

104. *MA Reddy v State*, [AIR 1956 SC 177](#) : [1956 Cr LJ 341](#) .
105. *Muklesur Rahaman v State*, [2010 Cr LJ 4488](#) . Also see, *Kalubhai Maganbhai Vaghela v State of Gujarat*, [2009 Cr LJ 2317](#) (Guj).
106. *Khandu v State*, [\(1899\) 1 Bom LR 351](#) , 355.
107. *Sidharth v State of Bihar*, [AIR 2005 SC 4352](#) [[LNIND 2005 SC 752](#)] : [\(2005\) 12 SCC 545](#) [[LNIND 2005 SC 752](#)] : [2005 Cr LJ 4499](#) : (2006) 1 SCC (Cr) 175. Also see *Mukati Prasad Rai alias Mukti Rai v State IR*, [2005 SC 1271](#) : [\(2004\) 13 SCC 144](#) : (2005) 1 SCC (Cr) 69; *Awadh Mahto v State of Bihar*, [2007 Cr LJ 342](#) (Pat).
108. *Mangiya v State of Rajasthan*, [2000 Cr LJ 4814](#) (Raj).

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 115] Abetment of offence punishable with death or imprisonment for life—if offence not committed.

Whoever abets the commission of an offence punishable with death or ^{109.} [imprisonment for life] shall, if that offence be not committed in consequence of the abetment, and no express provision¹ is made by this Code for the punishment of such abetment,² be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If act causing harm be done in consequence.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

ILLUSTRATION

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or ^{110.} [imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

COMMENT.—

This section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment or only in part committed.

When more than ten persons are instigated to commit an offence punishable with death, the offence comes under this section as well as under section 117. Abetment under this section need not necessarily be abetment of the commission of an offence by a particular person against a particular person. ^{111.}

1. 'Express provision'.—This refers to sections in which specific cases of abetment of offences punishable with death or imprisonment for life are dealt with. ^{112.}

2. 'Such abetment'.—These words refer to the abetment of the offence specified in the section itself, namely an offence punishable with death or imprisonment for life, and only sections 121 and 131 provide for the punishment of the abetment of such offence. ^{113.}

109. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

110. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

111. *Dwarkanath Goswami*, (1932) 60 Cal 427 ; *Lavji Mandan v State*, (1939) 41 Bom LR 980 .

112. *Ibid.*

113. *Lavji Mandan*, (1939) 41 Bom LR 980 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 116] Abetment of offence punishable with imprisonment— if offence be not committed.

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence.

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

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 refuses to accept the bribe. A is punishable under this section.
- (b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

COMMENT—

Where abetted offence not committed.—This section provides for the abetment of an offence punishable with imprisonment. There is no corresponding provision in the Code relating to abetment of an offence punishable with fine only.

Three different states of fact may arise after an abetment—

(1) No offence may be committed. In this case the offender is punishable under sections 115 and 116 for the mere abetment to commit a crime.

(2) The very act at which the abetment aims may be committed, and will be punishable under sections 109 and 110.

(3) Some act different but naturally flowing from the act abetted may be perpetrated, in which case the abettor will fall under the penalties of sections 111, 112 and 113.

[s 116.1] Section 116 and Section 306.—

Section 116, IPC, 1860 is "abetment of offence punishable with imprisonment if offence be not committed". But the crux of the offence under section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence, there cannot be an offence under [section 116](#) read with [section 306](#), [IPC, 1860](#).¹¹⁴ The Supreme Court has never laid down in *Satvir Singh*¹¹⁵ that under no circumstance an offence under [section 306](#) read with [section 511 IPC, 1860](#) can be committed. The Supreme Court did not have occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under [section 306](#) read with [section 511, IPC, 1860](#). Merely because the section opens with the words "if any person commits suicide" it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt on the one hand and abetment of commission of suicide and its attempt on the other are treated differently by law and, therefore, the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under [section 309](#) read with [section 116, IPC, 1860](#). To implement the scheme of law he has got to be held to be punishable under [section 306](#) read with [section 511, IPC, 1860](#).¹¹⁶

¹¹⁴. *Satvir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] : (2001) 8 SCC 633 [LNIND 2001 SC 2168] : 2001 Cr LJ 4625 : (2002) 1 SCC (Cr) 48.

¹¹⁵. *Supra*.

¹¹⁶. *Berin P Varghese v State*, 2008 Cr LJ 1759 (Ker).

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 117] Abetting commission of offence by the public or by more than ten persons.

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

ILLUSTRATION

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

COMMENT—

Abetting by public or more than ten persons.—Abetment has a reference both to the person or persons abetted, and to the offence or offences the commission of which is abetted. This section deals with former, whatever may be the nature of the offence abetted, while section 115 deals with the latter without having regard to the person or persons abetted.^{117.}

Under this section it will be sufficient to show any instigation or other mode of abetment, though neither the effect intended, nor any other effect follows from it. The gravamen of a charge under this section is the abetment itself, the instigation to general lawlessness, not the particular offence of which the commission is instigated.^{118.} The section covers all offences and is a general provision for abetment of any number of persons exceeding ten. When more than ten persons are instigated to commit an offence punishable with death, the offence comes under section 115 as well as this section.^{119.} Abetment of the commission of murder, whether by a single individual or by a class of persons exceeding ten, falls under section 115. In the latter case, it may fall under this section also, but as this section prescribes a lesser punishment, section 115 is the more appropriate provision for such an offence. Although both the sections are applicable, there cannot be separate sentences under the two sections for the same [criminal act](#), and the conviction should properly be under that section which inflicts the higher punishment.^{120.}

[s 117.1] Instigation is essential.—

A mere intention or preparation to instigate is neither instigation nor abetment. In order to constitute an offence under this section by pasting leaflets it is necessary that either the public should have read the leaflets or they should have been exposed to public gaze.^{121.}

-
117. *Lavji Mandan v State*, (1939) 41 Bom LR 980 .
118. *Konda Satyavtamma v State*, (1931) 55 Mad 90.
119. *Dwarkanath Goswami*, (1932) 60 Cal 427 .
120. *Lavji Mandan*, (1939) 41 Bom LR 980 .
121. *Parimal Chatterji*, (1932) 60 Cal 327 .

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 118] Concealing design to commit offence punishable with death or imprisonment for life.

Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or ^{122.}[imprisonment for life],

^{123.}[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence or makes any representation which he knows to be false respecting such design,

If offence be committed – if offence be not committed.

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

ILLUSTRATION

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

COMMENT—

Concealing design to commit offence.—Sections 118, 119 and 120 all contemplate the concealment of a design by persons other than the accused to commit the offence charged. These sections apply to the concealment of all offences except those which are merely punishable with fine. Under section 107 concealment of a design to commit an offence constitutes an abetment. There must be an obligation on the person concealing the offence to disclose.^{124.} The Cr PC, 1973 creates such obligation in respect of several offences of a serious nature (sections 39 and 40 Cr PC, 1973). The concealment to be criminal must be intentional or at least with knowledge that it will facilitate the commission of an offence.

^{122.} Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

^{123.} Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

124. *Bahadur*, (1882) PR No. 34 of 1882.

THE INDIAN PENAL CODE

CHAPTER V OF ABETMENT

[s 119] Public servant concealing design to commit offence which it is his duty to prevent.

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;

¹²⁵[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design;

If offence be committed.

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence be punishable with death, etc.

or, if the offence be punishable with death or ¹²⁶[imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

If offence be not committed.

or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

ILLUSTRATION

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to so facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provisions of this section.

COMMENT—

Public servant concealing design to commit offence.—Section 118 deals with persons who are not public servants. In this section the same principle is extended to public servants but with severe penalty.