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# **ABETMENT BY INSTIGATION, CONSPIRACY, AND AIDING: A COMPARATIVE STUDY**

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## **ABSTRACT**

Abetment is a criminal offence under the Indian Penal Code (IPC) that involves assisting, encouraging or instigating someone to commit a crime. Abetment can take three forms: abetment by instigation, abetment by conspiracy and abetment by aiding. This study aims to compare and contrast these three forms of abetment and analyze their legal implications and challenges. The study will examine the definitions, elements, examples and punishments of each form of abetment under the IPC and relevant case laws. The study will also explore the differences and similarities between abetment and other related concepts such as criminal conspiracy, common intention and common object. The study will conclude with some suggestions for improving the law on abetment and preventing its misuse or abuse.

Chapter V of the Indian Penal Code, 1860 is the first offense which starts in Indian Penal Code, 1860 stating that the mastermind behind the commission of offense should not be set free on the mere ground that the actus rea has not been done by the person behind the offense committed or yet to be committed. The concept of abetment has widened the scope of criminal law to incorporate these criminal intentions and penalize them according to the provision laid down under Chapter V of the Indian Penal Code, 1860.

There are four stages of crime which are read as below:

For any offense being committed or instigated by other for their commission there should be a human being, Human being plays an important role in any kind of criminal act being done by himself or either made other to do so and be liable for the same.

- Intention and knowledge plays an important role in any criminal act being done by human being. However a non-criminal behavior as simple as buying a knife for household use becomes criminal when there is any kind of criminal intention behind getting the knife. None of the act can be considered itself a crime if done with a guilty mind.
- After the formation of an intention mere execution is necessary which is followed by actus reus, i.e. the act done in return of the intention formed causing injury to others.
- Last stage is the offense itself which is the result of any kind of criminal intention and criminal act punishable under law. Eg: Murder, Rape, Robbery, etc.

So, in the middle of the above four stages, abetment may take place. At the very initial stage of planning where the intention is developed by one person but the act is done by another as a result of instigation for the commission of an offense. Abetment is a substantive offense where the commission of the offense is not considered, one is held liable for mere instigating, conspiring, and aiding other for the commission of the offense.

**Importance of Complicity:** (Section 107) Sections 107-120 of the Indian Penal Code 1860 speak of incitement. According to Article 107, which explains the meaning of incitement, “incitement” generally means instigating, aiding or encouraging the criminal intent to be carried out. Incitement consists of three acts set out in Article 107: Incitement by incitement: It is generally said that one can motivate another in two ways: motivate one for a good cause and motivate another for a bad cause, which is incitement to incitement and therefore independent of the act incited for that incitement responsible for. be committed or not. A person will “incite” any act that voluntarily induces or causes or attempts to induce or cause an act by willful misrepresentation or willful concealment of a material fact that he or she is required to disclose. This is called aid. Figure: A, an officer, is authorized by court order to arrest Z. B knows that the fact that C is not Z willfully makes A aware

that C is Z, and therefore willfully brings about both A should capture C. Here B incites the arrest of C by incitement.

**Incitement to conspiracy:** Incitement to conspiracy is the involvement of one or more persons in a conspiracy to commit the cause when an unlawful act or omission is made in furtherance of that conspiracy. Complicity by conspiracy is merely said to exist when there is a conspiracy between two or more persons to commit a crime. If the act is committed it amounts to incitement by conspiracy, if not committed it will amount to conspiracy and will be punishable. not for complicity in a conspiracy under Sections 120A and. Aid: The third type of aid is an aid to willful assistance (by unlawful act or omission) in the commission of a criminal offense. Clarification 2 of section 107 clarifies that a person who assists in the performance of an act, whether before or during the commission of an offense, does everything possible to facilitate the commission of that act.

Who is the abettor? Section 108 of the Indian Penal Code 1860 speaks of an instigator, i.e. implicitly. The five proposed involvements in Article 108 of the CPI are worded as follows: Article - Incitement to commit a criminal offense may constitute a criminal offense without the need for the instigator to be compelled to do so. Thus, if a public official has committed an unlawful act and was instigated by a private individual, he is an accomplice in the crime that he himself committed, even if the client, as a private individual, could not have committed the crime himself.

- Canon It is not necessary to recognize the illegality of the incitement, whether or not the incitement was committed. The crime of sedition depends on the intent of the instigator and not on the actual action of the instigator.
- For instigation to be a criminal offense, the instigator must not have the legal capacity to commit the crime, have the same intent to commit the crime, or have the same level of knowledge as the instigator. Incitement is a material crime, regardless of the intent or conscience of the accomplice. The mere incitement to commit a criminal offense is necessary and does not constitute aid. and whether the instigator encourages the action, whether it is legal or not. Example: A, with intent to commit a crime, induces a child or mentally ill person to do what would be a crime if committed by a person legally capable of committing the crime, and with the same intent as A. Here Weather, guilty whether or not there is incitement to commit a criminal offense. Article - If inciting a crime is a crime, then



instigating such a crime is a crime. Figure: A instigates B and instigates C to murder Z. B then instigates C to kill Z and commits the crime at B's instigation. For the crime, B is guilty of murder, and since A instigates B to commit the crime, A is also punished with the same penalty.

- It is not necessary for the crime of the criminal organization to be recognized if the instigator coordinated the crime with the perpetrator. It is enough that he is held responsible if he participates in the conspiracy within which the crime was committed.

Penalty for aiding and abetting under the Indian Penal Code 1860: Sections 109 to 120 of the Indian Penal Code 1860 deal with the penalties for incitement which are as follows:

**Section 109(IPC):** Punishment of incitement, if the act of incitement has effects and its punishment, is not expressly provided for. If a person instigates a crime and the act of instigation is due to instigation, and this law does not expressly provide for the penalty of instigation, he shall be punished with the penalty provided for instigation and commission. Conversely, in some cases of incitement, a sanction is expressly provided for. It should be made clear that an act or crime is considered to have been committed as a result of incitement if it was committed as a result of incitement, criminal conspiracy, or complicity which constitutes incitement. Depending on whether the crime of incitement is recognizable or not, whether released on bail or not, it is judged by the judge and not cumulative. Figure: A misleads B into making a false statement. B commits a crime at the instigation of A. In this case, A is guilty of inciting a criminal offense and is liable for the same criminal offense as B. A offers B, a government official, a bribe as a reward for doing A an official favor. B accepts the bribe. A is the perpetrator of an offense and responsible for an offense under Article 161 of the CPI. Art.

**Section 110(IPC):** Penalty of incitement when the instigator acts for a purpose other than that of the instigator: Art.

This article provides for the punishment of the instigator, i. H. for the instigator, if the act is committed with knowledge or intent different from that of the perpetrator, shall be punished with the penalty provided for the offense that would have been committed if the act had been committed with the same intent and committed with the same knowledge as the perpetrator. An instigator commits a criminal

offense and to commit an act cannot defend himself simply because the act committed after instigating was carried out with a different intention and knowledge than the perpetrator; he is also responsible for the punishment. Depending on whether the crime of incitement is recognizable or not, whether released on bail or not, it is judged by the judge and not cumulative.

**Section 111(IPC):** Responsibility of the instigator in instigating one act and performing another: No. When instigating and committing another act, the instigator is liable for the instigating act in the same way as for the direct instigating, provided that the act can be caused by the instigating and was committed under the influence of the instigating, charged with aiding and abetting instigating. And if an act is committed that is unlikely to be instigated, the instigator is not liable for any other crime committed. Incitement to act is recognizable or unrecognizable, with or without guarantee, arbitral and non-cumulative. Illustration: Get a child to put poison in food Z and give him poison in return. By poking, the child mistakenly mixed poison into Y's food, which was kept next to Z's food, resulting in Y's death. Here A reacts in the same way and to the same extent as if he had instigated the child to poison Y, since the child acts under the instigation.

**Section 112(IPC):** The instigator who is threatened with an aggregate penalty for an act of incitement and a crime committed: Section 112 is an extension of Section 111 of the Indian Penal Code. According to Art. 111, if the offense committed is different from the act of incitement, but belongs to the probable consequences of the incitement committed under the influence of the incitement or participation in the commission of the act. The instigator is responsible for the act in the same way as the immediate instigator. Furthermore, the cumulative word used here in this article would indicate that the act of incitement and the act taken for the purpose of incitement go beyond nature and thus give rise to an additional act leading to an additional offense on the part of the instigator.

The main difference between Section 111 and Section 113 is that Section 111 states that when committing an act of incitement and another act and in Section 113 the incitement and the act committed are the same but the cause of the effect is different. Depending on whether the crime of incitement is recognizable or not, whether released on bail or not, it is judged by the judge and not cumulative.

**Section 114(IPC):** Instigator present at commission of crime: This article provides that when a person who is absent as an instigator who would be subject to a sanction and is exposed to the commission of an act or crime as a result of instigation for which he would be subject to a sanction, the law resumes establishes that the instigator himself committed such a crime and act. And the instigator is punished for the crime committed, not for instigating the crime. Depending on whether the offense of incitement to hatred is recognizable or unrecognizable, on bail or not, subject to judicial judgment and not cumulative.

## **Penalties under Sections 115, 116, 117, 118, 119, and 120 of the Indian Penal Code 1860:**

**Section 115:** Incitement to commit a crime punishable by the death penalty or life imprisonment - if the crime was not committed: - If the offense was not committed by incitement. 7 years in prison + fine The harmful act is punished with 14 years imprisonment + fine

**Section 116(IPC):** Incitement to commit a crime punishable by imprisonment - if the crime was not committed: Act not committed as an accessory – longer sentence for the act/fine / both. When the instigator is an official charged with preventing the vice. is the longer penalty for the offense/fine/both.

**Section 117(IPC):** Incitement to commit a crime by the company or more than ten people: Anyone who incites the commission of an offense by the community, or by a number or group of persons greater than ten, shall be punished with imprisonment for not more than three years or a fine, or both. Depending on whether the crime of incitement is recognizable or not, whether released on bail or not, it is judged by the judge and not cumulative. Penalty for concealing intent or intent to commit a crime:

**Sections 118, 119, and 120 of the Indian Penal Code 1860 provided a penalty for the willful concealment of a purpose by an unlawful act or omission which resulted in the commission of an offense punishable under those sections.**

**Section 118(IPC):** Concealing intention to commit an offense punishable by the death penalty or life imprisonment: If the offense is committed by incitement, 7 years imprisonment/fine If the offense was not committed by incitement – 3 years imprisonment/fine

**Section 119(IPC):** The official conceals the intention to commit a crime, for which he must prove: If the offense is committed by incitement, the longer penalty applies to the offense/fine/both. If the offense was not committed by incitement, the longer penalty applies to the offense/fine/both. If a crime has been committed, it is punishable by the death penalty or imprisonment for up to ten years.

**Section 120(IPC):** Concealing the intention to commit a criminal offense is punishable by imprisonment: If a crime is committed by incitement, the longer sentence for the crime/fine/both. If the offense was not committed as an accessory, 1/8th the higher penalty for the offense/fine/both.

## Case Laws

**Rangasami Gounder v. State of Madras (1950) 51 Cri LJ 1052<sup>1</sup>:** In this case, the accused was convicted of abetment to murder. The court held that abetment can be established by direct or indirect evidence. Direct evidence is when the abettor is seen or heard inciting or encouraging the commission of the offense. Indirect evidence is when the abettor's conduct shows that he or she intended to bring about the commission of the offense.

**Mohan Singh v. State of Punjab (1967) 1 SCR 1028<sup>2</sup>:** In this case, the accused was convicted of abetment to suicide. The court held that abetment to suicide can be established by

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<sup>1</sup> Rangasami Gounder v. State of Madras (1950) 51 Cri LJ 1052

<sup>2</sup> Mohan Singh v. State of Punjab (1967) 1 SCR 1028

showing that the accused had knowledge that the victim was likely to commit suicide and that the accused's conduct was a substantial factor in causing the victim to commit suicide.

**State of Andhra Pradesh v. P.N. Raju (1994) 4 SCC 388<sup>3</sup>:** In this case, the accused was convicted of abetment to dowry death. The court held that abetment to dowry death can be established by showing that the accused had knowledge that the victim was likely to be subjected to cruelty and that the accused's conduct was a substantial factor in causing the victim to be subjected to cruelty.

## Conclusion:

Abetment is said to be a substantive offense that is punishable in itself irrespective of whether the act abetted is committed or not. When any act is done as a consequence of instigation, conspiracy, and aid, the person performing such act is held liable under Indian Penal Code, 1860 but the person behind the commission of an act will also be held liable for abetment as the instigation for such commission has been done by that person.

Therefore, we say that abetment as an offense is a just and fair law that enhances the principle of natural justice in the legal system. As explained above there are four stages of crime and abetment may take place at the initial level of planning and is punishable with that imprisonment or fine or both as may be expressed in the provision.

## Reference's

- IPC Prof. S.N. MISRA
- SCC Online
- Bare Act

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<sup>3</sup> State of Andhra Pradesh v. P.N. Raju (1994) 4 SCC 388<sup>3</sup>: