



A DETAILED STUDY OF ABETMENT UNDER IPC

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1. INTRODUCTION –

With the passage of time, every crime is looking at a steady growth and advancement and opening path to new and more crimes. The general meaning of abetment is to guide, aid, help, promote or provide assistance. Contrary to the original practice of only holding the person committing the crime to be liable, abetment deviates in such a way that a person who has helped the criminal or provided him with any assistance in any form will also be held liable. This person is termed as the abettor. How do we conclude that the offence committed is abetment? What does IPC talk about abetment? It is not seldom that taking part indirectly in committing a crime itself may often even become criminal offence. When many persons engage in the

commission of an offence, every one of them may chip in to the commission of it in a manner and degree different from the others. The criminals may not have necessarily indulged in the offence of these offences. However, their abetment, to be precise, the motivation or instigation of the person to commit the crime, in itself can become punishable.

Abetment, though differs from perspective to perspective, one thing that remains the same is the presence of two persons; one who has planned the crime and has prepared for it and the other one who executes the crime without the intention of doing it. Here, the intention and other various matters matter a lot and is in question when it comes to abetment. However, much scrutiny into abetment, rules out the fact that any involvement of the person in committing the crime who has planned it, other than instigating the other person to commit the crime will not be held for abetment, instead will be looked upon as if the person himself has committed the crime. Also, if two persons are involved in committing a crime together, where one prepares and the other one executes the crime, this cannot be considered as

abetment. This completely rules out the meaning and the need for abetment. At the end of the day, the crime perpetrated must have been solely for the achievement of abetment. All these factors will be discussed in the research paper in detail, while exhibiting real life illustrations and case laws for better understanding.

Chapter 5 of the Indian Penal Code, 1860 deals with offences relating to abetment. The Indian Penal Code, in detail explains abetment, its constituents, elements and punishments. Section 107 lays down the definition of abetment. Abetment of definite offences are made penal and actionable under particular Sections of IPC. However, there is no distinct provision for it. The abettor is punished according to the offence which he has abetted listed under the IPC. This research paper, thereby will look into the sections of IPC dealing with the definition, types, elements and punishments for abetment with reference to various case laws and judgements.

Probing into the crime of abetment will also showcase certain loopholes as to understanding the exact meaning and its constitution, which is why referring to IPC and deliberating the sections dealing with abetment will give a clear understanding of this assorted but very abounding crime.

2. ABETMENT UNDER IPC

2.1 WHAT IS ABETMENT?

Abetment under simple terms, refers to the instigation of someone to commit a crime by another person. However, this does not cover the entire meaning and the elements of the crime, by which the courts decide the act to be abetment. To prove it to be abetment, certain criteria need to have happened a certain way. To understand this in depth, we will go through abetment under Chapter 5 of IPC and understand it in detail. To start with, it is necessary to have fulfilled the places of positions, such as the abettor, who is the one instigating and motivating another person to get the crime done and the one who executes the same. Followed by their presence, the following should happen for it to be considered as abetment –

1. “The abettor should have instigated any person to do that specific thing (crime).
2. Should have engaged with one or more persons with regards to the conspiracy for the doing of the said thing, if an act or an unlawful omission has been done for the pursuit of the conspiracy and done in order for the execution of the thing.
3. Should have purposely or intentionally aided another person

by any act or illegal omission for doing that said thing.”

A person may have abetted the doing of a thing in any of the ways mentioned above, even though it has not been executed yet. Also, the presence of the abettor while the act is being executed will also hold the person liable for abetment and will be punished for the same. Having laid out the main considerations and elements of abetment, it has been made evident that without the presence of these criteria, it would not be possible to prove an act to be abetted or that a person has abetted the doing of a certain action. Having enacted on 6th October, 1860, this chapter has been followed since years and based on precedents from the courts after adjudication on matters of abetment. This chapter also covers several punishments and liability for abetment depending upon the certain differentiating aspects in each case which are to be discussed in detail in the coming chapters. Over the years since the enforcement of punishments for abetment, there have been several precedents regarding the same, however to what extent are these viable and will it serve justice in the wrong run are some essential questions which needs to addressed for ensuring speedy and fair justice.

2.2 LIABILITIES OF AN ABETTOR

As any prudent man would understand what is stated above as abetment if a person instigates another person to conduct a specific thing, one might also consider the chances of the person abetted doing the wrong action, even though he was abetted for conducting a different action. In simpler words, it can be said that the act abetted was one, however the act conducted by the person abetted was different. In such a case, the abettor would be held liable for the act which was executed by the person abetted, as an act done by himself as the act executed even though was different was a consequence or a pursuit of the conspiracy due to the instigation made by the abettor for the action thought of, to be executed by the person abetted.

Illustration 1 – If A instigated a child to poison the drink of B, but the child ends up poisoning the drink of C, whose glass was adjacent to B’s, A would be held liable for the action to the extent as if it was committed by him against B, without considering the change of action while executed, as this was a direct consequence of A’s directions and instigation to the child.

Illustration 2 – If X was instigated by Z to burn the house of A; however, during the commission of the act, X also looted the house, then Z would only be liable to the extent where the act committed was done as a part of his instigation to X. Since the

looting of the house was much of an instant happenstance, and not a consequence of the burning or the instigation, Z would not be held liable for it, but only for abetting to burn the house.

Illustration 3 – If A instigated B and C to rob a house and during the tenure, when Z resists them and if one of the two kill Z, then A will be held liable for abetment of murder if the murder happened as a consequence to the instigation given to B and C to conduct the act.

When an act that has been abetted with a certain intention to cause a certain effect causes a different effect and not the desired one, which happened as a consequence of the abetment, then the abettor would be incarcerated for the abetment to the indistinguishable extent as if he had committed it with the intention of arriving to this effect, also provided that he was aware that such an effect would take place.

Illustration 1 – If X instigates Y to cause grievous hurt to B and having done the act, if B dies as a consequence of the act, then X will be held liable for the murder of B, if he was aware of the fact that such a hurt would eventually cause the death of B.

2.3 PUNISHMENTS FOR ABETMENT

IPC lays down several punishments for abetment while considering the gravity and circumstance under which and how it was

conducted. When an act is committed as a consequence or result of abetment i.e., instigating the person to get done a desired action, and the punishment for such an action is not mentioned in the IPC, then the act would be punished with reference to the offence i.e., the punishment given for that particular offence would be implemented.

Illustration 1 – If A offers bribe to an official person C for a favour from him to act against the grants of another person B and if C accepts it, then A will be liable for abetting that offence under section 161 of IPC.

Illustration 2 – if A instigates B to submit false evidence and as a result of which, if the act is committed, then A will be liable for abetment of that offence and will be punished the same as B.

Illustration 3 – if there is a conspiracy between A and B to poison D and in pursuit of it, A provides poison to B to administer it to D and as a result, B does it without the presence of A and D dies. In this case, A is liable and will be punished for the abetment of murder and B for murder.

If a person abets an act with a specific intention, however, if the act was carried out by the person abetted was with a different intention, the abettor would be punished for the offence that would have been committed had it been executed with same intention as that of the abettors. However, in a case where a person

instigates another to do an action and as a consequence of it, commits another act in order to complete the act, then the abettor will be liable to the punishment of both the offences.

Illustration 1 – If A instigates B to rob a house and in order to achieve the same, if B causes grievous hurt to the owner, then B will be held liable to both offences and if A knew B would have done this, then A will also be held liable for both offences.

Contrary to the usual meaning of abetment, if the abettor was present during the commitment of the crime that was abetted, then the abettor will be liable to punishment which will be the same as for the abetment of the offence.

If a person abets the perpetration of an offence which is prosecutable and punishable with death or imprisonment for life, but the act is not done as an implied outcome and no specific or precise provision is made for this by this code, then such abetment shall be punished with imprisonment up to 7 years and shall also be liable to fine. However, if any act which is done as a consequence of the abetment and also caused hurt to a person, then the abettor will be liable for a punishment of imprisonment up to 14 years and shall also be liable to fine.

Illustration – If A abetted B to murder Z and if the act was not committed, and no provision is made for this, then A will be

punished with imprisonment up to 7 years and shall also be liable to fine. However, if Z was hurt as a consequence of A's instigation, then A will be punished with imprisonment up to 14 years and shall also be liable to fine.

Section 116

Illustration 1 – If B tries to bribe A for making a judgement in favour of him but if A does not accept it, then B will be liable to punishment for that offence under this section.

Illustration 2 – If A instigates B to submit false evidence but if B does not do that, A would still be liable to punishment under this section.

Illustration 3 – If a police officer whose duty is to curb crimes in the society instigates a robbery which does not take place, he would still be liable to punishment for one half of the longest punishment made for this offence and also shall be liable to fine.

Abetment committed by the general public or by a group with more than 10 persons will be punished with imprisonment which may be expanded to a time period of up to three years or will be liable to pay fine or both.

Whoever plans to commit the offence of abetment or knows he will do it and voluntarily hides it by means of an illegal act or makes false representations, will also be liable to punishment under this section.

However, if a public servant does the same when it his duty to prevent such acts, he would also be liable to punishment. If the offence is punishable with death, then the concealment will be punishable with imprisonment up to 10 years and if the offence is not committed, then they will liable for punishment of one fourth of the punishment given for that offence. The concealment of design to hide offences however is punishable with imprisonment.

3. JUDICIAL APPROACH TO ABETMENT

3.1 DEFINITION OF ABETMENT AS LAID DOWN BY THE COURTS

In the case of Sanju v. State of Madhya Pradesh, the High Court held the definition of abetment as “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”. As evident from the definition laid out in the IPC, it is quite clear that abetment needs to constitute at least two persons for it to be considered as abetment; one being the abettor and the other being the person who is abetted.

In the case of Rajat Prasad v. C.B.I, it was held that for an act to be considered as abetment, it is necessary for the abettor to have criminal intent. The fact on the need to have a culpable mental state was emphasised here, to give rise to abetment.

The case of Daulat Mansingh Aher vs C.R. Bansi And Another held that even though the communication of abetment was done through letters, the abettor would still be held liable for the offence and it resembles the communication of a contract where the letter instigating a person to a specific act reaches the person, the abetment is said to be complete.

The High Court in the case of Sanju v. State of Madhya Pradesh had comprehended the meaning of instigation specifying that the abettor needs to have actively promoted towards the implementation of the crime i.e., during the preparatory phase.

The case of Baby John v. State of Travancore, Cochin was against a leader of an assembly for instigating the assembly to use violence in order to overcome any resistance from the army or police and as a consequence of this, some members cause hurt to the public offices and officials and was charge for attempted murder, causing hurt by using dangerous weapon, causing hurt to public servants and for committing mischief and damage. However, the court said that this not give rise to abetment as he did not specifically ask the members to destroy or cause hurt to the government; moreover, it was an action to something which might happen i.e., they were instructed to act only if the army or police showed resistance. Having cleared the issue of the case by the case, it held that the

charges held against him were invalid and he would only be held liable for abetment by instigation to cause a riot and this was substituted with the other charges filed against him. The court also held that instigation must refer to what was really done and not what was likely to happen in the near future.

The case of Noor Mohammad Momin v. State of Maharashtra put forth the difference between criminal conspiracy and abetment to conspiracy and specified that criminal conspiracy has much broader scope and jurisdiction than abetment as just an agreement between people to commit an offence can constitute criminal conspiracy.

3.2 PUNISHMENTS FOR ABETMENT AS COMPREHENDED BY THE COURTS

IPC Chapter 5 (section 107-120) talks about abetment from definition to the liabilities and punishments of the abettor. In furtherance of the provisions, in the case of Kishori Lal v. State of Madhya Pradesh, the High Court further interpreted abetment under IPC –

- Section 108 covers the definition and the circumstances under which abetment is said to be complete, along with covering the extra territoriality power awarded to this section when the crime of abetment

is committed outside the territory of India.

- Section 111 criminalizes the inadvertent repercussion caused due to abetment and it gets covered till 113.
- Section 114 would hold the abettor liable for the consequence of the abetment done by the person abetted i.e., the main offense, if he was present there during the execution.
- Sections 115 and 116 exclusively talks about the punishment of abetment even if the act is not implemented.
- Section 117 administers the crime of abetment done generally or by a large group of people.
- Section 118 incorporates the punishment for concealing the design of a plan to commit a minacious offence.
- Sections 119 and 120 talks about the punishment for the crime incorporated under section 118 for public servants and others whose duty is to prevent these.

In the case of Sangarabonia Sreenu v. State of Andhra Pradesh, it was held that section 306 of IPC covers elements of suicidal death and abetment thereof considering the punishment for abetment of suicide as well. In the case of Faguna Kanta Nath v. State of Assam, the allegation was against a person

for abetting an offence under section 165 A, done by an officer, who was acquitted. Following this the court held that the petition is not maintainable and he cannot be held liable because he was already acquitted.

However, it was later held that such an issue will not stop the accused from getting punished and it was unfair to have given them a loophole to escape the fair means of punishment which was in fact considered for every other person, just because the abettor was acquitted. It further held that the guilt of abettor would depend upon the nature of the offence and the manner in which it was conducted.

The Supreme Court has recapitulated that before prosecuting anyone for the promotion or abetting of suicide, it is very vital to prove first that the death in question was suicidal. If proven otherwise, the entire allegation stands void, however the person could be punished for abetment. The Supreme Court held that a distinct and autonomous crime is the crime of abetment. Where the crime is performed as a result of the abetment, however, if there is no distinct punishable provision of such an abetment, then the abettor is to be punished along with the perpetrator.

4. ANALYSIS AND CONCLUSION

From the above stated detailed explanation and study of abetment under the Indian Penal Code, it is evident that it covers quite all aspects of abetment, taking it account all perspectives and sides of the same, thereby coming to provisions with efficacy. Chapter 5 of IPC covers abetment from its definition to the liabilities and punishments. However, as efficient as it seems to be, there are quite some loopholes that needs to be addressed for better ways to adjudicate the matters of abetment at hand. Section 113 of the IPC which talks about the liability of the abettor if the act done as a consequence of the abetment was different from what was desired, then the abettor would be held liable for punishment only if he knew or expected such an outcome. However, such an expectation may not always be foreseen by the abettor and in such a case, he will go unpunished. Given the circumstance and devouring the punishment provisions, it is also very much vital to understand the motive of abetment. Even if outcome arrived at was not expected, the abettor would have had a much more heinous outcome in mind and had it not been for the unfortunate turn of events, the desired outcome would have come to earlier without having gone through or arriving at other happenstances.

Section 110 of the IPC which explicitly says that if the subsequent act done by the person abetted was done with an intension

different from that of the abettor's, then the abettor would be punished to the same extent as if it was done with his own intention and not that of the person who was abetted. However, it is very much vague and unfair to go by the means of only intention here if the crime conducted was much more heinous. As the law in UAE states that the punishment for abetment will always be proportional to the heinousness and gravity of the crime rather than referring to the motive or intention behind the crime, this approach can be adopted to section 110 of IPC where, in cases of conflicts between the motives of the abettor and the person abetted, instead of focussing on their intentions, much better conclusions and punishments can be arrived at if the matter were to be looked by the gravity of the crime conducted or were to be conducted with the intention of the abettor. The intention of the abettor here can be referred to only find out the ulterior outcome hoped by the abettor thereby, arriving at the crime completely furnished and done, as expected by the abettor. Continuing with the focus on the crime committed or about to be committed with the intention of the abettor, the gravity of punishments could also be altered accordingly.

As Section 114 of the IPC states that the abettor will be liable to the same punishment as the punishment for abetment

of an offence, it is not always feasible to go by this rule as the abettor is an accomplice to the crime and has an active involvement in the execution of the crime as he abetted it. Hence, he should be held liable to the punishment of the crime and not merely abetment. In the case of K. Hashim vs. State of Tamil Nadu, it was held that it is must be proven that the accomplice had active involvement in the crime to be held liable for it. Going by this rule, once the accused is found guilty of abetment and his presence is also proved, he can be held liable and punished for the crime including abetment. With the rising cases of abetment, it is very essential to probe into the current provisions set for abetment as they need to be made much more stringent with the changing and advancing culpable mindset of the people. Quite detectably, the criminal mindset of people is advancing as fast as technology, and has indefinitely contributed to the rise of abetment. Having a strong urge to come at a desired outcome and not having to give into clasp of the punishment that the democratic government has set for such criminals, have them come up with an alternative move by abetting persons to reach their criminal goals. This is as evident and clear as it is, an indirect way of inflicting real crime, as done by the person himself by instigating another person to do it. And as such crimes are on the rise, it is ever more essential to

make stringent the existent provisions and punishments for abetment by adopting an outlook which is much more inclined towards the gravity of the crime desired to be achieved by the abettor. In much simpler terms, instead of having to analyse the intention of the abettor as the main leading factor to decide the punishment, it could be used as a supporting factor to cast aspersions on and to hold the abettor at fault.

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