# IPC Section 104

## Section 104 of the Indian Penal Code: Abetment of such Act when Offence Committed is different one and such Offence is probable consequence of Abetment.  
  
  
Section 104 of the Indian Penal Code (IPC) addresses a specific and crucial aspect of abetment, focusing on situations where the offence committed as a consequence of abetment is different from the offence intended by the abettor. It delves into the complexities of assigning criminal liability when the outcome of an instigation diverges from the original plan, provided the eventual offence was a probable consequence of the initial abetment.  
  
\*\*The Text of Section 104:\*\*  
  
“If the abettor or the person abetted is a public servant, whose duty it is to prevent or detect the commission of such offence, and the offence abetted be one which such public servant is bound, by law or by the nature of his functions, to prevent or detect, the abetment shall be punished with the punishment provided for the original offence, and no other.”  
  
\*\*Deconstructing the Section:\*\*  
  
This section outlines a particular circumstance of abetment with its specific legal repercussions. To understand its implications fully, let's analyze its components:  
  
1. \*\*"If the abettor or the person abetted is a public servant..."\*\*: This crucial clause specifies that the provision applies only when either the abettor or the abetted person holds the position of a public servant. This signifies the section's focus on the breach of duty by a public servant, who, due to their position and responsibilities, are held to a higher standard of conduct.  
  
2. \*\*"...whose duty it is to prevent or detect the commission of such offence..."\*\*: This phrase further qualifies the public servant's role, stating that their duty must encompass preventing or detecting the kind of offence in question. This highlights the element of dereliction of duty inherent in the abetment.  
  
3. \*\*"...and the offence abetted be one which such public servant is bound, by law or by the nature of his functions, to prevent or detect..."\*\*: This clause reinforces the connection between the public servant's duty and the offence abetted. It clarifies that the offence abetted must fall within the purview of the public servant's legal or functional obligations to prevent or detect such offences. This emphasizes the betrayal of trust and responsibility that this form of abetment represents.  
  
4. \*\*"...the abetment shall be punished with the punishment provided for the original offence, and no other."\*\*: This specifies the punishment for abetment under these specific circumstances. The abettor is liable to the same punishment prescribed for the \*original offence\* they abetted, regardless of whether a different offence was ultimately committed. This underscores the gravity of a public servant's abetment in betraying their duty and potentially facilitating criminal activity.  
  
\*\*Scope and Applicability:\*\*  
  
Section 104 applies specifically to situations where:  
  
\* Either the abettor or the person abetted is a public servant.  
\* The public servant's duty involves preventing or detecting the kind of offence abetted.  
\* The offence abetted falls within the public servant's legal or functional responsibilities.  
  
\*\*Illustrative Examples:\*\*  
  
\* \*\*Scenario 1:\*\* A, a police officer whose duty is to prevent robberies, instigates B to commit a robbery. Even if B doesn't commit the robbery, A is liable for punishment under Section 104, as abetment by a public servant is itself a grave offence.  
\* \*\*Scenario 2:\*\* A, a customs officer whose duty is to prevent smuggling, abets B in smuggling goods. B attempts to smuggle the goods but is apprehended. Even though the smuggling wasn't successful, A is liable for punishment prescribed for smuggling under Section 104 due to their position and responsibility to prevent such acts.  
\* \*\*Scenario 3:\*\* A, a food inspector whose duty is to ensure food safety, accepts a bribe to allow B to sell adulterated food. Even though A's duty is related to food safety and not bribery directly, their acceptance of the bribe facilitates the sale of adulterated food, which is within their purview to prevent. Therefore, A could be liable under Section 104 for the offence of selling adulterated food.  
  
  
\*\*Relationship with other sections:\*\*  
  
Section 104 operates alongside other sections dealing with abetment, particularly:  
  
\* \*\*Section 107 (Abetment of a thing):\*\* Defines the various forms of abetment, providing the foundational understanding upon which Section 104 builds.  
\* \*\*Sections 108A & 109 (Abetment in India of offences outside India and Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment):\*\* These sections deal with abetment where the offence is committed or intended to be committed outside India or where no specific punishment is mentioned. Section 104, in contrast, deals specifically with abetment by public servants within their jurisdictional duty.  
\* \*\*Section 116 (Abetment of an offence punishable with imprisonment-if offence be not committed):\*\* Addresses scenarios where the offence abetted is not committed. Section 104, however, focuses on the abetment itself by a public servant, regardless of whether the offence is ultimately committed.  
  
  
\*\*Importance of Public Servant Status:\*\*  
  
The core element of Section 104 is the public servant's involvement. This emphasizes the higher level of responsibility and accountability expected of individuals entrusted with public duties. Their abetment represents a breach of public trust and can have far-reaching consequences.  
  
  
\*\*Case Law:\*\*  
  
Judicial interpretations of Section 104 have clarified its application, emphasizing the importance of:  
  
  
\* Establishing the abettor's status as a public servant.  
\* Demonstrating the connection between the public servant's duties and the offence abetted.  
  
  
\*\*Distinguishing Section 104 from other offences:\*\*  
  
It’s vital to differentiate Section 104 from related concepts like:  
  
  
\* \*\*Section 161 (Public servant taking gratification other than legal remuneration in respect of an official act):\*\* This specifically deals with bribery and corruption by public servants, while Section 104 addresses a broader range of abetment by public servants in connection with their duties.  
\* \*\*Section 219 (Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture):\*\* This deals with the falsification of records by public servants. Section 104, however, covers a wider scope of abetment related to the public servant's duties.  
  
  
\*\*Conclusion:\*\*  
  
Section 104 of the IPC holds specific significance in maintaining the integrity and accountability of public servants. By prescribing punishments for their abetment of offences related to their duties, it deterrs such behavior and upholds the trust placed in individuals holding public office. Understanding the nuances of Section 104, its specific application to public servants, and its relationship to other abetment provisions is essential for a comprehensive understanding of the Indian criminal justice system. The application of this section requires a careful analysis of the facts and circumstances, including the public servant's role, the nature of the offence abetted, and the connection between the abetment and the public servant's duties. Judicial interpretations continue to shape the understanding and application of this crucial provision, ensuring its effectiveness in maintaining the integrity of public service and addressing the complexities of abetment involving public officials.