to the Indian Penal Code. In general, the phrase 'abet' implies to help, advance, aid, conduce, and promote. The term 'abet' has been described as meaning to help; to assist or offer assistance; to order, obtain, or counsel; to countenance; to urge; induce, or assist in encouraging or setting another to commit. Abettor is a person who 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 the same intention or knowledge as that of the abettor.

The essentials are:

- A. There must be an abettor;
- B. He must abet, and
- C. The abetment must be an offence or an act which would be an offence, if committed by a person capable in law of committing the offence with the same intention or knowledge as that of the abettor

The purpose of the person who abets determines the crime of abetment, not the act that is actually done by the person who abets. It makes no difference whether the person who provoked the crime or the individuals conspiring together actually carry out the conspiracy's intention for the purposes of the first two clauses of this section<sup>93</sup>. Only in the situation of a person abetting a crime by willfully assisting another to commit that offence would the accusation of abetment against him be likely to fail if the person accused of committing the offence is acquitted.

#### V. Difference between common Intention and Abetment

- A. Abetment is a stand-alone crime that can be punished on its own, but having a common intention is not a crime in and of itself and must be considered in conjunction with other crimes<sup>94</sup>.
- B. The offence does not have to be committed for Abetment, but it must be committed for Common Intention.
- C. While the accused may not be present at the crime site for Abetment, his presence is required for Common Intention, and he must participate, whether actively or passively.

#### Types of Abetment under the IPC

##### A. 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.

In a case of abetment by instigation, the law does not require that instigation take a specific form or that it be only in words; for example, a simple gesture indicating a beating or a simple 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 case to take a bribe.

The word "instigation" means "to push forward, prod, instigate, or encourage someone to do something." To meet the "instigation" criterion, it is not required to employ explicit words to that effect, nor does what constitutes "instigation" have to be necessarily and especially indicative of the outcome. However, a reasonable assurance to elicit the result must be spelled clearly.

To constitute 'instigation,' a person who instigates another must provoke, incite, urge, or encourage the other to perform an act by "goading" or "urging onward." To

<sup>93</sup> Rooholamini, M., 2017. Concept of Abetment in the IPC (2013). *J. Pol. & L.*, 10, p.162.

<sup>94</sup> Dhruv Bhardwaj, Abetment under the Indian Penal Code, *Ipleaders*, (Dec. 15, 2021, 22:01 PM),

be found guilty of aiding and abetting, it must be proven that he did anything purposefully that amounted to encouraging another to do something. It's also possible that the instigator is someone you don't know. Permission is not the same as instigation.

#### B. Wilful Misrepresentation or Wilful Concealment

Explanation 1 to this section states that a person who deliberately causes or procures, or seeks to cause or procure, a thing to be done (1) by willful misrepresentation, or (2) by wilful suppression of a material truth that he is obligated to reveal, is said to incite the doing of such thing. When a person has an obligation to reveal a fact, this is referred to as 'wilful concealment.'

#### C. Abetment by Conspiracy

A 'conspiracy' is defined as an agreement between two or more people to do an illegal act or to commit a legal conduct using illegal methods. It is not indictable as long as the design is based only on purpose. When two people carry it out, the scheme becomes an act in and of itself, and each party's conduct, promise against promise, capable of being enforced if lawful, is punished if done for a criminal purpose or with criminal means. It is not essential for the abettor to coordinate the crime with the perpetrator.

It is sufficient if he participates in the conspiracy that leads to the crime being committed. When parties get together and share a single goal, an act by one of them, carried out in advancement of the common goal and in accordance with the concerted plan, is an act by all.

A simple combination of individuals or agreement is insufficient for an offence under the second clause of this section; some act or illegal omission must occur in furtherance of that conspiracy, and each unique conduct assisted by conspiracy must be treated as a separate offence. However, if the agreement is to commit an

offence, a simple agreement under section 120 A of the Indian Penal Code is sufficient.

#### D. By Illegal Omission

Abetment is defined in Section 107 of the Penal Code to encompass not just incitement but also purposeful assisting through an unlawful omission. As a result, the appellant was liable to be convicted of abetment of suicide since he was responsible for creating conditions that prompted or forced the victim to take the extreme measure to avoid a more wretched existence while making no attempt to preserve her life.

The accused in a case when a lady lawyer was present in the chamber of her senior advocate. She was conversing with the accused at her home on the day of the event. She doused herself in kerosene and lit herself on fire in his presence at that very time. The defendant did nothing to help her. He was found not guilty of abetment to suicide since this did not amount to "illegal omission."

#### VI. Abetment of offenses under other laws

Aiding and abetting is a statutory offence that applies to all statutory offences unless explicitly prohibited by legislation, and it was ruled to apply to the English Public Order Act 1986 offences. A non-public servant can aid in the commission of an offence under the Prevention of Corruption Act, 1988<sup>95</sup>. Abettors will face criminal charges under the Prevention of Corruption Act.

#### VII. Chapter XVI

##### Abetment to Suicide

In situations of abetment to suicide and dowry death, the most important aspect has typically been instigation as a kind of abetment. Another factor to consider when charging someone with abetment to suicide is proving beyond a reasonable doubt that the death in issue was suicidal. Section 306<sup>96</sup> of the Indian Penal Code states that if a person commits suicide, anyone aids and abets the suicide must be punished with imprisonment of either type for a time up to 10 years, as

<sup>95</sup> Prevention of corruption Act 1988

<sup>96</sup> Section 306, Indian Penal Code, 1860

well as a fine. The meaning of abetment in section 306 must be consistent with that of section 107 of the IPC. If A persuades B to commit suicide and he does so, then A is accountable as an abettor under this provision. It is required to establish the accused's direct involvement in such suicide abetment. Suicide abetment, on the other hand, is a protracted mental process that is rarely simple to show. Under section 306, a conviction cannot be granted unless clear mens rea is established. Suicidal death and abetment thereof are the conditions that must be met in order for an offence to fall under section 306 IPC, according to *Sangarabonia Sreenu v. State of Andhra Pradesh*<sup>97</sup>. Abetment of suicide is punishable under Section 306 of the Penal Code, whereas attempting to commit suicide is punishable under Section 309<sup>98</sup>. Section 306 of the Penal Code does not apply to aiding in the attempt to commit suicide.

#### VIII. Conclusion

Abetment as a provision has been sufficient in terms of both the offence and the penalty for abetment offenders. However, in light of technological advancements and the present situation, India's legislation has attempted to make the necessary revisions to this clause. The provision has been changed by the Information Technology (Amendment) Act, 2008, to provide the act and omission through the use of encryption or any electronic technique a broader meaning. As a result, we may conclude that abetment as a crime is a reasonable and equitable rule that promotes natural justice principles in the legal system.

#### IX. References -

- Sanju v. State of Madhya Pradesh, (2002) 5 SCC 371
- Kartar Singh v. State of Punjab, 1994 Cri LJ 3319
- Dhruv Bhardwaj, Abetment under the Indian Penal Code, Ipleaders, (Dec. 15, 2021, 22:01 PM), <https://blog.ipleaders.in/abetment-ipc/>

- Raman Devgan, <http://devgan.in/>, (14 Dec 2021 05:51 PM)
- Advocatespedia, [https://advocatespedia.com/Section\\_115\\_of\\_IPC](https://advocatespedia.com/Section_115_of_IPC), (15 Dec. 2021, 22:04)
- Pathshala, Substantive criminal law, NME-ICT, (15 Dec. 2021, 22:04)
- Rooholamini, M., 2017. Concept of Abetment in the IPC (2013). J. Pol. & L., 10, p.162.
- Hema Modi, Abetment: important pointers you must know about, Ipleaders, Dec. 15, 2021, 22:12, [https://blog.ipleaders.in/abetment/#Abetted\\_Act\\_Need\\_not\\_be\\_Committed\\_Effect\\_of\\_Abetment\\_is\\_Immaterial](https://blog.ipleaders.in/abetment/#Abetted_Act_Need_not_be_Committed_Effect_of_Abetment_is_Immaterial)
- Sangarabonia Sreenu v. State of Andhra Pradesh. (1997) 5 SCC 348
- Prevention of corruption Act 1988
- Section 306, Indian Penal Code, 1860
- Section 107, Indian Penal Code, 1860
- Section 109, Indian Penal Code, 1860
- Section 309, Indian Penal Code, 1860

<sup>97</sup> *Sangarabonia Sreenu v. State of Andhra Pradesh*. (1997) 5 SCC 348

<sup>98</sup> Section 309, Indian Penal Code, 1860