

# Abetting attempt to suicide or attempting to abet Suicide

Prepared by Rakesh Kumar Singh

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In the present paper, we will discuss some interesting situations about the concept of suicide.

- **Whether one can abet the attempt to suicide?**
- **Whether one can attempt to abetment of suicide?**
- **Whether one can abet the abetment of suicide?**

2. Abetting an offence is clearly punishable. But for this, there must be an offence defined in terms of the law i.e. **Section-40 IPC**. Unless therefore there is a defined offence, there cannot be abetment thereof.

**The question then is: Whether suicide is an offence or not?**

Entire Indian Penal Code, 1860 nowhere says that committing suicide is an offence. Consequently, only in terms of concept of abetment as defined in **Section-107 IPC**, the abetment of suicide could not be an offence. However, the Legislature chosen to create one specific offence not through the abetment but by a direct provision and enacted **Section 306 IPC** which reads as:

“If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

3. The aforesaid shows that it is not an abetment of offence but the Section provides for a new offence in itself. Therefore, it can be said that abetment to suicide is punishable not as an abetment to commit offence but as an offence itself. As such, there is hardly any scope for applying Section-116 to this abetment of suicide as the section applies when an offence is abetted but not committed in reality. Hon'ble Supreme Court in **Satvir Singh v. State of Punjab, (2001) 8 SCC 633** has observed as under:

“Learned Sessions Judge went wrong in convicting the appellants under Section 116 linked with Section 306 IPC. The former 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.** Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by the Sessions Court”.

4. Therefore it can safely be said that unless the person commits suicide, there cannot be any question of punishing the other person under **Section-306 r/w 116 IPC.** But the story does not end here. The judgment has also observed that it is inconceivable to have abetment of an abetment. Why? There is no answer at all in the judgment. Abetment of an abetment is a well-recognized legal proposition and is permissible under IPC. **Explanation-4** appended to **Section-108 IPC** provides for the same reading as: “*The abetment of an offence being an offence, the abetment of such an abetment is also as offence*”. Illustration appended to Explanation-4 of Section-108 further makes it amply clear which records as:

“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”.

5. The aforesaid clearly shows that abetment of abetment is possible in law. Through a Constitution bench judgment in **CBI vs Keshub Mahindra** (2011) 6 SCC 216 which observed “**No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act**”, we know that we are not required to read a judgment in a manner going against a clear statutory provision. As such, the one line observation made in Satvir Singh (supra) cannot be followed as a law prohibiting general abetment of abetment of offence.

6. We may now come to the specifics. We may suitably modify the aforesaid Illustration in a contextual scene of suicide and then consider the concept of abetment of abetment. Take for example a situation where A instigate B to instigate C to instigate Z to commit suicide. Consequent thereupon, B instigates C and thereupon C instigates Z to commit suicide.

7. Now, if Z actually commits suicide, there will be no problem at all in a legal sense. In such a case, C will be liable to be punished under Section-306 IPC. Clearly, C has committed an offence but since C himself was instigated by B to commit that offence, B will be liable as an abetbor (be it noted that here we are not talking about suicide which is not an offence but abetment of suicide which is an

offence in itself). In turn, B himself was instigated by A to commit the abetment and therefore, by virtue of explanation-4 appended to Section-108, A will also be liable for another abetment. So, there are now three culprits: A by virtue of explanation-4, B as the abettor himself for abetting an offence and C as prime accused for committing an offence of abetment to commit suicide.

8. But if Z does not commit suicide, the instigation by C will not materialize and as such, C would not be liable under Section-306/116 in terms of the aforesaid judgment. However, B had primarily instigated the C to abet commission of suicide. Now, abetment to commit suicide is punishable and therefore is an offence by virtue of Section-40. As such, B abetted an offence and became an abettor. From here, Section-108 will come into picture as an offence has been abetted. The explanation-2 provides that abetted offence need not to be committed. Therefore, even if abetted offence i.e. punishable under Section-306 does not stand committed, B will be liable under Section-116. A had abetted B to further abet and therefore A will be liable for abetment of abetment by virtue of explanation-4 appended to Section-108 IPC. So, there are now two culprits: A by virtue of explanation-4, B as the abettor himself for abetting an offence though it may not actually have been committed.

9. A very insightful and illuminating discussion on the concept of abetment of abetment when crime is not actually committed is available in **Srilal Chamaria vs Emperor** (1919) ILR 46 Cal 607.

10. What is of some interest is that there may be even a third situation for the aforesaid example in a case where suicide has not actually materialized. This will be discussed after properly analyzing the other questions.

11. **Whether one can be guilty of attempting an abetment of suicide is another significant question.** Since “abetment of suicide” is punishable under the IPC, therefore it becomes an offence by virtue of Section-40. In terms of Section-511, any offence punishable with imprisonment can be attempted.

12. The judgment of Hon'ble Supreme Court in **Satvir Singh (supra)** is normally cited to support a view that no person can be punished for **Section-306 r/w 511 IPC**. In other words, there cannot be any attempt towards abetment of suicide. A bare glance at the judgment however goes to show that Section-511 has been used merely at seven places in the entire judgment. It considered the applicability of Section-511 in the context of **Section-304B IPC** and in the factual situation prevailing therein, it came to the conclusion that the act of accused would have attracted the Section-498A thereby lifting the act from the purview of Section-511. It is thus clear that the judgment in Satvir

Singh (supra) is not an authority to hold that there cannot be any attempted abetment to suicide. How can such an attempt be made will be a factual question and therefore needs no answer in a paper discussing legal scenario. A detailed observation on this point vis a vis Satvir Singh case is available in **Berin P.Varghese vs State Of Kerala** 2008 (1) KHC 164.

13. The next question is: **Whether one can abet an attempt to suicide?**

At first, it may seem preposterous. Hon'ble Supreme Court in **Satvir Singh v. State of Punjab, (2001) 8 SCC 633** has observed as under:

“It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. **But nobody would abet a mere attempt to commit suicide.** It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.”

14. The judgment assumes that nobody would abet a mere attempt to commit suicide. Why? No answer has been provided in the judgment. As per definition of abetment, anything can be abetted. Section-107 IPC has used an expression “a thing”. The article “a” indicates towards indefiniteness and therefore will include everything. As such, anything can be the subject matter of abetment through any of the three modes available under Section-107. Abettor has been defined as a person who abets the commission of an offence. We know that the word “offence” is defined in Section-40 of IPC as a thing made punishable by the code. By virtue of Section-309, “attempt to suicide” has been made punishable and therefore has to be treated as an offence. As such, being an offence, attempt to suicide itself can be abetted and the person abetting it can be treated as abettor.

15. The aforesaid discussion shows that attempt to suicide can be abetted and therefore becomes punishable. The judgment aforesaid in Satvir Singh (supra) should be treated as not only rendered per incuriam vis a vis the statutory provisions but also to have been eclipsed in the shadow of a judgment rendered by the constitution bench of Hon'ble Supreme Court in **Gian Kaur v. State of Punjab, (1996) 2 SCC 648** wherein it has observed as under:

“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 read with Section 107 IPC.** In certain other jurisdictions, even though attempt to commit suicide is not a penal offence yet the abettor is made punishable. The provision there, provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus, even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. In other words 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. The arguments which are advanced to support the plea for not punishing the person who attempts to commit suicide do not avail for the benefit of another person assisting in the commission of suicide or in its attempt. This plea was strongly advanced by the learned Attorney General as well as the amicus curiae Shri Nariman and Shri Sorabjee. **We find great force in the submission.**

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The reasons assigned for attacking a provision which penalises attempted suicide are not available to the abettor of suicide or attempted suicide. Abetment of suicide or attempted suicide is a distinct offence which is found enacted even in the law of the countries where attempted suicide is not made punishable.”

16. In the aforesaid scenario, the judgment rendered by a two Judge’s bench in Satvir Singh (supra) cannot be followed. We have to accept that attempt to suicide can be abetted by virtue of Section-107 and such abetment will have to be punished under **Section-309 r/w 109 of IPC.**

17. Now, if we put the concept of offence under Section-306/511 and 309/109 in our example given in Paragraph-6, concept of abetment of abetment can be invoked even in certain specific situations of failed suicide along with the first abettor in respect of these offences and therefore it will

lead to an entirely different chain. In such cases however, for some instigators two different type of offences will be available and they may be sentenced for the severe offence.

18. **In the ultimate analysis, we may arrive at the following conclusions:**

- a) If C instigates Z to commit suicide and Z commits suicide in consequence thereof, C will be punishable for an offence under Section-306 IPC as an independent offence;
- b) If in the aforesaid situation, Z does not commit suicide, C may not be liable to be punishable under Section-306 read with 116 IPC;
- c) However, if Z attempts to commit suicide in the aforesaid situation, C will be punishable under Section-309 read with 109 IPC for abetting an attempt to commit suicide and Z will be liable under Section-309 IPC;
- d) The aforesaid situation may also attracts a punishment for C under Section-306 read with 511 IPC in case of non-committal of suicide if the other ingredients of Section-511 are satisfied in some rare & specific cases;
- e) If in the aforesaid, C was in turn instigated by B, the said B would be liable for abetment by virtue of Section-109 for abeting Section-306 irrespective of the fact whether Z actually commits suicide or not;
- f) Similarly, if the B was in turn instigated by A, the said A would be liable for abetment of abetment by virtue of Explanation-4 appended to Section-108 IPC irrespective of the fact whether Z actually commits suicide or not;
- g) If in a given situation of failed suicide, Section-306 r/w 511 or Section-309 r/w 109 is available, the instigational chain may even follow the path in respect of these offences and A, B, C all would be punishable for abetment of abetment, abetment and actual commission of these offences according to their liability as the case may be. In such cases however, for some instigators two different type of offences will be available and they may be sentenced for the severe offence.