

CLASSIFICATION OF PARTIES TO CRIME UNDER COMMON LAW AND INDIAN PENAL CODE

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ABSTRACT

This article analyses the fundamental concept of classification of parties to crime under criminal law. Initially, the author has discussed various terminologies which are used as parties to crime. Then it provides a comprehensive analysis of different classification of parties to crime under Common law theory. Further, this article also discussed the classification of parties to crime under Indian Penal Code and examines the differences of parties to crime under both the system of law i.e. under common law and Indian Penal Code. The article concludes by providing suggestions as to how the classification of parties to crime under common law would make justice system easier to interpret such law which includes parties to crime under Indian Penal Code.

Keywords- Vicarious liability, Parties to crime, Principal offender, Accessory, Accomplice, Innocent agent, Abettor

INTRODUCTION

It has been seen that the criminal offences which took place in any society are not only done by a single person but are also be committed together by many persons. In criminal law there are different terminologies which are used when there are many people involved in the commission of crime. The person who immediately and directly performs the *actus reus* of an offence, known as *principal offender*, is not necessarily the only one who is criminally liable for the act. A person might also be liable as an *accessory* or secondary party, who performs acts capable of assisting or encouraging the principal offender.

In simple terms, if a person is a party to the crime then he can also be liable for the criminal acts done by of another person. This can be seen in instance where the driver of the car can also be liable who was waiting for the offenders who committed the entire armed robbery of a store even though the driver had never left the car. Also the term i.e. *accomplice* is somewhat same with the classification of parties to crime. Most of the jurisdictions have abolished the old common law distinctions between principles, accessories, etc.

Vicarious liability also means that a person can be held liable for those acts done by others which are criminal in nature even if that person had not committed any *actus reus* and had no *mens rea*. Vicarious liability is based on the relationship between the defendants and the actual offender. One form of vicarious liability can be making the owner of any business responsible for the acts done by his employees. Thus acts of one person done before, after or during the crime can also make another person involved in the crime.

Most of the criminal offences which include often more than one criminal defendant play a role in the commission of a crime. Defendants working together with a common criminal purpose or design, intention are acting with complicity. "Inchoate Offenses" considers crimes that which involve more than one person such as **conspiracy**, as well as another incomplete crime or inchoate offences like **attempt**. When the different types of participation in crime is conducted among the respondent, an important question arises as to *who* is responsible for *which* crime and to *what degree*. This article gives a basic analysis on above mentioned important questions concerning different parties involve in crime in Common law and as well as in Indian law, along with their criminal liability.

DIFFERENT TERMINOLOGIES FOR THE PARTIES TO CRIME

The starting point in a classification of parties in the case of criminal law is the distinction between culpable party and innocent party. Under certain circumstances, one who has caused, or has aided in causing, a socially harmful act, or one who has interfered with the course of justice after such act may, be excused by the law for such act. The most common excuses recognized by the law are the mistake of fact based upon reasonable grounds, infancy, insanity, necessity etc. On one hand, if the only person connected with a socially harmful occurrence is an innocent party, or if there are several parties all within this group, no crime has been committed. On the other hand, if the culpable party makes use of an innocent agent¹ in the perpetration of his criminal plan, it is the same, as if he had used “merely an instrument.”²

Culpable parties are basically of four different types and they are- (a) Perpetrators, (b) Abettors, (c) Inciters, and (d) criminal protectors.

(a) Perpetrators-

A “perpetrator” is the one who, with mens rea, has caused a socially harmful occurrence either with his own hands, or by means of an innocent agent, or by means of some tool or instrument or other non-human agency.

(b) Abettors-

An "abettor" is the one who is present, either actually or constructively, and who, with mens rea, either assists the perpetrator in the commission of the crime, stands by with intent to render aid if needed, or commands, counsels or otherwise encourages the perpetrator to commit the crime.

The term "aider and abettor" is more common and has been said to be necessary to express the idea,³ though court used the word “abettor” alone. To "aid" is to render assistance and hence one might innocently aid a perpetrator, without knowledge of his wrongful purpose. The word "abet" includes either the element of aid, or that of

¹ One who unintentionally, unknowingly or under coercion commits a criminal act on behalf of another is said to be known as innocent agent.

² Where a crime is accomplished through the instrumentality of an innocent agent, the one who induced the act is a principal even though not present when the act was committed.

³ State v. Powell, (1914) 168 NC 134, 141, 83 SE 310.

commanding, counselling or encouraging the crime without actual assistance plus, in either case, the additional element of mens rea.⁴

(c) *Inciters-*

An "inciter" is the one who, with mens rea, counsels, commands, procures or encourages another to commit a crime, the one not being present either actually or constructively at the moment of perpetration. The word has been so used at times by the courts. If deemed necessary some such phrase as "absent inciter" might be used.

(d) *Criminal protector-*

There is also need of a term to designate a person who was in no way tainted with guilt of a crime when perpetrated but who, with full knowledge of the facts, thereafter conceals the offender or gives him some other assistance to save him from detection, arrest, trial or punishment.⁵

Using the terms *perpetrator*, *abettor*, *inciter* and *criminal protector* with the meanings thus arbitrarily assigned, the common law classification of principals and accessories may be expressed in this form:

1) *In treason-*

Perpetrators, abettors, inciters and criminal protectors are all principals, because of the heinousness of the crime and different degrees of principals are seldom even mentioned.

2) *In felony-*

- (a) Perpetrators are principals in the first degree;
- (b) Abettors are principals in the second degree;
- (c) Inciters are accessories before the fact;
- (d) Criminal protectors are accessories after the fact.

3) *In misdemeanours-*

- (a) Perpetrators, abettors and inciters are all principals, because the law does not descend to distinguish the different shades of guilt in petty misdemeanours;
- (b) Criminal protectors are not punishable as such.

⁴ Rollin M. Perkins, *Parties to Crime*, 89 U. Pa. L. Rev. 581, 584 (1941).

⁵ *Id.* at 585.

COMMON LAW THEORY OF PARTIES TO CRIME

Common law divides guilty parties into principals and accessories. The actual perpetrator of the felonious deed is called as a “principal”. Other person who themselves are not main offenders, but who assist or aid them, are known as "accessories", and to distinguish among these with reference to time and place they were divided into three classes:

- i. Accessories before the fact;
- ii. Accessories at the fact;
- iii. Accessories after the fact;

The reason why different degrees of principals and accessories were permitted under the common law, and also in some of the modern jurisdictions, is basically to give an attempt to soften penalties for persons not actually or directly involved in the crime itself.⁶

Also at a relatively early time the party who was originally considered an accessory at the fact, ceased to be classed in the accessorial group and was labelled a principal. Thereafter, in felony cases when there are two or more parties to a crime, then they are classified into two kinds of principals that are first degree and second degree, and two kinds of accessories which are before the fact and after the fact.

1. PRINCIPAL IN THE FIRST DEGREE-

Principals in the first degree are the persons those who perpetrate a crime directly. In other words, those who actually commit the crime or offence with their own hands or through innocent agent are principals in first degree.

This can be in case the respondent used a person to make him do the act (offence) and the person did not have the ability or capacity to commit the offence. In such situation, the “instigator would be the principal offender and the perpetrator would be the innocent agent.”⁷ Therefore this can be seen that the presence of the principals in the first degree at the place where an offence has taken place is not essential.

⁶ *Parties to Crimes*, (March 31, 2017), <http://carlsonmeissner.com/law-enforcement-manual/chapter-1---108-parties-to-crimes>.

⁷ *Innocent Agent*, (April 2, 2017), <http://www.lawmentor.co.uk/glossary/I/innocent-agent/>.

Innocent agent is a person who by reason of either immaturity of understanding or of impairment of mind is legally incompetent to commit a crime.⁸ The person committing the actus reus could be completely innocent because they do not have the capacity to commit the offence. Examples of innocent agents can be a child below the age of discretion or a person of unsound mind who had been used to commit a crime and they may not have the necessary mens rea.

In the case of *R v Stringer and Banks*⁹,” employees were asked by their employer to send out letters and participate in financial transactions which they did not realize would lead to fraudulent transactions. The employer was the principal offender and the employees were innocent agents.”

2. PRINCIPAL IN THE SECOND DEGREE

Principals in the second degree are those who are present at the commission of the crime and extend aid and assistance for its commission. Accessories at the fact and principals in the second degree are the two classifications which essentially denote the same type of offenders.

Accessory at the fact are generally classified as principals of the second degree, that is as an aiders and abettors of the principal offender in the in the commission of the offence. Also principal of second degree are the person who may be actually or constructively present in the scene of occurrence. Such persons do not actually participate in commission of the crime. However, they remain present, actually or constructively, at the occurrence of the crime and thereby aid, assist, encourage or abet commission of the crime.¹⁰

Difference between Principal of first degree and Principal of second degree-

Common law distinction between principals in the first degree and those in the second degree is one of fact rather than of legal consequence. Their guilt is exactly the same unless in a particular case some factor of mitigation applies to one and not the other, and in such case principal may be guilty of a higher grade of the crime than the other.

⁸ K I VIBHUTI, PSA PILLAI'S CRIMINAL LAW 200 (12th ed., Lexis Nexis 2016).

⁹ R v. Stringer and Banks, (1991) Crim LR 639.

¹⁰ VIBHUTI, *Supra* note 8.

Principal in the first degree is the immediate perpetrator of the crime while a principal in the second degree is one who did not commit the crime with his own hands but was present aiding and abetting the principal.

3. ACCESSORY BEFORE THE FACT

An accessory before the fact is the person who is guilty of felony for acts which aid, counsel, command or encourages the culpable act, without being present either actually or constructively at the time of perpetration.¹¹ In other words, accessories before the fact are those who though not present in the scene of occurrence or where the crime is committed, counsel, procure or command another to commit the crime.

The accessory before the fact is unable to render aid at the actual moment of perpetration, because anyone in such a position is held to be constructively present and therefore known as a principal. But he may render aid in advance, as by procuring for the perpetrator the weapon or other means by which the felony is to be committed.

The element of time requires special mention here, but this is only to emphasize the want of any legally established time limit within which the accessory's incitement may be recognized. It is no ground of immunity to him, for example, that his counsel and advice were given more than a year prior to the perpetration of the crime.¹²

4. ACCESSORY AFTER THE FACT

The accessory after the fact is one who, with knowledge of the other's guilt, renders assistance to an offender in the effort to hinder his detection, arrest, trial or punishment. In other words, all those who knowing that a person has committed an offence knowingly receive, relieve, comfort, harbour or assist him from escaping from the clutches of law is identified as Accessories after the fact.¹³

Throwing suspicion away from the principal, concealing the evidence by hiding corpse in a homicide case, performing surgical operation upon a fugitive by altering his facial expression

¹¹ Perkins, *supra* note 4, at 602.

¹² Workman v. State, (Ind 1939) 2i NE (2d) 712.

¹³ Jaso v. State. (1936) 13I Tex. Cr. R. 229, 97 SW (2d) 696.

and obliterating his finger prints and to enable him to evade arrest are some of the examples for a person to be guilty as an accessory after the fact.

A person who is an accessory before the fact may also become an accessory to the same offense after the fact but this is not same in the case of principal offender. Moreover, absence at the time of perpetration is not necessary in the case of an accessory after the fact. For instance, a person who was present at the time a murder was committed and he assisted in concealing the evidence of the crime, to protect the principal from prosecution, without abetting the offender in any way, would be held guilty as an accessory after the fact. Also under the common law, a wife cannot be accessory after the fact by reason of having concealed her husband or given him other assistance, knowing him to be a felon, but this does not apply to the husband who renders such assistance to his wife, nor to others such as parents or children.¹⁴

DIFFERENCE BETWEEN ACCOMPLICE AND ACCESSORY

In common law, there is some authority for using the word "accomplice" to include all the accessories and all the principals.

“One who knowingly, voluntarily, or intentionally, and with common intent and criminal purpose shared with the principal offender, solicits or encourages another to commit a crime or assists or attempts to assist in its planning and execution.” – Webster’s New World Law Dictionary

The word ‘accomplice’ includes in its meaning all persons who participate in the commission of a crime. However the preferred usage is to include all principals and accessories before the fact (helper who was not present at the crime scene), but it exclude accessories after the fact (helps the offender to avoid arrest or trial).

If this limitation is adopted, the word "accomplice" will embrace all perpetrators, abettors and inciters. But an accessory after the fact or known as criminal protectors is not an accomplice. It will include criminal protectors if the offense is treason but will not do so if it is a felony or

¹⁴ Perkins, *Supra* note 4, at 607.

a misdemeanour.¹⁵ In most states, accessories after the fact face far less punishment than the principals or accomplice.

Following are some of the basic differences between accessory and accomplice-

- An accessory usually helps the principal before or after the crime while an accomplice helps the principal before and during the crime.
- Accessory is not usually present during the crime while accomplice may or may not be present during the crime.

For example, an employee of the bank may give the plan of the bank and the vault to a gang of robbers. Although this employee may not be present at the scene of the crime but he is an accomplice therefore he is also guilty of the crime.

- Accessory may receive lesser charges and punishments while Accomplice may receive the same charges and punishments as the principal offender.

For example, one person secures the victim with ropes whereas the other stabs with him a knife. Here, the person who stabbed the victim may be the principal and the one who tied up the victim may be charged as the accomplice. Despite their presence or absence, they are considered to be equally guilty of the crime.

PARTIES TO CRIME IN INDIAN PENAL CODE

Indian Penal Code, 1860 (IPC) does not expressly recognize such classification of parties to crime which is present in common law. However, it also seems that the classification of parties and the complicity of parties were there in the mind of the authors of IPC.¹⁶ Accessories at the fact and principals in the second degree are thus two classifications which essentially denote the same type of offenders. Both the two classifications have been classed as abettors.

¹⁵ Perkins, *Supra* note 4, at 586.

¹⁶ VIBHUTI, *Supra* note 8.

However, a distinction is made with regard to the punishment that is liable to be inflicted on them depending upon the nature of participation.¹⁷

For instance, Section 114 of IPC, 1860 says that- "*Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.*"¹⁸

The India Penal Code makes separate provisions to cover the liability of persons who associate with or extend help, gave assistance or aid to the principal offender to flee from justice, despite knowing well that the person has committed a crime. Also, under IPC, accessories after the fact are known as 'harbourers'. Section 52-A provides the definition of the term 'harbour' which includes food, drink, cloths, money, shelter, arms, ammunition or means of conveyance, or assisting of a person by any means, to evade apprehension.¹⁹

Examples of some of those separate provisions which talks about parties to crime in IPC are sections 136, 157, 212, 216, 216A. These sections deal with harbouring deserter and their liability in different methods of commission. Other examples of such provisions are section 201 which talks about "causing disappearance of evidence of offence, or giving false information to screen offender"²⁰, section 412 which deals with "dishonestly receiving property stolen in the commission of a dacoity".²¹

CONCLUSION AND SUGGESTION

The present article deals with provision of parties to crime in criminal law which provides some important different classification of criminal offenders under common law system and Indian Penal Code (IPC). Under Common law system, such classification is generally based on two categories that are principals and accessories. It moreover examines the different terminologies of offenders and their distinction with common law system. It has been further seen that

¹⁷ *Id.*

¹⁸ Indian Penal Code, 1860, s. 114.

¹⁹ *Id.* s. 52A.

²⁰ *Id.* s. 201.

²¹ *Id.* s. 412.

accomplice has also some different characteristics and meaning as compared with accessory. There are many terms for criminal offenders, which are used in place of another, even though they have a different meaning.

When we talk about Indian Penal Code, there is no such classification of parties to crime which is present in common law. Indian Penal Code does not expressly provide different classification for parties to crime. However, this cannot be implied that there is no recognition of offenders who are guilty of committing or helping to commit a crime under IPC. IPC does recognize parties to crime in different sections through different terminologies. Therefore, the classification of parties to crime under common law system is different from that of Indian Penal Code.

According to author, the above classification of parties is quit facile for the state to set criminal liability upon various parties to crime according to their criminal act. However, such clear classification of parties to crime is only seen in common law system not under Indian Penal Code. If such method of classification of parties to crime is used under IPC then it will be easy for judges to set the criminal liability on different types of parties to crime. It will also be advantageous and helpful to interpret the legal nuances.