

DE JURE NEXUS LAW JOURNAL

Author:

Vasanta Priya R

VELS University, Chennai

3rd Year, BBA LL.B. (Hons.)

**ABETMENT AS A CRIME****ABSTRACT**

Undoubtedly in many cases, abetment is the main reason for a crime to occur. In recent days, many crimes are happening around us in which most of them are by abetment. The objective of the abetment is to commit a crime not by himself as well as to escape from the law. An abetment not only results in petty offences but also results in the offence like murder, which could be either intentional or accidental. To give a fair judgement the abettor is also liable to the punishment even if the offence is not committed in the consequence of abetment. The Indian Penal Code has a separate chapter for the abetment and gives the punishment according to the circumstances.

KEYWORDS

Abetment, abettor, offences and punishment

INTRODUCTION

The act of forcing or encouraging or instigating any person to commit a crime. An abettor is an indirect participant who does not directly involve themselves in committing an offence but abets another person to do an illegal act which is also a punishable offence under IPC, 1860.

Chapter 5 of the Indian Penal Code, 1860 deals with abetment related-offences. Section 115 to 120 of IPC provides the terms of punishment for the abetment.

ABETMENT UNDER SEC.107 OF THE IPC, 1860

The word ‘abet’ has been defined as “meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage; induce, or assist, to encourage or to set another one to commit.”¹

This Section says that a person has three ways to constitute an abetment.²

- Abetment by instigation: Instigate or initiate to commit an offence by another person.
- Abetment by conspiracy: Engage with some other person (or persons) in a conspiracy to do an illegal act.
- Abetment by aid: Intentionally helping or supporting someone to commit a crime.

Whoever does any of these three circumstances is said to be an abettor.

Illustration: A, a major person gives an alcohol to B, a seven year old (minor) to drink it. Here, A is liable under abetment by aid for intentionally aiding B to drink an alcohol.

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.³

ABETTOR – SECTION 108

An abettor is a person who abets the commission of an offence or the commission of an act which would be an offence, if performed by a person capable under the law with the same intent or knowledge as that of the abettor.

Five propositions contained in Sec.108 of IPC, 1860

1. Even though the abettor did not commit the act, the abetment of the illegal omission of an act can be considered as an offence.

¹ Kartar Singh vs State of Punjab

² Available at <https://www.toppr.com/guides/legal-aptitude/indian-penal-code/abetment-under-section-107-ipc-instigation-conspiracy-aid/> (last visited Oct 30, 2021, 10.38 P.M)

³ (2007) 10 SCC 797

2. It is not essential for the act abetted to be committed to constitute the offence of abetment. The intention of the person who abets, determines the offence of abetment and not upon the actual act done by the person abetted.

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.

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 abettor, or any guilty intention or knowledge.

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.

4. When an offence is committed by the abetment it is an offence and so the abetment of such abetment is also an abetment.

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 for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.⁴

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.

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

⁴ Available at <https://www.legalserviceindia.com/legal/article-2753-abetment.html> (last visited Oct 30, 2021, 10.35 P.M)

Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Section 108A - Abetment in India of offences outside India

A person in India abetting the other person, a foreigner would constitute an offence if committed in India.

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

Section 109 - Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment

A person who abets the other person to commit a crime will be given the same punishment as that of the offender only when a crime is committed under the influence of an abettor.

An abetment is said to be committed, if it is known to be done by instigation, conspiracy or aiding.

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.

Section 110 - Punishment of abetment if person abetted does act with different intention from that of abettor

An abettor will be liable and given the same punishment as that of the offender for the act done through abetment although the intention or knowledge of the offender is different from that of the abettor.

Therefore, the abettor will be charged with the punishment as that of the offender for abetment.

Section 111 - Liability of abettor when one act abetted and different act done

As a result of an abetment, an act is done, where the mens rea of an abettor is different from the act done by the offender. The abettor would be liable for the act done as if he had directly abetted it.

Illustration: A instigates B and C to break into an inhabited house at midnight for the 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 the punishment provided for murder.

Section 112 - Abettor when liable to cumulative punishment for act abetted and for act done

An abettor is held liable as said in the last preceding section for abetment and also for the additional offence committed by the offender while doing an act and so he is punishable for each of the offences.

Illustration: A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As he 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.

Section 113 - Liability of abettor for an effect caused by the act abetted different from that intended by the abettor

When the intention of the abettor is different from the act caused by offender resulting in different effect, the abettor will be liable for the effect caused because he knew that the abetted act would probably cause such effect and also be liable for the mere effect based on knowledge.

An abettor is liable to be punished with the punishment provided for the offender.

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.

Section 114 - Abettor present when offence is committed

An abettor is liable for the abetment though he is absent in the place of crime.

But in the case, where the abettor is present in the place of an act committed, he would be liable for the offence committed and not for the abetment because it is assumed that the abettor himself has committed such offence.

PUNISHMENTS FOR ABETMENT UNDER IPC,1860

Section 115 - Abetment of offence punishable with death or imprisonment for life-if offence not committed

If an offence is not committed in consequences of the abetment, the abettor will be punished with imprisonment of either description for a term which may extend to seven years, and also be liable to fine.

- If an act causes hurt to any person in consequences of the abetment, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and also be liable to fine.

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.

Section 116 - Abetment of offence punishable with imprisonment-if offence be not committed

An abettor is held punishable with imprisonment extending to a quarter part of the longest term, provided for the offence, or fine, or both, if that offence be not committed in consequence of the abetment.

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.

The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed.⁵

⁵ Jamuna Singh v. State of Bihar

- If the abettor or the person abetted is known to be a public servant whose duty is to prevent offence, the abettor will be punished with imprisonment extending to half of the longest term, provided for the offence, or fine, or both.

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.

Section 117 - Abetting commission of offence by the public or by more than ten persons

Any individual who abets the commission of an offence by the public generally or by any number or class of people in excess of ten is punishable by imprisonment for a term up to three years, or with fine, or with both.

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.

Section 118 - Concealing design to commit offence punishable with death or imprisonment for life

Anyone who intends or knows to facilitate the commission of a criminal offense punishable by death or life imprisonment, voluntarily withholds the existence of an intention to commit this crime for unlawful acts or omissions or makes a representation known to them to be false respecting such design,

- A person concealing a design to commit an offence punishable with death or imprisonment for life, if the offence be committed is punished with imprisonment up to seven years or fine.
- A person concealing a design to commit an offence, if the offence be not committed is punished with imprisonment up to three years or fine.

Section 119 - Public servant concealing design to commit offence which it is his duty to prevent

Whoever, being a public servant intends to facilitate or knows to be likely facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily

conceals, by any act or illegal 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 the offence be committed, be punished with imprisonment for a term which may extend to one-half of the longest term of such imprisonment, or with such fine or with both.
- If the offence be punishable with death or imprisonment for life, with imprisonment for a term which may extend to ten years.
- 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.

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 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.

Section 120 - Concealing design to commit offence punishable with imprisonment

Anyone who intends or knows to facilitate the commission of a criminal offense punishable by death or life imprisonment, voluntarily withholds the existence of an intention to commit this crime for unlawful acts or omissions or makes a representation known to them to be false respecting such design,

- If offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth or with or both.
- If the offence be not committed, punished with one-eighth, of the longest term of imprisonment, or with such or with both.

CHAPTER XVI OF IPC

Abetment to suicide⁶ – Section 306: If a person commits , anyone who abets the suicide will be sentenced to a term of imprisonment up to ten years or with fine. The basic ingredient that

⁶ Available at https://blog.ipleaders.in/abetment-ipc/?amp=1#Abetment_to_Suicide (last visited 30 Oct, 2021, 10.32 P.M)

need to be satisfied in order for an offence to come under section 306 IPC are suicidal death and abetment.⁷

CONCLUSION

In order to reduce the crimes first we should punish the one who encourages to do the crime. The abettor should be punished strictly so that everyone should fear to think about abetting some one. An abetment as a crime is a just and fair law that strengthens the principle of natural justice in the legal system. Therefore, the laws must be strictly followed and executed to maintain the peace and order of the people.



De Jure Nexus

LAW JOURNAL

⁷ Gurcharan Singh vs. State of Punjab