



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

An Analysis of Attempt under Penal Laws

Eshaan Gupta^a

^aSymbiosis International University, Pune, India

Received 16 November 2022; Accepted 26 November 2022; Published 07 December 2022

It is said to be an attempt the commission a crime when an individual develops the right mind to commit it and does every necessary action required to do the crime but ultimately is unsuccessful in doing so. According to the IPC, even the attempt to commit a crime will constitute committing a crime. Every failed attempt is imprinted on the minds of the affected people as a threat to them, which can be called an injury as it is, and therefore, according to the 511th section of IPC, the person committing the attempt has to bear the same level of moral responsibility as if the crime was successful. If the harm which is done does not equal the harm that would have resulted from the success of the crime, then only half of the punishment is given. Although the word "attempt" is nowhere given a proper definition in the IPC, there have been multiple cases in which the Supreme Court has tried to define attempt. In the 302nd section of the IPC, the punishment for murder is given, while in the 307th section of the IPC, the punishment for a murder attempt is given. Both offences carry separate sentences. The researchers have used case law when appropriate and supplemented it with reviews of other literature, which is crucial for aiding in their comprehension of all the concepts. An overview of the findings and recommendations rounds out the paper's last section.

Keywords: *attempt, crime, Indian penal code, punishment, penal law.*

INTRODUCTION

Crimes as well as incomplete categories of crimes, both are dealt with by Criminal Law. The incomplete categories of crime are often known as inchoate crimes. Before concluding that an

act constitutes a crime, an analysis has to be done regarding the additional criteria to direct it, for instance, the behaviour dealt with, the facts and consequences of the conduct, various interests involved and the attitudes of persons intended to cause harm. The “doctrine of inchoate crimes” specifically applies to Attempt, Abetment and Conspiring a crime. The law of attempt remains to be ambiguous and enigmatic due to certain factors. First, absence of a proper legislative definition of inchoate offences; Second, mental and physical ingredients that bring variance; Third, absence of narrow interpretation alongside the existing penal laws¹. According to the IPC's 511th section, anybody found guilty of trying to commit a crime which is punishable, can be subject to life in prison or additional punishments.² This research paper will be an attempt to study the different laws that exist under the IPC regarding the code of attempt and the analysis of the gravity or nature of the crime.

“The offence of criminal conspiracy is committed as soon as there is an agreement between two or more persons to commit an offence”³. The dilemma of whether it is appropriate to punish someone who has caused no harm or to liberate someone who had determined to commit a crime is raised by such incomplete criminal activities. Another question in Criminal law is, “why an attempt to commit an offence is criminalized” and “whether acts constituting an attempt after the preparatory stage must be adjudged as crimes or not”. In contrast to civil law, criminal law considers attempts to commit crimes and punishes them by the type and seriousness of the attempted crime. However, the ‘jurisdiction’ plays an important role here, to determine whether the act is ‘mere preparation’ or beyond mere preparation to constitute an attempt. The paper will also be including various English laws supporting the concept of attempt and some of the prominent international laws that talk about the same.

STAGES OF CRIME

To constitute a crime both *men's rea* and *actus reus* are important elements. Actus reus completes the crime because without human conduct intention cannot be fulfilled.

¹ BB Pandey, *An Attempt on Attempt* 2 SCC J 1984 42

² Indian Penal Code 1860 s 511

³ Indian Penal Code 1860, s 120(A)

There are 4 stages which lead to the commission of a crime, they are listed below:

- The mere intention or want to commit the offence;
- Preparation to commit to it;
- The attempt to do the crime;
- Actual commission of the offence.

The first two stages of an act are typically not punishable, but once the third stage is reached, criminal liability becomes a possibility. As a result, trying to commit a crime is one of a series of acts.⁴ Due to their distance from the actual commission of the crime, the first two stages are not punishable, whereas the stage of attempt brings the offender very close to the actual commission of the crime.

In the case of *Aman Kumar v State of Haryana*,⁵ the Supreme Court stated that the “word attempt is to be understood in its ordinary meaning itself.” Which is exactly what the provision of section 511 requires. Additionally, preparation and an intention to commit the crime must be distinguished from an attempt. An act is considered an attempt if it could have been fully completed if it hadn't been stopped. Therefore, an attempt only starts after preparation is complete.

In another case, *Abhyanand Mishra v State of Bihar*⁶ the accused had applied to appear for an entrance exam to get admission to the University as a teacher, and he was allowed the same. He was later discovered by the university not to be a graduate or a teacher, and as a result, he was found guilty under Section 415, which is read with Section 511 of the IPC, 1860. The judge ruled that the accused's application for submission to the institution constituted the completion of preparation. As soon as he eliminated it, he visited the area where cheating attempts were being made. Sometimes there is little difference between preparation and attempt. Thus, the case's details must be considered before coming to a judgement. The crime will be finished if the third stage is successful and complete, at which point the accused will be held accountable for the

⁴ *State of MP v Narayan Singh* [1989] AIR 1989 SC 1789

⁵ *Aman Kumar v State of Haryana* [2004] 4 SCC 379

⁶ *Abhyanand Mishra v State of Bihar* AIR 1961 SC 1698

offence they committed. For an attempt to be deemed criminal, it will be sufficient if there is intent coupled with some overt act in execution.

Concepts like "attempt," "conspiracy," and "incitement" allow for the formulation of offences like "attempted murder," "conspiracy to commit theft," "incitement to assault," and other similar offences. Compared to if the intended offence had been committed, they are less severe. As a result, when individuals who committed the crime are prosecuted, the penalty handed down is typically less severe than it would have been if the intention had been committed.

PRINCIPLES TO DETERMINE ATTEMPT

Some guidelines have been developed with the aid of court declarations to establish whether an act would be considered an attempted offence. They are given as follows:-

PROXIMITY RULE: It asserts that when an act or set of acts are sufficiently close to the commission of an offence, they constitute an attempt.⁷ In the case of *R V Taylor*⁸, the Accused lighted a match he purchased and put it close to a haystack. When he thought someone was watching, he put out the flame of the match. He would not have been held responsible if he had just brought the matchbox and not ignited the stick. The lighting act indicates *actus reus*, which is required to charge him with trying to commit a crime.

DOCTRINE OF LOCUS PAENITENTIAE: It deals with situations where someone has made preparations but then changes his mind and withdraws at the last minute. As a result, this deliberate withdrawal before an attempt will just be prepared. Consequently, he won't be held accountable in court.⁹

IMPOSSIBILITY TEST: If the potentially criminal conduct turns out to be impossible to carry out, the perpetrator would not be held accountable. A modification in the law has since made it possible for someone to be held accountable for the crime of attempting to commit a crime even if the action they do furthers the planned wrongdoing is not achievable. For instance, even when

⁷ K I Vibhuti, *Attempt*, *PSA Pillai's Criminal Law* (11 edn, LexisNexis) 185

⁸ *R v Taylor*, 1895 IF & F 511; *Malkiat Singh v State of Punjab* AIR 1970 SC 713

⁹ *Muthammal v Maruthatla* [1981] Cr Lj 833 (Mad)

it is subsequently discovered that the bag was empty if someone tries to steal a bag while having the *men's rea* to do so and is arrested before he can remove anything from the bag, they will still be held accountable for the attempted crime.

SOCIAL DANGER TEST: A significant factor in determining responsibility in the event of an attempt is the severity of the crime. The crime would be finished if it can be concluded from the case's circumstances that serious repercussions would have resulted. Liability is determined by the perception of societal risk that the crime is intended to cause.¹⁰

EQUIVOCALITY TEST: Acts are only considered close if they demonstrate the goal they are intended to achieve. Acts must point to the commission of crimes and stand on their own as evidence. This theory has found its application in courts in New Zealand.¹¹

ATTEMPT UNDER IPC, 1860

Sometimes, the commission of an offence and its attempted commission are dealt with in the same section, and the severity of the punishment imposed is the same for both. Actual commission and attempted commission both carry the same punishment. For the four serious offences, attempts are classified separately and subject to different sentences. Attempts at homicide, suicide, robbery, and murder are among them.

- a) Attempting to commit any offence listed under section 511.
- b) Attempting to violate Sections 307 and 308¹² of the Penal Code.
- c) Make a suicide attempt by section 309¹³
- d) Make an effort to conduct crimes against the state.

Section 511: Penalties for attempting to commit crimes that carry a life sentence or other significant prison time. Anyone who attempts to commit an offence that is prohibited by this Code and is punishable by life in prison or by a term of years in prison, or who attempts to make

¹⁰ Holmes, *The Common Law* (Sayre 1881) 68-69

¹¹ *Ibid*

¹² Indian Penal Code 1860, s 308

¹³ Indian Penal Code 1860, s 309

an offence prohibited by this Code occur and takes any action that would facilitate the commission of the offence, shall be punished by a term of imprisonment that may be as long as one-half of life in prison or the longest term of imprisonment allowed for that offence, or with a fine as allowed for that offence, or with both.

LIMITATIONS

- It solely refers to attempts to commit crimes covered by the IPC and not attempts to commit crimes covered by any other special or local laws.
- Only those who face the possibility of life in prison or other serious penalties are covered by this section. The crimes that are only punished by death or a fine do not apply if this provision is followed.
- The section applies to offences for which there are no express punishment provisions in this code.

Section 307: Anyone who commits any act with the intent or knowledge that, if the conduct caused death, the person would be guilty of murder, must be punished by imprisonment of either kind for a time that may not exceed 10 years and by a fine as well; ...if someone is injured as a result of the offender's actions, they could face [life in prison] or the punishments listed above. When a person violates this clause and is sentenced to life in prison, he or she may be punished with the death penalty if harm is done.¹⁴ In *Madan Pal v State of U.P.*¹⁵, No matter whether the act is punishable or not, the crimes under the 307th section of IPC would be established if the intent is to commit murder and whatever action is taken in furtherance of that intention.¹⁶

Difference between sections 307 and 511: In *R V Francis*¹⁷ the Bombay High Court determined that Section 511 is broad enough to cover all efforts and is punishable under the Act, including attempts to commit murder, which are specifically mentioned in Section 307. Section 511 does

¹⁴ Indian Penal Code 1860, s 307

¹⁵ *R v Francis* [1961] 2 Cr LJ 848 (SC)

¹⁶ *Ibid*

¹⁷ *R v Niddha* [1892] 14 All 38

not apply to efforts to commit murder, which are fully and exclusively covered by Section 307, according to the Allahabad High Court. According to Raju, when it comes to attempted murder, section 307 is both exhaustive and not more restrictive than section 511. However, attempts to commit crimes and attempts to cause crimes to be committed both falls under the provisions of Section 511.¹⁸ The apex court distinguished between attempted murder under section 307 of the IPC and attempted murder or preparation for attempted murder in *Sagayam v State of Karnataka*.¹⁹ According to the court, inflicting bodily harm that could have killed the victim is not necessary to support a conviction under section 307 of the IPC.

Section 308: Whoever attempts to commit culpable homicide is punishable by imprisonment of either description for a term that may reach three years, a fine, or both. This punishment is also applicable if the act was done with the knowledge or intent that, if it resulted in death, it would be considered culpable homicide; and, if harm is done to anyone as a result of such an act, shall be punished with either type of imprisonment for a time that may not exceed seven years, or with a fine, or with both.

Section 309: Anyone who makes a suicide attempt or does any action that contributes to the commission of such an offence is subject to a sentence of simple imprisonment, which may last up to one year, as well as a fine or both.

DIFFERENCE BETWEEN ATTEMPT AND PREPARATION

When necessary means or measures are arranged or devised, preparation takes place. Once preparation is complete, however, attempts take place. In the case of *Sudhir Kumar Mukharjee v State of West Bengal*²⁰, The Supreme Court ruled that the beginning of an attempt to commit an offence is when the preparation is complete and the offender starts acting in a way that is both a step toward committing the offence and shows intent to do so.²¹ Once the preparation is

¹⁸ *Ibid*

¹⁹ *Sagayam v State of Karnataka* [2000] 4 SCC 454

²⁰ *Sudhir Kumar Mukharjee v State of WB* [1974] 1974 SCR (1) 737

²¹ *Ibid*

done, the attempt can start. The offender participates in the crime's commission in some way. If someone has gone too far and missed the chance to repent, they are in the attempt stage.

It will be an attempt if the behaviour is close enough to an actual offence. The act will be considered preparation if it is done too far in advance of the actual offence. As a result, whereas an attempt, which is at an advanced level, is always punitive, preparation, which is the first step, is not.²² The conduct would be harmless if the offender changes his mind and decides against continuing. If true, it is only preparation; if false, it is an attempt. The desire to commit a crime or the preparation for its commission must be distinguished from an attempt to commit one.²³ Comparing the attempt to preparation, there is a higher level of determination in the latter.

ANALYSIS OF "ATTEMPT" THROUGH ENGLISH CASES

In *R v O' Toole*²⁴ the appellant was prohibited from entering the public house where she was a frequent patron. When the bar closed, the appellant came back with a can of gasoline and slashed it all over the entryway at the front of the establishment. When he was questioned, he said that he cared whether she was burned alive and that he had previously said he would shatter the house. When he was detained, he admitted to the police that he intended to carry it out the following evening. Additionally, he used his intoxication as a defence. The accused was accused of aiming to cause harm, of being careless regarding the damage, and of wanting to put the life of the barmaid in danger. The appeals court overturned the conviction and ruled that the intent element is inherent in the definition of attempt and is the same as, if not less than, the intent required to create the whole offence.²⁵

In *R v Khan*²⁶, According to Russell C.J., the appeals raise the crucial question of whether an attempt to rape is committed when the defendant is careless about the victim's permission for sexual activity. The appellant argued that there was no such offence in the law. The respondent and three other people were found guilty of attempting to rape a 16-year-old by the Central

²² *Ibid*

²³ *Sagayam v State of Karnataka* [2000] 4 SCC 454

²⁴ *R v O' Toole* [1987] Cri LR 759

²⁵ *Ibid*

²⁶ *R v Khan* [1980] 2 AII E R 783 (CA)

Criminal Court. To engage in sexual activity, the defendant drove the girl. The three were unable to do the same after this. The girl then complained while at a friend's house.²⁷

The analysis of the charges of attempted rape and rape was approved by the judge. The main distinction between the two is the absence of sexual activity during attempted rape as opposed to sexual activity during rape. Rape occurs when an accused person acts recklessly while engaging in or attempting to engage in sexual behaviour. This recklessness is unrelated to the accused's physical activity.

Other International laws and facts regarding the attempt:

- Preliminary actions, which could imply an attempt, were illegal under Article 6(a) of the Charter criminalized preliminary acts.
- Attempt was not yet defined in the ICTY and ICTR Statutes and only applied to the crime of genocide. The ICTY and the ICTR do not have jurisdiction over attempts to commit any of the other international crimes.
- In *Vasiljević*, the attempted murder of two men was the reason for the prosecution's charges against the defendants, which included "inhumane conduct" (Article 5(i) of the ICTY Statute) and "violence to life and person" (Common Article 3 of the Geneva Conventions). The Trial Chamber found the perpetrators guilty of "inhumane acts" for those conduct, but cleared them of "violence to life and person," citing the absence of such a provision in customary law.
- In *Mrđa*, after admitting responsibility, the defendant was charged with and found guilty of "inhumane crimes" for trying to kill 12 individuals.
- In 1951, the International Law Committee (ILC) was the first to raise the issue of making attempts to commit crimes other than genocide illegal. The 1954 Draft Code of Offenses against the Peace and Security of Mankind included the following phrasing in Article 2(13)(iv): 'Attempts to conduct any of the offences listed in this article's previous paragraphs.'

²⁷ *Ibid*

- In the 1991 Draft Code, the ILC included a definition of attempt under Article 3(3) that read: "A person who commits an act constituting an attempt to commit a crime against the peace and security of mankind (as defined in arts...) is responsible therefor and is liable to punishment." Any start of a crime's execution that was stopped or failed only due to events unrelated to the perpetrator's intended outcome is referred to as an attempt.'
- The ICC Statute's Article 25(3)(f) defines an attempt as one that involves taking a substantial step toward committing the crime in question but failing due to factors unrelated to the attempt's intentions. However, if a person completely and voluntarily gives up the criminal purpose before attempting to commit the crime or otherwise prevents the crime from being completed, they are not subject to prosecution under this Statute for the attempt.
- The threshold for an act that constitutes "*le commencement execution*" by the French Penal Code.

LANDMARK CASE: STATE OF MAHARASHTRA *v* MOHD. YAKUB²⁸

FACTS: Near a bridge over a creek, two cars came to a stop. From the truck, a few compact and hefty parcels were taken out and left on the ground. Customs agents encircled them. The officers simultaneously heard the sound of an engine coming from a motorised boat along the creek's edge. In the truck, there were many ingots strewn beneath sawdust bags. By using the proximity rule and arguing that the silver was going to be loaded in the ship had the officers not stopped them, the Supreme Court determined that the accused had committed the crime of trying to export silver out of India by sea.²⁹

To understand the significance of the law of attempt in India, two different judgements by Justices Sarkaria and Chinnappa Reddy demand critical analysis. Observed Justice Sarkaria, "What constitutes an attempt is a combined question of law and fact depending largely upon the circumstances of the case. The case analyses the different stages of crime" as discussed in the

²⁸ *State of Maharashtra v Mohd Yakub* 980 AIR 1111

²⁹ *Ibid*

earlier chapter. Justice Chinnapa explored and concluded, “to constitute an attempt there must be an intention to commit a particular offence, secondly, some act must have been done which would be done towards the commission of the offence, thirdly, such act must reveal with reasonable certainty in conjunction with other facts and circumstances.”³⁰

The truck's proximity to a remote creek, where the silver could be loaded onto a ship, was suggestive or indicative, but not conclusive, that the accused intended to export the silver. The accused may have argued that the silver was exclusively intended for intercoastal trade and was not intended for export. However, the fact that everything was carried out covertly and in the dead of night revealed, with reasonable certainty, the accused's intention for the silver to be exported.

CONCLUSION AND SUGGESTIONS

According to Kenny, criminal culpability won't start until the perpetrator has committed an act that not only shows that they had the intent to commit a crime, but also takes some steps to carry it out. Because it is only meant to be used for the labour of other sinful acts, hundreds of sins, including the oldest and most serious, forbade the practice and limited its usage. On the other hand, propaganda is unlawful simply because it involves a plan to spread false information or other forms of similar deception.

Instead of a complete violation, an attempt has been made when the word "attempt" is used. The law declares that the suspect is still guilty and, depending on proximity, the law may also imply that. Since the motivation for both attempts and crimes is the same, there is not much difference between them. Even if someone tries to commit a crime honestly but is unsuccessful, they should still be punished on par with those who succeed. According to the law, the suspect is still guilty, and it also makes recommendations that, depending on proximity.

³⁰ *Ibid*