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**FACULTY OF JURIDICAL  
SCIENCES**

**NAME OF THE FAULTY- Ms. Neha Khanna**

**SUBJECT NAME- LAW OF CRIMES**

**COURSE NAME- BBA LLB, Vth Sem**  
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## **LECTURE 25**

## **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 offence abetted is committed given that 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 happens or has purposefully helped the commission of an offence 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 offence. 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 offence has been committed or the offence 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 offence 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 offence abetted and also the offence 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 offence 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 offence 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 offence 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 offence 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. 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.

### **MCQs-**

#### **i. Abetting the commission of an offence by the public or by more than ten persons is dealt under-**

- A. Section 117 of IPC
- B. Section 118 of IPC
- C. Section 119 of IPC
- D. Section 120 of IPC

#### **ii. Abetment of an offence, punishable with death or imprisonment for life if an act, which causes harm to be done in consequence of the abetment is dealt under-**

- A. Section 115 of IPC
- B. Section 116 of IPC
- C. Section 117 of IPC



D. Section 118 of IPC

**iii. In which of the following death sentence is awarded?**

- A. Waging war against the Government of India
- B. Abetting mutiny actually committed
- C. Murder
- D. All of them

**iv. Abetting the commission of an offence by the public or by more than ten persons is dealt under-**

- A. Section 117 of IPC
- B. Section 118 of IPC
- C. Section 119 of IPC
- D. Section 120 of IPC

**v. Abetment of any offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment is dealt under-**

- A. Section 115 of IPC
- B. Section 116 of IPC
- C. Section 117 of IPC
- D. Section 118 of IPC