

Abetment

Chapter – v

Sections-107 to 120,IPC.



- **Principle and scope** of abetment.-
- A crime may be committed by a single person, two or more persons.
- When several persons are associated with the commission of a crime the degree of culpability of each will depend on the mode of his participation in the crime, for the law recognises gradations of guilt based on the variety of ways in which a person might be associated in the act of a crime.

- Liability under this chapter V for abetment based on the principle that many crimes would be impossible
- but for the support and encouragement received from others who, though not actively co-operating in the crime, prepare the ground and facilitate its commission.
- As such, the Code penalizes all who may have lent their support and assistance in one form or the other to the commission of a crime.

- **English Law** with reference to participant's in a crime gives the classification of the criminals according to the role played by each.
- **Principal in the first degree** – He who actually commits the crime.
- **Principal in the second degree** – He who being present at the commission of the crime aids and assists in its commission.
- **Accessory before the fact** – He who though absent at the time the crime is committed, counsels, procures or commands another to commit the crime. He may be tried as though he himself had committed.
- **Accessory after the fact** – He who knowing the fact that a particular person has committed a crime, harbours and assists him in escaping from punishment.

- The ***Indian Penal Code***, makes no distinction between principals in either the first or second degree.
- All those who are present at the scene and participate in the commission of a crime are liable either as the actual offender under the specific sections of the Code, or under the provisions governing joint and constructive liability.

- The Penal Code, however, makes a broad distinction between a principal and an abettor, who correspond roughly to accessories before the fact.
- Such cases are dealt within this chapter of the Code under the caption 'Of Abetment' from sections 107 to 120, IPC.
- on the other hand, when the role played by an individual is that of *an accessory after the fact*, the Code provides for a substantive offence in such cases, like – Section 52A harbouring, 130, 136, 157, 212, 216, 216A and 201.

- **Abatement means** to help in doing something (usually bad).
- So the word abetment under the Penal Code should be understood in this context.
- It is synonymous with instigation, encouragement and incitement.
- Abetment is not solely related with the actual commission of the crime abetted.
- It is a crime apart provided thing abetted is a crime.

(In Gurubachan Singh V/s Satpal Singh, AIR 1990SC 209, It was held that abetment not only related with the actual criminal act, but it is also a separate/distinct offence, for it abetted act must be an offence.)

- **Definition of Abetment:**
- Abetment is defined under Section 107 IPC, according to it -
- "A person abets the doing of a thing who -
- **Firstly:** Instigates any person to do that thing ,or
- **Secondly:** engages with one or more 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."

- So according to section 107 **abetment may be constituted:-**
- (i) by instigation; or
- (ii) by conspiracy ; or
- (iii) by intentional aiding. (Aid may be given by act or by illegal omission).

- **Abetment by instigation.-**



- In common language it means to goad or urge forward or to provoke, incite or encourage in doing something.
- **Explanation I** to Section 107 of the Code explains the term instigation. According to it-
- *"If a person legally bound to disclose a material fact, willfully or by willful misrepresentation conceals it and voluntarily causes or procures or attempts to cause or procure a thing to be done, he will be said to instigate the doing of that thing".*

- The **illustration** given in the Code is that
- A with a warrant from court is to apprehend B.
- C willfully representing to A that D is B and caused his apprehension.
- Here C abets by instigation the apprehension of D.
- *A person, therefore, instigates another to an act when he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement.*

- In ***R. v. Mohit Pande, NWPR, 316 (also see, Fugunkant V. State of Assam, AIR 1959, SC. 673)*** The silent approval producing an effect of incitement was held to be an abetment by instigation.
- In this case a woman prepared herself for Sati. Therefore, certain people followed her to the cremation ground and stood by her funeral pyre.
- They all were saying 'Ram' 'Ram' and the accused had asked the woman also to say 'Ram' 'Ram'. It was held that they were guilty of abetment for actively conniving at the act of the woman in killing herself by jumping into the fire.

- It may, however, be kept in mind that there must be reasonable certainty in understanding the meaning of words used for incitement.
- Where a murderer was incited by these words, "*Mar do us ko, mauka achha hai, kya dekhat hai, mar us ko*" it was held that a charge of abetment was sufficiently made out. (***Prem Narayan v/s State, AIR 1957 All 177***)
- Instigation can be made by letter or by telephone provided contents are made known to the addressee.



- **Abetment by conspiracy-**
- Abetment by conspiracy consists when two or more persons engage in a conspiracy for the doing of a thing and an act or illegal omission takes place in pursuance of the conspiracy and in order to the doing of that thing.
- Thus in order that for abetment by conspiracy may be constituted, three things are necessary :-

- A conspiracy between two or more persons;
- An act or illegal omission must take place in pursuance of that conspiracy; and
- Such an act or illegal omission must also take place in order to the doing of the thing conspired.

For example, A, a servant, enters into an agreement with thieves to keep the doors of his master's house open in the night so that they might commit theft.

A, according to the agreed plan keeps the doors open and the thieves take away the master's property.

A is guilty of abetment by conspiracy for the offence of theft.

Conspiracy means an agreement between two or more persons:-

To do an illegal act; or

To do an legal act by illegal means.

- Thus, it is clear that for an offence under the second clause of Sec. 107 a mere combination of persons or agreement is not enough; an act or illegal omission must also take place in pursuance of the conspiracy and the act or illegal omission must also be in order to the doing of the thing agreed upon between them.
- But, for an offence under Sec. 120A - A mere agreement is enough if the agreement is to commit an offence.
- For abetment by conspiracy under Sec. 107 an overt act or illegal omission in pursuance of that conspiracy must be done even though the agreement is to commit an offence.

- Clause (2) has to be read together with Explanation 5 to Sec. 108, which provides that it is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert (concert- to arrange or continue by mutual agreement) the offence with the person who commits it.
- It would be sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

- **Abetment by intentional aiding**



If a person *intends to* facilitate the commission of the offence, he will be said to abet by aiding. Merely to give the aid does not amount to abetment.

According to **Explanation 2** to Section 107 a person is said to aid the doing of a thing if either **prior to or at the time of** the commission of an act, he does anything in order to facilitate the commission of that act, and thereby facilitates commission thereof.

- *Aid may be given by act or by illegal omission.*
- **For example**, A instigates B to commit suicide and C puts poisonous drink in B's hand. Here A and C both are abettors-A by instigation and C by intentional aiding.
- **Similarly**, A will be held guilty as abettor by intentional aiding if he provides B with a room for committing gambling.

- Simply doing nothing is not an act and unless there is a duty to do something, one cannot say that it is an illegal omission.
- **For example**, a policeman is duty-bound to interfere if an offence is being committed. If he remains a silent spectator of an offensive incident he will be in the same position as if he has encouraged its doing.
- **Similarly**, if an Incharge of Thana knows that accused\prisoner is likely to be harassed by policemen in his absence, and even then he leaves the thana enabling his subordinates to harass the accused, he will be held guilty as abettor by intentional aiding.

Who is an abettor?

- **Section 108 of the Code defines the abettor.** According to this Section, an abettor is a person who abets either the commission of an offence, or commission of an act which would be an offence, if committed by a person capable by law of committing that offence with the same intention or knowledge as that of the abettor.

An abettor may be either instigator, or a conspirator, or helper in commission of a crime as defined in section 107.

- To constitute an offence of abetment, three things are essential i.e.
- (i) there must be an abettor;
- (ii) he must abet; and
- (iii) the abetment must be an offence or an act which would be an offence, if committed by a person capable in law of committing an offence with the same intention or knowledge as that of the abettor.

- But if the thing abetted is not an offence, the person abetting will not be termed abettor within the meaning of Sec. 108 and cannot be held liable to punishment,
- **For example** if, A gives five hundred rupees to B to kill stray dogs moving in the city in a residential area, a is not abettor since the act of instigation of killing stray dogs is not an offence.

- Again it is not necessary for the offence of abetment that the person abetted should be capable in law of committing offence *or* that he should have same guilty intention as that of the abettor,
- **For example** one may employ a child below seven years of age to commit an offence in such a case a child is not punishable, being incapable of committing an offence in law (exempted u/s 82 IPC) and would be treated as an innocent,
- where the person directing him to do an illegal act would be liable as an abettor.

- **Five explanations** provided in Section 108 state clearly the essential requirements of an offence of abetment.
- These are as follows –

Explanation- I (Section 108), Abetment of illegal omission.

- According to this explanation the abetment of the illegal omission of an act is an offence even though the abettor himself may not be bound to do that act.
- In simple words it should be understood that a person can be held guilty as abettor though as a principal he would be innocent.
- No illustration has been given in the Penal Code but one illustration could have been enough to understand it properly.

- **For example**, a police constable will be guilty of an illegal omission of his duty. A private individual cannot, however, be guilty of such offence. If he instigates a police constable for such illegal omission of his duty he will be held liable as abettor.

***Explanation- 2* to Section 108, Effect of abetment is immaterial.**

- This explanation does not make it at all necessary to constitute the offence of the abetment that the act abetted must be committed or the requisite effect be caused,
- **For example**, A instigates B to murder C and B refuses to do so, A will be guilty of abetment to commit murder.
- **Similarly**, on A's instigation B stabs C to kill him but C recovers as the wound was not sufficient to cause death.
- A is guilty to abet B for committing the murder.
- Thus the offence of abetment is complete whether act abetted is done or not.

Explanation- 3 to Section 108, Person abetted need not be capable of committing an offence.

- This explanation deals with the cases where persons abetted –
 - (i) are not capable by law of committing the offence, or
 - (ii) do not have any guilty intention or knowledge.
- For offence of abetment, *according to Explanation 3, it is not necessary that person abetted should be capable by law to commit the offence and also he need not have any guilty intention or knowledge,*
- **for example,** A abets a child to commit an offence, he will be guilty for abetment although children under 7 years of age are not capable by law to commit the crime. If crime is committed by a child in pursuance of the instigation, the abettor will be punished in the same manner as if the offence was committed by a normal adult person.

Explanation- 4 to Section 108, Abetment of an abetment is an offence.

- This explanation says, "*The abetment of an offence being an offence, the abetment of such an abetment is also an offence.*"
- Thus abetment of an abetment is also punishable,
- **for example**, A, instigates B to instigate C to murder D, B does so and C murders D in consequence thereof.
- Here A and B both are equally liable to be punished. Abetment of an abetment is an offence even though the second abetment is ineffective.

Lastly, ***Explanation 5*** to **Section 108**, **Abettor** **need not concert in abetment by conspiracy.**

- This explanation declares that in case of abetment by conspiracy it is not necessary that abettor should concert the offence with the person who commits it. Mere engagement in conspiracy in pursuance of which the offence is committed, is enough.
- **For example**, A, concert with B a plan for poisoning Z. A is to administer the poison but concealing his name, B explains the plan to C who procures the poison and delivers it to B.
- A administers the poison and Z dies in consequence. C has committed the offence though he did not conspire with A because he engaged himself in the conspiracy in pursuance of which Z had been murdered.

Section 108.A - Abetment in India of offences outside India

- Section 108A was added in the Penal Code in 1898 with a view to overrule a decision of the Bombay High Court in the case of Empress V. Ganapatrao Ramachandra, in which it was held that the abetment in India by an Indian citizen of an offence committed in a foreign country was not punishable under the Code.

- Section 108-A provides that a person abets an offence who, in India abets the commission of an act without and beyond India which would constitute an offence if committed in India.
- **For example**, A in India, instigates B, a foreigner in Nepal, to commit a murder in Nepal, he will be guilty of abetting the murder.

Punishment for Abetment

- Provisions for the punishment of the different kinds of abetment are contained in Sections 109 to 120.
- Section 109 and 110 prescribed punishment of abetment if the act abetted is committed in consequence of abetment,
- whereas sections 115 and 116 provides for punishments where the offence is not committed in consequence of abetment.

- **Section 109** broadly deals only however there is no specific provision made in the Code for the punishment of that abetment.
- In such a situation, the punishment due will be the same as provided for the offence abetted.
- **For example** A instigates B to murder C and B does so, here A and B both are guilty. A as an abettor will be awarded the same punishment which is awarded to B.

- **Ingredients of Sec. 109** are as follows –
- (i) there must be abetment of an offence;
- (ii) the act abetted must have been committed in consequence of abetment, and
- (iii) there must be not express provision in the Code for the punishment of such abetment.

- Thus, where specific provision has been made in the IPC, providing for punishment in cases of abetment, in those case Sec. 109 will not operate.
- Therefore, Sec. 109 will not apply for the following sections where specific provisions for punishments have been made :-
 - Sections 121-130 :-Abetting the Waging of War.
 - Sections 131-135 and 138:- Abetting Mutiny or Attempting to Seduce a soldier, etc.

- Section 109 meets the situation when there was identity of intention between the abettor, and the person abetted committing the act, and the act was committed as it was abetted, then the liability of the abettor and the principal offender is equal.
- A complete identity of intention and act committed may not always be possible and there may exist variation or difference between the intention and the actual act committed, and its different combinations.

- Thus, if intention is different **Section 110** will apply.
- If, act is different **Section 111** will be applicable
- If, effect is different **Section 113** will be applicable
- If, abetment + presence of the abettor on the spot = Actual Offence **Section 114** will be covered the situation.
- Where no offence is committed, **Sections 115 & 116** will be applied as per the situation.
- **Sections 118 – 120** penalize for a variety of ways in which an offence is facilitated by concealing the design or intention to commit such offences.

- **Section 110** applies where offence is committed with different intention or knowledge from that of abettor.
- If such is the position the punishment awarded will be the same as 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.

- **For example**, 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.
- Since B was acting under the misconception and had no dishonest intention, he is not liable for committing theft,
- *but* A is guilty of abetting theft, and is liable to the same punishment as if B had committed the theft.
- (Explanation 3 to Sec.108 IPC and illustration 'd' in conjunction with Sec.110 IPC)

- **Sections 111 to 113** deal with aggravated acts and make it clear that the abettor is punishable not only for the offence abetted but also for the offence committed.
- So when an act is abetted and a different act is done or an additional act is done which is the probable consequence of the abetment, the abettor will be liable in the same manner and to the same extent as if he had directly abetted it.

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

- This section proceeds on the maxim *“every man is presumed to intend the natural consequences of his act”*.
- Under this section where an act is abetted and the abetment takes form of instigation of an act and different act is done, the different act must be probable consequence and committed under the influence of instigation
- But where the abetment takes the form aiding of a conspiracy, the different act must be probable consequence and also with the aid or in pursuance of the conspiracy.

- A probable consequence of an act is one which is likely or which can reasonably be expected to follow from such act.
- **For example**, A instigates B to set fire to a house. B not only sets fire but also commits the theft. Here since theft is not probable consequence of the burning, A will be held liable for burning of the house and not for theft. (Not probable Consequence)

- **Another example-**
- A instigate 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 putting poison in food of Y was under the circumstances a probable consequence of the abetment,
- A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y. (Probable Consequence)

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

- This section extend the doctrine of constructive liability and makes provision for cumulative punishment in cases covered u/s 111.
- The section states that the abettor would be liable to punishment both for the offence abetted as well as for the offence that was the probable consequence of the abetment, provided cumulative sentence could be passed in that particular case.

- **For example--**
- A instigates B to resist by force, a distress made by public servant and B in consequence thereof causes grievous hurt to executing officer. A will be liable for both the offences committed by B.
- Same will be the position when a different effect is caused.

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

- Section 113 extends the liability of an abettor to a situation wherein the act done causes a different effect from that intended by the abettor.

- In such a case the abettor would be 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 was likely to cause that effect.
- **For example--**
- B, in consequence of A's instigation, causes grievous hurt to Z, who dies.
- Here if A knew that the grievous hurt abetted was likely to cause Z's death, A is liable for the offence of abetment to murder.

Section 114. Abettor present when offence is committed.

- This section applies if abettor is found present at the scene when the offence was committed. In such a case the abettor shall be punished in the same manner as if he himself had committed the offence.
- According to the Section 114 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.

- For application of this Section, the following things must exist:-
- The nature of the act done must constitute an offence.
- The act or offence in consequence of the abetment is committed.
- The abettor is present at the time of commission of the act or offence. Though another actually commits the offence.
- This section will not apply if there is no evidence that the accused abetted the offence before its commitment.

- **Sections 34 and 114**
- Both the sections are not punitive but they state a principle of criminal liability.
- In Section 34, the act is required to be done by all in furtherance of common intention *whereas* under Section 114, the abettor simply remains present and does not commit the offence with his own hands.
- There need not be any abetment under Section 34 *and* there need not be any common intention in the case under Section 114.

- **Sections 115 to 117** prescribe the punishment for abetting offences punishable with death **or** imprisonment for life **or** imprisonment.
- As per **Section 115**, if abetment is for the offence punishable **with death or imprisonment for life** and no express provision for its punishment is made, the abettor shall be punished as under:-
 - - If offence is not committed, 7 years and fine.
 - - If act done causes hurt to any person, 14 years and fine.

- If abetted offence is punishable **with imprisonment**, will, according to **Section 116**, be as under:
 - **(a)** If no offence is committed -One-fourth of the punishment prescribed for the offence.
 - **(b)** If abettor is public servant, One-half of the punishment prescribed for the offence.
- If a police officer instigates commission of the robbery which is not committed, he will be awarded half of the punishment prescribed for robbery. In case of private persons the punishment will be only one-fourth.

- The Supreme Court discussing the scope of Sections 115 and 116 has held that if a person instigates others or engages with another in a conspiracy for doing of a criminal act, he abets such offence and would be guilty under Sections 115-116 even if no offence is committed at all.
- ***[Jamuna Singh v/s State, AIR 1967 SC 553]***

- The offence **u/s 117** is an aggravated form of abetment and refers to offences abetted **by the public generally**. It provides punishment for abetment of an offence by the public or by any member or class of persons **exceeding ten**.
- If abetment is made to public in general or to a class of persons exceeding ten the abettor shall be punished with imprisonment of either description not extending to 3 years with or without fine.

- **Section 118 to 120** penalise the **concealment of design** to commit the offence in the following manner:
- If offence is punishable *with death or imprisonment for life* (**Section 118**) and the same is :
 - (a) committed - 7 years and fine.
 - (b) not committed - 3 years and fine.

- If abetted offence is punishable *with imprisonment only* and the offence (according to **Section 120**) is :
- (a) committed - One-fourth of punishment of offence with or without fine.
- (b) not committed - One-eighth of punishment of offence with or without fine.

- If person concealing such design happens to be the *public servant whose duty it is to prevent such offence* the punishment shall be **(according to Section 119)** as under:
 - (a) If offence is committed and is punishable **with death or imprisonment for life** the maximum punishment shall be **10 years**.
 - (b) In case the offence is punishable **with imprisonment** and **it is committed** then punishment will be **one-half** of the prescribed for the offence.
 - In case **no offence is committed**, punishment shall be **one-fourth** of the punishment prescribed for the offence.