



BNS - ABETMENT (S-45-60)

- There can be no abetment without intention or knowledge. However, mere knowledge of offence being committed by others is not covered by the definition of abetment.
- **As a general rule**, for the offence of abetment, it is not required that the abetted offence should actually be committed.
- An act of abetment may take place in one or more of the following ways:
 - (1) Instigation, (2) Conspiracy, or (c) Intentional aid.
- It is not necessary that a person instigated must be known to the instigator.
- A person who abets to do an offence is equally liable for the offence which is done by the person who was abetted.

S- 45. Abetment of a thing. – Essential ingredients

- ❖ **Instigating** any person to commit an offence, **or**
- ❖ **Engaging** any person in a **conspiracy** to commit an offence and overt act is done in pursuance of conspiracy, **or**
- ❖ Intentionally **aiding** a person to commit an offence.

Exp 1 : If a person **willful misrepresentation** or willful concealment of a material fact that they are bound to disclose, and this causes or tries to cause something to happen, they are considered to have **encouraged that act**.

Exp 2: Aid : Anyone who, before or during the act, does something to make it **easier for the act** to happen (in order to facilitate the commission of that act), is considered to have **helped in doing that act**.

Supreme Court in **Sanju Vs. State of Madhya Pradesh**, AIR 2002 SC 1998 held that it is essential to keep in mind that while considering the law relating to abetment, the requirement of **mens rea is a precondition for liability**. However, this position is different in those cases where the statute does not require mens rea.



Three modes of Abetment ;

Abetment by Instigation (Clause 1, Section 45 BNS) :

(a) A person is said to '**instigate another to do an act**', when he actively suggests him to do an act by any means of words, direct or indirect. The word 'instigate' means to provoke, incite, urge or encourage to do an act.

(b) Instigation can be further done by **willful concealment** of a material fact which is bound to be disclosed. Instigation can also be done through post, telegram, phone, etc.

Example : A with a warrant from court is to apprehend B. C willfully representing to A that D is B and caused his apprehension. Here C abets by instigation the apprehension of D.

- A person instigates with intention to incite or encourage doing of an act by another.

- Instigation involves a physical act or omission as well as a mental act.
- Advice per se or permission is not instigation rather it requires some active suggestion or stimulation.
- Advice can become instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence.
- The act of causing humiliation is not instigation.
- There is no instigation unless it is communicated to the author of the act in some form.
- Instigation may be personal or through a letter or a third party.
- The instigation may be direct or indirect, but in either case it is necessary to show that the mind of person instigated was affected thereby.

In C.P. Malik Vs. State, 1999, where accused persons went to the house of the deceased, hurled (utter) abuses at her, the words used by them were highly provocative and stimulating, the deceased as a result committed suicide, the acts of the accused persons amounted to instigation and they were held liable to be convicted under section 306(Now section 108 of BNS) read with section 107, IPC (Now section 45 of BNS).

Supreme Court in **Chitresh Kumar Chopra Vs. State Govt. of National Capital Territory of Delhi**, AIR 2010 SC 1446 held that if instigation is by words, then words must necessarily and specifically be suggestive of the consequence. A reasonable certainty to incite the consequences must be shown. Approval of an act is another form of instigation. Generally passive approval may not amount to instigation.

Abetment by Conspiracy (Clause 2, Section 45 BNS) :

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by

unlawful means. So long as such design rests in intention only, it is not indictable.

In order to **constitute abetment by conspiracy** 4 things are essential:

1. There must be at least two persons,
 2. They must 'engage' in the commission of an act, (agreement)
 3. An act or omission must take place in pursuance of that conspiracy, and
 4. That act or omission must have taken place 'in order to the doing of that thing'. All these elements must combine to constitute abetment by conspiracy.
- ❖ To constitute conspiracy, there must be at least two persons engaged therein and it must be proved that there was another person engaged beside the accused and if one of the two persons charged is acquitted, the conviction of the other for conspiracy cannot stand.
 - ❖ It is not necessary 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.
 - ❖ It is not necessary that all the conspirators should be equally informed of all the details of the scheme. But there must be mutual consent to a common purpose.
 - ❖ It is also not necessary that all persons should have joined in the scheme from the first, but those who come in at a later stage are equally guilty, provided the agreement is proved.

Illustration: If A and B conspire to rob C, and B not only robs but even kill C, A cannot be said to abet the killing unless it can be said that A must have foreseen (predict) it as a probable consequences of the conspiracy.

Note: It is important that for abetment by conspiracy, **not only** must the person abetting engage in a conspiracy, but there must be an overt act or

illegal omission in furtherance of the conspiracy and for doing of the thing abetted.

If a conspirator withdraws from the conspiracy before the offence which is the object thereof is effected by the other parties thereto, he is not liable.

Supreme Court in **Kehar Singh Vs State Delhi Administration**, AIR 1988 SC 1883 drew distinction between abetment by conspiracy under Section 107 and conspiracy under Section 120A of IPC (Now Section 45 and 61(1) of BNS). In former, a mere combination of persons or existence of agreement is not required. An act or illegal omission should take place in pursuance of a conspiracy. In latter, a mere agreement to commit an offence is sufficient.

Abetment by Intentionally Aiding (Clause 3, Section 45 BNS) :

- Intention to aid the commission of offence is the gist of offence of abetment by aid.
- An act which merely amounts to aiding the commission of an offence is not an abetment. In order to amount to abetment by aid, the aid must be given with the intention to aid the commission of the offence.
- The mere giving of the aid will not make the act of abetment an offence if the person who gave the aid did not know that an offence was being committed or contemplated.

A person is said to intentionally **aid** the commission of offence when he renders assistance by doing an act or omitting to do an act. **As a general rule**, for the offence of abetment, it is not required that the abetted offence should actually be committed. However, in case of abetment by intentional aid, it is essential that the abetted offence should actually be committed and further it is also to be proved that:

- (a) Offence abetted was committed with the help of aid provided.
- (b) That aid facilitates the commission of the offence.

In **Ram Vs. State of U.P., AIR 1975**, a person may invite another for a friendly purpose or casually and that may facilitate the murder of invitee, but unless the invitation is extended with the intention to facilitate the murder, the host cannot be said to have abetted the murder.

S- 46. Abettor

Abettor is a person **who abets**

- ✓ The commission of an **offence** **or**
- ✓ The commission of an **act** which would be an offence if committed by a person capable by law.



Circumstances when the abetment amounts to an offence:

(EXP :1) Abetment of illegal omission is also an offence

Explanation 1 to Section 46 provides that 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.

For example, a police constable will be guilty of an illegal omission of his duty by not interfering in a fight whereas a private individual cannot be held guilty of such offence.

To prove an act by 'illegal omission', it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference. In a case (**Ram Kumar Vs. State of Himachal Pradesh**, AIR 1995 SC 1965) of custodial rape by co-accused, the victim was forcibly taken to the police station by the accused who kept watch over the husband of the victim while she was being raped by the co-accused. The accused did not do anything and turned a deaf ear towards the cries of the victim. The Supreme Court upheld the conviction of accused for abetting commission of rape with the aid under section 107.(Now section 45 of BNS)

- ✓ **Note:** Mere silence is not necessarily an illegal omission. Simply doing nothing is not an act, and unless there is a duty to do something, it cannot be said that it is an illegal omission.
- ✓ The act **or** omission must take place either prior to or at the time of, the commission of offence. There can be no abetment of an offence after it has been committed.

(EXP :2) The effect of abetment is immaterial

The offence of abetment is complete notwithstanding that the person abetted involuntarily fails in doing the act abetted or is interrupted before the act is complete. It depends upon the intention of the person who abets and not upon the act which is actually done by the person abetted.

For Example: 'A' instigates B to murder 'C'. 'B' refuses to do so. 'A' is guilty of abetting 'B' to commit murder.

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.

(EXP :3) Person abetted need not be capable or having mens rea

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. 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.

For example, 'A' with a guilty intention, abets a child to commit an act which would be an offence, if committed by a person capable by law to commit an offence. Here 'A' is guilty of abetment of the offence. In this case the child is not capable by law to commit an offence but still 'A' will be guilty of abetment.

(EXP :4) Abetment of abetment is also an offence

Explanation 4 to Section 46 provides that the abetment of an offence being an offence, the abetment of such an abetment is also an offence. The abetment of an abetment of an offence is no more and not less than the abetment of that offence.

For example, 'A' instigates 'B' to instigate 'C' to murder Z. 'B' accordingly, instigates C to murder 'Z' and 'C' commits the offence. In this case 'A' is also liable to be punished for abetment.

(EXP :5) Abettor need not concert (plan) with the person executing the act abetted

This explanation applies only to abetment by conspiracy. Abetment relates not to an offender but to an offence. In case of abetment by conspiracy, it is not necessary 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.

For example, Ram makes a plan with Mohan to kill Raju. It was decided that Ram will give the poison. Mohan explains the plan to Ravi who arranges the poison and delivers it to Mohan. Ram gave the poison and Raju dies in consequence. Here, Ravi has committed the offence although he did not conspire with Ram he engaged himself in the conspiracy to kill Raju.

(S -47) Abetment in India for offences outside India

Section 47 of BNS provides that a person abets an offence who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

For example, 'A', in India, instigates 'B', a foreigner in Nepal, to commit a murder in Nepal. 'A' is guilty of abetting murder.

(S -48) Abetment outside India for offence in India

For example, 'A', in Nepal, instigates 'B' to commit a murder in India, 'A' is guilty of abetting murder. This provision is introduced for the first time in BNS, 2023.

Note : Sec 107: Abetment of suicide of child or person of unsound mind.

Sec 108 :Abetment of suicide.