

# Abetment and joint liability under ipc law general essay

Law



----- Pragalbha Priyakar This portion of the article forms the Second section of the project, where the offences related with joint or constructive liability under the Indian Penal Code and their nuances are closely examined and experimented so as to fathom their nexus with the culpable element of abetment. However, since opinions of jurists are not abundantly available on the issue, the author employs to analyse the matter in the light of various judgements rendered by the Indian courts.

### **Common intention and the role of Abetment**

As has been already stated, sec. 34 of the Indian penal Code, encapsulates the principle of 'constructive or joint liability' in commission of a criminal act; by virtue of the fact that all offenders harboured a common intention. Thus, the cases which revolve around this provision of Indian Penal Code may also stretch their reach to penalise the offenders for abetment as well. Whenever, the issue of Common intention crops up; it becomes imperative to reveal the methods employed by the offenders - in respect of 'meeting of minds'; thereby, giving rise to a common intention. In these regards, the interplay of intentions of various persons in a group liability can be understood with respect to an act of abetment; as mentioned under sec. 107. This provision may be attracted, even if the abettor is not present when the offence abetted is committed, provided that he has instigated the commission of the offence[1]. This proposition becomes extremely relevant for the purpose of Joint liability where a plan fabricated by a master-mind is executed by others who participate in the crime, whereas he abstains from doing so. It was initially held that sec. 34 essentially requires participation in crime, whereas mere instigation was sufficient for abetment under sec.

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107[2]. However, such a situation could have left sufficient room for the offenders as mentioned in the above instance, to go unpunished. Thus, physical presence which was considered to be an element of the participation of crime in the well-known case of Barendrakumar Ghose v. King Emperor[3], was later adjudged not to be a condition requisite for the purpose of Joint Liability under sec. 34[4]. To this it must be noted, that for offences which involve physical violence, it is imperative and obvious that physical presence of the accused would be an essential fact. However, as has already been made clear, in instances where non-physical violence was called into question, for example in cheating and misappropriation, it would be completely unreasonable for physical presence to be a prerequisite in establishing joint liability[5]. In concurrence to this issue, in Barendra Kumar Ghosh v. King Emperor, Privy Council stated the nuances of the elements of a crime charged under sec. 34 and their interplay with the offence of abetment. The court held:" As to sec. 114, it is a provision which is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition as laid down in Abhi Misser v. Lachmi Narain [1900 (27) Cal. 566]. Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart. sec. 114 deals with the case where there has been the crime of abetment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case is this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abetted.

The section is evidentiary, not punitive. Because participation de facto (as this case shows) may sometimes be obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by sec. 114 brings the case within the ambit of sec. 34[6]." What necessarily follows from this observation of the court, is the fact that only in instances where, abetment by an offender does not amount to the actual commission of the offence, can he be held guilty of the offence in question, as well as abetment. However, where an offender abets another towards the commission of an offence and this leads to that another's participation in the offence in question, the offender who abetted cannot be penalised for abetment if his abetment standing alone, counts as participation with respect to the offence in question. However, at various places it has been argued that even after assuming the fact that presence at the scene is pre-requisite to attract sec. 34 and that such propinquity is absent, it has been adjudged that sec. 107, which is different in one sense, still comes into play to rope in the accused[7]. Essentially, it is crucial that several persons join in the actual 'doing of the act' and not merely in planning and preparation[8]. The antithesis is between the preliminary stages, the agreement, the preparation and the planning, which is covered under sec. 109, and the stage of commission when the plans are put into effect and carried out. Since, sec. 34 of the code is concerned with the latter[9]- which is the result or the outcome of the preliminary stages, it fully encompasses within its ambit the instigation offered by the offender amongst themselves, which constitutes abetment. Again, 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, but these elements are the pre-requisites of liability under, sec. 34. Thus, considering the above propositions, it is to be comprehended that joint liability under sec. 34 subsumes greater dimensions with respect to the offence of abetment and in this way subsumes within itself the nuances of abetment as well.

### **b. The Interplay of Abetment with Common object of an Unlawful Assembly**

Where several persons are proved to have combined together for the same illegal purpose, any act done by one of the parties in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of the law, the act of all[10]. Each party is an agent of the others in carrying out the objects of the conspiracy, and doing anything in furtherance of the common design[11]. In this case, there exists a strong presumption that each of them would have instigated all of them, thereby amounting to abetment[12]. Thus, similar to the position of law as is moulded under sec. 34, the provision under sec. 149 is already impregnated with the element of abetment which doesn't put an imperative on the penal laws to punish the offender for abetment separately. This may be understood using an illustration, where four persons combine to attack with lathis their common enemy. Here, each is abetting the conduct of the other within the meaning of sec. 107[13]. However, it is not essential that there should have been an agreement in express terms as to what the principal in the first degree should do; but, the aider and abettor will be responsible for anything

done in the joint enterprise which the evidence shows was within the contemplation[14]. Thus, in cases where several persons have come together for the purpose of committing some breach of peace, their general resolution must be considered, and if it appears upon evidence either to have been actually and explicitly entered into by the confederates, or may be reasonably collected from their number, equipment or behaviour at or before the scene of action or that some kind of violence in certain eventualities be resorted to, then every individual in the group will be involved in the guilt of any who do any such act which has thus been established to have been within the contemplation of the group[15].

### **C. Evolution of criminal Conspiracy from the offence of Abetment**

Now, if we analyse the provisions of criminal conspiracy under sec. 120A, it may be deduced, that if a person engages himself; with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy, some illegal act or illegal omission takes place, or has intentionally aided the commission of an offence by an act or illegal omission, the role of abetment persists within the present context. This is due to the fact that whenever the act of sharing an unlawful design takes place in a criminal conspiracy, the act of abetment is manifested between the offenders. Here, it must be taken into account that criminal conspiracy differs from other offences in the sense that mere agreement is made an offence even if no step is taken to carry out that agreement. Though, there is a close association of conspiracy, with incitement and abetment but, the substantive offence of criminal conspiracy similar to the rule of evidence

under sec. 34, is somewhat wider in amplitude than abetment by conspiracy as contemplated by sec. 107[16]. Here, what must be taken care of is the fact that an accused who only keeps the common intention in his mind, but is not involved in actual commission of any act - overt or covert at the scene, cannot be convicted with the aid of sec. 34, IPC. It is only in such cases that the provisions in sec. 109, be invoked so as to catch such non-participating accused[17]. Moreover, a view different to this argued that sec. 120A and 120B have been introduced to fill a gap in sec. 107 to expand the realms of abetment[18]. These provisions did not find a place in the IPC before the 27 March 1913, when the Indian Criminal law (Amendment) Act 1913; which inserted them in the IPC under Chapter V-A, became law[19]. These sections have no retrospective effect and a conviction under sec. 120B cannot stand if the offence was committed before that section came into force, though the accused may be convicted of abetment under sec. 109[20]. This has been elaborated at length in King Emperor v. Tirumal Reddi, by Ayyangar J. Who observed:" Under the Indian Criminal Law, conspiracy is a mere species of abetment when an act or an illegal omission takes place in pursuance of that conspiracy and amounts to a distinct offence for each distinct offence abetted by conspiracy. Under the English Law, the agreement of combination to do an unlawful thing or to do a lawful thing by unlawful means amounts in itself to a criminal offence. The Indian Penal Code follows the English law of Conspiracy only in a few exceptional cases which are made punishable u/s 311 (Thug), sec. 400 (Belonging to a gang of dacoits), Sec. 401 (Belonging to a gang of thieves), sec. 402 (being a member of an assembly of dacoits), sec. 121A (Conspiring to wage war). In these cases where any act is done or

not or offence committed in furtherance of the conspiracy, the conspirator is punishable and he will also be punishable separately for every offence committed in furtherance of the conspiracy. In all other cases, conspiracy is only one species of 'abetment of an offence' as that expression is defined and explained in sec. 108 and stands on the same footing as abetment 'by intentional aiding'. In regards to both these species of abetment an act or illegal omission; in pursuance of the conspiracy or for the purpose of intentional aiding is essential"[21]. Thus, if an offence alleged to be the object of the conspiracy has been committed, the conspiracy amounts to an abetment under sec. 107 and it has been argued that it is unnecessary to invoke the provisions of sec. 120A and 120B because the code has, in sec. 109 and 114, made specific provisions for the punishment of such conspiracy[22]. Here, it is also not necessary to take into account that all persons so engaging, in the criminal conspiracy should have joined in the scheme from the initial stage but, those who come in at a later stage are equally guilty, provided the agreement is proved[23]. But if the offence, which is the object of the conspiracy, or one which naturally flows from it, is actually committed, it must have been committed in consequence of the conspiracy and it must therefore, be proved that the accused was engaged in the conspiracy down to the time when the offence was committed, or when the act was put in course of actual execution[24]. Therefore, the distinction between abetment by conspiracy and criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this that for abetment by conspiracy, mere agreement is not enough while in the offence of criminal conspiracy, the very agreement or plot is, in itself, an act and is



the gist of the offence[25]. It is substantive offence in itself[26]and has nothing to do with abetment[27]. As has already been said, where parties go with a common purpose to execute a common object, each and everyone becomes responsible for the acts of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. In such cases, all are guilty of the principal offence and not of abetment[28]. In combinations of this kind a mortal stroke, though given by one of the party, is deemed in the eye of the law to have been given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike[29]. This in turn, depends on the fact that in group offences, it becomes often unclear to demarcate liabilities due to the ability of offenders to execute their individual subjective intentions[30]. But a party, not cognizant of the intention of such a person's companion to commit murder is not liable, though he has joined his companion to do an unlawful act; by virtue of the fact that there was an absence of Common intention[31].