# IPC Section 138: Abetment of act of insubordination by soldier, sailor or airman.

## IPC Section 138: Abetment of Act of Insubordination by Soldier, Sailor or Airman - A Detailed Explanation  
  
Section 138 of the Indian Penal Code, 1860, addresses the specific offense of abetting insubordination within the armed forces. It targets individuals who incite or encourage acts of disobedience or defiance among soldiers, sailors, or airmen, recognizing the critical importance of maintaining discipline and order within the military. The section reads:  
  
"Whoever abets what he knows to be an act of insubordination by a soldier, sailor or airman, in Her Majesty’s Army or Her Majesty’s Navy, or in the Army or Navy of the East India Company, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."  
  
While the archaic references to "Her Majesty's Army/Navy" and the "East India Company" are outdated, the essence of the law remains pertinent. It criminalizes the act of aiding, instigating, or encouraging insubordination within the modern Indian Armed Forces.  
  
Let's break down the key components of this section for a comprehensive understanding:  
  
\*\*1. The Actus Reus (Guilty Act):\*\* The offense consists of "abet[ting] what he knows to be an act of insubordination." This involves two key elements:  
  
\* \*\*Act of Insubordination:\*\* This refers to any act of disobedience, defiance, or resistance to lawful authority within the military. It encompasses a wide range of behaviors, from refusing to obey orders to engaging in mutiny or other forms of collective defiance. The specific act of insubordination must be clearly established.  
\* \*\*Abetment:\*\* This signifies the active involvement of the accused in encouraging or facilitating the act of insubordination. Abetment can take various forms as defined under Section 107 of the IPC:  
 \* \*\*Instigating:\*\* Inciting or prompting another person to commit the offense.  
 \* \*\*Engaging in a Conspiracy:\*\* Planning and agreeing with others to commit the offense.  
 \* \*\*Intentionally Aiding:\*\* Providing assistance or support to facilitate the commission of the offense.  
  
\*\*2. The Mens Rea (Guilty Mind):\*\* The section requires that the abettor "knows" that the act they are abetting is an act of insubordination. This implies a conscious and deliberate intent to encourage disobedience. Mere negligence or unintentional facilitation is not sufficient for this offense. The prosecution must prove that the accused was aware of the nature of the act and its implications within the military context.  
  
\*\*3. "Soldier, Sailor or Airman":\*\* The section explicitly specifies that the insubordination must be committed by a member of the armed forces – a soldier, sailor, or airman. This clearly defines the scope of the law and highlights its focus on maintaining discipline within the military.  
  
\*\*4. Punishment:\*\* The prescribed punishment is imprisonment for up to six months, a fine up to one thousand rupees, or both. The relatively lenient punishment reflects the fact that the offense deals with abetment rather than the actual act of insubordination itself. However, it serves as a deterrent against external influences that might undermine military discipline.  
  
  
\*\*Evidentiary Challenges and Defenses:\*\*  
  
Proving this offense requires demonstrating:  
  
\* An act of insubordination occurred.  
\* The accused abetted this act.  
\* The accused knew they were abetting an act of insubordination.  
  
  
The accused could offer several defenses, such as:  
  
\* \*\*Lack of Abetment:\*\* Arguing they did not instigate, conspire, or intentionally aid the act of insubordination.  
\* \*\*Lack of Knowledge:\*\* Claiming they were unaware of the nature of the act or its implications as insubordination.  
\* \*\*Absence of Mens Rea:\*\* Asserting their actions were unintentional or did not meet the criteria for abetment.  
\* \*\*Justification:\*\* In rare circumstances, arguing that the act of insubordination was justified due to exceptional circumstances, like an illegal order. (This defense would be extremely difficult to establish.)  
  
  
\*\*Relevance in Contemporary Context:\*\*  
  
Maintaining discipline within the armed forces is paramount for national security and operational effectiveness. While the language of Section 138 might be outdated, the principle it embodies remains crucial. External influences that incite insubordination can severely disrupt military operations and endanger national security. This section provides a legal tool to address such threats and uphold the chain of command.  
  
  
\*\*Distinction from Other Offenses:\*\*  
  
It's crucial to distinguish Section 138 from offenses directly related to mutiny or sedition. While insubordination might be a component of mutiny or sedition, Section 138 focuses specifically on the act of abetting insubordination, not necessarily inciting a full-blown revolt. Mutiny and sedition are covered under separate, more stringent provisions of the IPC.  
  
  
In conclusion, Section 138 of the IPC, despite its archaic phrasing, continues to play a vital role in safeguarding military discipline. By criminalizing the abetment of insubordination, it provides a legal mechanism to address external influences that seek to undermine the chain of command and disrupt the functioning of the armed forces. It emphasizes the importance of maintaining order and obedience within the military for the protection of national security.