

two years of marriage was held to be her personal act. *Padmabai v State of MP*, 1987 Cr LJ 1573 (MP).

26. *Bhagwan Das v Kartar Singh*, AIR 2007 SC 2045 [LNIND 2007 SC 650] ; *Dayalan Babu v State*, 2011 Cr LJ 359 (Mad).

27. *Paramjeetsingh Chawala v State of MP*, 2007 Cr LJ 3343 (MP).

28. *Vedprakash Bhajji v State of MP*, 1995 Cr LJ 893 (MP). *Netai Dutta v State of WB*, 2005 Cr LJ 1737 , no averment that the employer had withheld salary, or of aiding or instigating suicide, proceedings against employer to be quashed.

29. *Sanju v State of MP*, 2002 Cr LJ 2796 : AIR 2002 SC 1998 [LNIND 2002 SC 357] (Supp).

30. *Bura Manohar v State of AP*, 2002 Cr LJ 3322 (AP); *Central Bureau of Investigation v VC Shukla*, 1998 Cr LJ 1905 : AIR 1998 SC 1406 [LNIND 1998 SC 272] ; *Bapurao v State of Maharashtra*, 2003 Cr LJ 2181 (Bom).

31. *Chitresh Kumar Chopra v State (Govt. of NCT of Delhi)*, 2009 (16) SCC 605 [LNIND 2009 SC 1663] : AIR 2010 SC 1446 [LNIND 2009 SC 1663] .

32. *Ramesh Kumar v State of Chhattisgarh*, AIR 2001 SC 3837 [LNIND 2001 SC 2368] : (2001) Cr LJ 4724 .

33. *State of MP v Shrideen Chhatri Prasad Suryawanshi*, 2012 Cr LJ 2106 (MP); *Jetha Ram v State of Rajasthan*, 2012 Cr LJ 2459 (Raj); *Kailash Baburao Pandit v State of Maharashtra*, 2011 Cr LJ 4044 (Bom).

34. *Vijay Kumar Rastogi v State of Rajasthan*, 2012 Cr LJ 2342 (Raj).

35. *Praveen Pradhan v State of Uttaranchal*, (2012) 9 SCC 734 [LNIND 2012 SC 612] : 2012 (9) Scale 745 : 2012 Cr LJ 4925 .

36. Per Willes J, in *Mulcahy*, (1868) LR 3 HL 306, 317. See *Quinn v Leatham*, (1901) AC 495 , 529.

37. Explanation 5 to section 108; *Kalil Munda*, (1901) 28 Cal 797 .

38. *Ameer Khan*, (1871) 17 WR (Cr) 15.

39. *Tirumal Reddi*, (1901) 24 Mad 523, 546.

40. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : 1962 (1) Cr LJ 770 . See *CBI v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : (1998) 3 SCC 410 [LNIND 1998 SC 272] ; Abetment by conspiracy not made out.

41. *Noor Mohammad Mohd. Yusuf Momin v State of Maharashtra*, AIR 1971 SC 885 [LNIND 1970 SC 155] : (1970) 1 SCC 696 [LNIND 1970 SC 155] .

42. *State of AP v Kandimalla Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] : 1962 (1) SCR 194 [LNIND 1961 SC 95] .

43. *State of MP v Mukesh*, (2006) 13 SCC 197 [LNIND 2006 SC 844] : (2007) 2 SCC (Cr) 680.

44. *Shri Ram*, 1975 Cr LJ 240 : AIR 1975 SC 175 [LNIND 1974 SC 349] ; See also *Trilokchand*, 1977 Cr LJ 254 : AIR 1977 SC 666 [LNIND 1975 SC 278] .

45. *Rajbabu v State of MP*, (2008) 17 SCC 526 [LNIND 2008 SC 1499] : AIR 2008 SC 3212 [LNIND 2008 SC 1499] : 2008 Cr LJ 4301 : (2008) 69 AIC 65 .

46. *R v State*, (1989) 3 All ER 90 CA. The Court considered the decisions in *Chan Wing Sui v R*, (1984) 3 All ER 877 and *Hyam v DPP*, (1974) 2 All ER 41 . *Krishan Lal v UOI*, 1994 Cr LJ 3472 , intentional aiding.

47. *R v Rook*, (1993) 1 WLR 1005 (CA).

48. *Jamnalal Pande v State of MP*, 2010 Cr LJ 538 (MP).

49. *Surendra Agnihotri v State of MP*, 1998 Cr LJ 4443 (MP).

50. *R v Jefferson*, The Times, 22 June 1993 (CA).

51. *P Nallammal v State*, AIR 1999 SC 2556 [LNIND 1999 SC 660] : 1999 Cr LJ 3967 .

52. *Muthammal*, [1981 Cr LJ 833](#) (Mad) : [1981 Mad LW \(Cr\) 80](#) ; *Karuppiah v Nagawalli*, 1982 Mad LJ (Cr) 19 : [1982 Cr LJ 1362](#) : [2004 Cr LJ 4272](#) (Kar).
53. *Malan*, [\(1957\) 60 Bom LR 428](#) .
54. *Shri Ram v State of UP*, [AIR 1975 SC 175](#) [[LNIND 1974 SC 349](#)] : [1975 Cr LJ 240](#) .
55. *Ram Kumar v State of HP*, [AIR 1995 SC 1965](#) : [1995 Cr LJ 3621](#) : 1995 Supp (4) SCC 67 .
56. *Neelam v State of AP*, [2003 Cr LJ \(NOC\) 160](#) (AP) : [\(2002\) 2 Andh LT \(Cr\) 186](#) .
57. *Satvir Singh v State of Punjab*, [AIR 2001 SC 2828](#) [[LNIND 2001 SC 2168](#)] : [\(2001\) 8 SCC 633](#) [[LNIND 2001 SC 2168](#)] .
58. *Berin P Varghese v State*, [2008 Cr LJ 1759](#) .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 108] Abettor.

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

ILLUSTRATIONS

- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

ILLUSTRATIONS

- (a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.
- (b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.
- (c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.
- (d) 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. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

ILLUSTRATION

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

ILLUSTRATION

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

COMMENTS.—

Abetment under the [IPC, 1860](#) involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence,⁵⁹ and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to give effect to the [criminal act](#) or purpose, is punishable under the Code.

'**Abettor**', under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act, which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section he must be an instigator or a conspirator or an intentional helper.

Merely because the accused's brother was carrying on criminal activities in her house, the appellant cannot be held guilty unless there is some material to show her complicity.⁶⁰

Explanation 1.—If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2.—The question regarding abettor's guilt depends on the nature of the act abetted and the manner in which abetment was made. Commission of the act abetted is not necessary for the offence of abetment.⁶¹ The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

Explanation 3.—This explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment.⁶² The offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he employs to act for him.

Explanation 4.—This Explanation is to be read as follows: "When the abetment of an offence is an offence the abetment of such an abetment is also an offence". In view of Explanation 4 appended under [section 108 of the IPC, 1860](#) the contention of accused that there cannot be any abetment of an abetment and it is unknown to criminal jurisprudence, holds no water and merits no consideration.⁶³

[s 108.1] Abetment of attempt to commit suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 and read with [section 107, IPC, 1860](#).⁶⁴

[s 108.2] Euthanasia.—

Assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.⁶⁵ But in *Aruna Ramchandra Shanbaug v UOI*,⁶⁶ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution](#) Bench of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.⁶⁷

[s 108.3] Political murder.—

The accused were poor villagers who were brainwashed and became tools for committing crimes. The leaders who called for revenge were not charge sheeted and they got off scot-free. Even their names were not revealed as they were political head-weight. Such leaders who prompt the followers to commit crimes should be charge sheeted for abetment of offence for murder.

[s 108.4] Abetment is substantive offence.—

The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.⁶⁸ It cannot be held in

law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under [section 107, IPC, 1860](#) a person abets the doing of an act in either of three ways which can be: instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under [section 115](#) or [section 116, IPC, 1860](#) even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. This is clear from Explanation 2 and illustration (a) thereto, to [section 108, IPC, 1860](#). It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.⁶⁹

59. *Molazim Tewari*, (1961) 2 Cr LJ 266 .

60. *Marry Perara Lilly v State*, (1987) Supp1 SCC 182 : (1988) 1 SCC (Cr) 56.

61. *Sundar v State of UP*, 1995 Cr LJ 3481 (All), relying on *Sukh Ram v State of MP*, 1989 SCC (Cr) 357 : [AIR 1989 SC 772 \[LNIND 2016 MP 593\]](#) .

62. *Chaube Dinkar Rao*, (1933) 55 All 654 .

63. *Gundala Reddeppa Naidu v State of AP*, 2005 Cr LJ 4702 (AP).

64. *Gian Kaur v State of Punjab*, [AIR 1996 SC 946 \[LNIND 1996 SC 653\]](#) : (1996) 2 SCC 648 [[LNIND 1996 SC 653](#)] .

65. The Constitution Bench *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [[LNIND 1996 SC 653](#)] held that both euthanasia and assisted suicide are not lawful in India which overruled the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*, [AIR 1994 SC 1844 \[LNIND 1994 SC 1533\]](#) : 1994 (3) SCC 394 [[LNIND 1994 SC 1533](#)] . The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die.

66. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [[LNIND 2011 SC 265](#)] : [AIR 2011 SC 1290 \[LNIND 2011 SC 265\]](#) .

67. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [[LNIND 2018 SC 87](#)] .

68. *Gallu Saheb v State of Bihar*, [AIR 1958 SC 813 \[LNIND 1958 SC 76\]](#) ; *Maruti Dada*, (1875) 1 Bom 15; *Sahib Ditta*, (1885) PR No. 20 of 1885.

69. *Jamuna Singh v State of Bihar*, [AIR 1967 SC 553 \[LNIND 1966 SC 202\]](#) : 1967 Cr LJ 541 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

70. [s 108A] Abetment in India of offences outside India.

A person abets an offence within the meaning of this Code who, in **71.** [India], abets the commission of any act without and beyond **72.** [India] which would constitute an offence if committed in **73.** [India].

ILLUSTRATION **74.**

A, in **75.** [India], instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.]

COMMENTS.—

This section makes an abetment in India by a citizen of India of an act committed in a foreign territory an offence punishable under the [IPC, 1860](#) if it would constitute an offence if committed in India. This illustration has become somewhat obsolete as Goa is now a part of Indian territory and not a foreign country as it was when this illustration was formulated.

70. Added by Act 4 of 1898, section 3.

71. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1-4-1951), to read as above.

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73. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

74. This Illustration is inappropriate as Goa, which was a Portuguese colony at the time of the British imperial enactment now forms part of the Union Territory.—Ed.

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THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

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THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 109] Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

ILLUSTRATIONS

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
- (c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

COMMENTS.—

Under this section the abettor is liable to the same punishment as that which may be inflicted on the principal offender, (1) if the act of the latter is committed in consequence of the abetment, and (2) no express provision is made in the Code for the punishment of such an abetment. [Section 109, IPC, 1860](#) becomes applicable even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission.^{76.}

[s 109.1] Scope.—

This section lays down nothing more than that if the [IPC, 1860](#) has not separately provided for the punishment of abetment as such then it is punishable with the punishment provided for the original offence. Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not, is a question to be decided on the facts of each

case. It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Further, the act abetted should be committed in consequence of the abetment or in pursuance of the conspiracy as provided in the Explanation to section 109. Under the Explanation an act or offence is said to be committed in pursuance of abetment if it is done in consequence of (a) instigation (b) conspiracy or (c) with the aid constituting abetment. Instigation may be in any form and the extent of the influence which the instigation produced in the mind of the accused would vary and depend upon facts of each case. The offence of conspiracy created under section 120A is bare agreement to commit an offence. It has been made punishable under section 120B. The offence of abetment created under the second clause of section 107 requires that there must be something more than mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by section 107 (second), "engages in any conspiracy ... for the doing of that thing, if an act or omission took place in pursuance of that conspiracy". The punishment for these two categories of crimes is also quite different. [Section 109, IPC, 1860](#) is concerned only with the punishment of abetment for which no express provision has been made in the [IPC, 1860](#). The charge under section 109 should, therefore, be along with charge for murder which is the offence committed in consequence of abetment. An offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable under section 120B for which a charge under section 109 is unnecessary and inappropriate.⁷⁷ Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. "Act abetted" in section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.⁷⁸ The commission of the offence of rape in a hut then in possession of the accused was held to be not sufficient in itself to show that the accused abetted the offence.⁷⁹

[s 109.2] Distinct offence.—

Section 109 is by itself creative of an offence though it is punishable in the context of other offences. The accused was charged under sections 300 and 149. The Court said that he could not be convicted under section 300 with the aid of section 109. That would cause great prejudice to the accused in his defence.⁸⁰ The offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.⁸¹ A plain reading of sections 107–109 of the [IPC, 1860](#) would show that act complained of in order to amount to abetment has to be committed either prior to or at the time of commission of the offences.⁸²

Where the appellant, the wife of a co-accused asked the prosecutrix, aged 15 years to go to the house of the accused and to bring *lassi*, and when the prosecutrix reached there, the co-accused, who were two in number, bolted the house from inside and committed rape on her, it was held that the appellant was guilty of the offence of abetment.⁸³