

## Law of attempt under IPC

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### ABSTRACT

Section 511 of Indian Penal code is the primary legislation dealing with the criminal responsibility of Attempt in India. The criminal law not only punishes completed crime but also inchoate crimes which are just short of completion. In this paper an attempt has been made to discuss this section in detail.

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### 1. Introduction

According to Mayne, for even an attempt a person can be legally liable and an attempt to commit a crime is also an inchoate crime. Crime is committed either at the spur of the moment or after preplanning the objective. If the culprit preplanned the crime then there are four stages as follows.

#### Stages of commission of an offence:-

1. Intention to commit an offence
2. Preparation to commit it
3. Attempt to commit it
4. The commission of the offence

For the first two stages, the person is not liable for anything and it is the third stage which make it so. An attempt to commit consists of intent to commit a crime combined with the doing of some act for its actual Commission.

### 2. Which act should be called as an attempt?

**Abhayanand Mishra vs State of Bihar 1961 AIR 1698, 1962 SCR (2) 24** in this case the accused applied for MA course as a private candidate in a University. He submitted some documents like B.Ed degree, mark sheets and other documents and an approved letter stating that he is currently working as a teacher at a private school. After sometime the university got to know that the documents submitted by the accused are fake and he has not worked as a teacher in any private school as submitted by him. So the university cancelled his admission and later on he was tried u/s 420 read with s.511 IPC. Held that after he intends to commit an offence, he having made preparation and with intention to commit the offence, does an act towards its Commission. Such act need not to be penultimate act but must be an act during the course of committing that offence.

### 3. Test for determining whether and net is attempt for preparation:-

- The Proximate Rule.
- The Equivalent Test.
- The Doctrine of Locus Poenitentiae.

**I. Proximity rule :-** An act or a series of fact must be

sufficiently proximate and not remotely connected to the crime intended. An act of the accused is considered proximate if it is not the last act. In *R versus Taylor* the accused was found in the act of striking a match behind a haystack but immediately he extinguished it on perceiving that he was being watched. He was held guilty of arson. If only he had prepared like purchasing a Matchbox he will not be guilty.

Similarly in **State of Maharashtra vs Mohd Yakub 1980 AIR 1111, 1980 SCR (2) 1158** accused was tried for smuggling. The accused got some parcel on a boat and went to the sea so that the other boat will come and take that parcel. Just before the parcel being unloaded, sound of another motor boat was being heard and at that moment he was captured. He contended that the action of the accused was only in phase of preparation but his contention was rejected and the court said that the Act was just finished or going to be finished. Sarkari J. stated that it was reasonably proximate to the offence. There was only one step left i.e. the departure of the loaded boat, so the offence is complete in itself.

**II. Doctrine of Locus Poenitentiae:-** This refer to the possibility of a person who having made preparation to commit an offence actually back out point to the change of heart or any other kind of situation. In **Malkiat Singh vs State of Punjab 1970 AIR 713, 1959 SCR (2) 663** there was a imposition of ban on the export of paddy outside the state of Punjab. The accused was the driver of the truck in which the paddy was loaded and he was intercepted at Samalkha which was around 25 km away from the Delhi border. He was charged with the attempt. The court held there was a fair chance that accused can change his mind not to commit it. He may stop just at the border. He was caught in the territory where there was no such ban. So no offence.

**III. The Equivocality Test:-** The step taken or act done must speak for themselves.

#### 4. Attempt to do an impossible act

In **MunahBintiAlivs Public Prosecutor [1958] 1 Mlj 159** it was a case in court of appeal of Malaysia. In this case the accused tried for miscarriage of a woman. The fact was that the woman was not pregnant at the time of the act. The court rejected that it is not amounting to attempt and convicted for the offence of miscarriage. The accused can be punished for his guilty mind although the act actually committed is innocent. In **R vs Shivpuri** the accused was arrested while in possession of believed to be prohibited drugs. He was convicted despite of the fact that the material found was not a drug. The court held that the accused concerned with harbouring or dealing with goods of which import was prohibited. It would be sufficient if it is proved that he knows the goods concerned were prohibited goods.

**Asgar Ali Pathania versus Emperor 76 IndCas 1040** in this case the complainant was a divorcee and was living with her father. She fell in love with his neighbor by whom she got pregnant. Denying to marry her the accused bring up powder and a bottle for carrying a miscarriage. He possibly wanted to administer it to her but she resisted and make a call for help. The accused was convicted of u/s 312 read with section 511 IPC. But the Supreme Court acquitted him reason being that none of the substance was harmful so as to cause miscarriage.

In a similar case **Om Prakash vs State of Punjab 1961 AIR 1782, 1962 SCR (2) 254** the wife was being tortured by the husband and inlaws. She was kept without food and was always kept locked inside a room. She was in a devastating condition and one day she found her Gate unlocked and manage to escape from there. She got her admitted to the general hospital and informed her parent about her miseries. The accused held guilty of under section 307 read with section 511 IPC. It was the sole motive of the accused that he wanted to kill the victim by starvation and in order to do so they kept in without any food for several days which make clear their intention to kill.

#### 5. Conclusion

An attempt in order to be criminal need not to be a penultimate act. It is sufficient in law if there is present and intent coupled with some overt act in execution thereof. It is therefore necessary for criminal law in social interest to identify and prevent criminal attempt at the earliest possible moment. Otherwise culprit be the better skilled and again and again will be doing the same act. An attempt to commit a crime is intended but unfinished crime.

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