INCHOATE CRIME – ATTEMPT

-Amrita Jain[1]

"Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing."

– *People v. Prez*, 50 Cal. 4th 222, 230 (2010).

ABSTRACT

The author believes that prosecuting crimes often entails complex analysis of guilt in those who partake in organized violations of the law. Contemplating the prosecution of a person for an attempt to commit a crime without the actual crime being committed has always been a point of controversy among people. It is of the belief that the offences that the individual wishes to commit is of such grievous nature that in case of failure to commit the said crime, it is in the public interest to prosecute the acts done in pursuance of the crime.

Objective: The paper attempts to decode the reason and rationale behind prosecuting a person for an attempt to commit a crime and deals with certain aspects which will justify how certain values criminalize mere 'attempt'.

Research methodology: The author has adopted the analytical approach for the research as analytical approach stands applicable in all stages of research, right from the articulation to the formulation of arguments on the issues mentioned in the research. This paper is the outcome of a secondary data related to criminal law with special reference to Indian context. It is a conceptual, qualitative research that the author has employed in writing this paper.

In the later part of the paper, the author concludes that dependant on proximity, there isn't much difference in an attempt and committing the crime as the *mens rea* for both is the same whatever the crime may be.

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INTRODUCTION

The criminal law punishes not only completed crimes but also short of completion of crimes. This category of uncompleted crimes is often called 'inchoate crimes.' The *doctrine of inchoate crimes* is applied specifically to three crimes: Attempt, Conspiracy, and Abetment.

The offence of criminal conspiracy is committed as soon as there is an agreement between two or more persons to commit an offence. [2] In this regard, incomplete criminal conducts raise a question as to whether it is proper to punish someone who has harmed no one or to set free that person who was determined to commit a crime.

An attempt creates alarm which of itself is an injury, and the moral guilt of the offender is the same as though he had succeeded. The act may be sufficiently harmful to society by reason of its close proximity to the completed offence classed as a crime. Hence, unlike civil law, criminal law takes notice of attempts to commit punishable wrongs and punishes them according to the nature and gravity of the offence attempted.

However the definitions for attempted crimes vary from state to state. In some jurisdictions, the actions or acts taken for an attempted crime must go beyond "mere preparation" for the offense. On the other hand, other jurisdictions permit a conviction based on a wider range of actions taken towards completing a crime.[3]

CONCEPT OF ATTEMPT

The term 'attempt' has nowhere been described in the IPC. Chapter XXIII titled as "Of Attempts to Commit Offences" does not give any definition of attempt but simply provides for punishment for attempting to commit an offence punishable with imprisonment for life or imprisonment. The term however means the direct movement towards the commission of crime after necessary preparations have been made.[4]

2 IPC, Section 120-A.
3 http://www.lawyersclubindia.com/articles/ATTEMPT-IN-CRIMINAL-LAW-1664.asp#_ftn5

4 O.P.SRIVASTAVA, '*Principles of Criminal Law*', (Eastern Book Company, 6th ed.) 50.

In the case of *R. v. Eagelton5*, Park B said, "Acts completely leading to the commission of the offence are not to be considered as attempt to commit, but acts immediately connected with it are."

The Supreme Court observed that an attempt to define the term attempt is a futile exercise. The attempt stage is reached when the culprit takes deliberate overt steps to commit the offence and this overt act need not be penultimate act.[6]

Conduct which is merely preparatory to the commission of an offence is not generally an offence. However, mere preparation to commit an offence is criminal if it amounts to one of a number of preparatory offences.[7] A person must always be proved to have intended to commit an act or to continue with a series of acts, which when completed, will amount to the offence allegedly attempted.[8]

An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he has succeeded. Moral guilt must be united to injury inorder to justify punishment. As the injury is not as great as if he act had been committed, only half the punishment is awarded.[9]

ATTEMPT TO COMMIT CRIME UNDER IPC

The IPC does not define this expression however there are various provisions wherein it has dealt with attempt.

a) In some cases the commission of an offence as well as the attempt to commit it is dealt within the same section and the extent of punishment prescribed is the same for both. Under such provisions, both the actual commission of the offence and the attempt to commit are made punishable equally.
b) On the other hand, in case of four grave offences, attempts are described separately but side by side with the offences and specific punishment is prescribed for them. These offences include attempt to murder, attempt to culpable homicide, attempt to commit suicide and attempt to commit robbery.

5 (1885) 6 Cox CC 559.
6 *State of Maharashtra v. Mohd. Yakub*,(1980) 3 SCC 5.
7 RICHARD CARD, *Criminal Law*, (Oxford Publishing Co. 20th ed.) 592.
8 *R v. Khan*, (1990) 2 All ER 783, CA.
9 *Koppula Venkat Rao v. State of AP*, (2004) 3 SCC 602.

Section 511 and Section 307

The offence of attempt has different meanings in Section 511 and Section 307. If specific provision for attempt to murder has been made in Section 307 there is no sense and also it will be against the interest of justice if attempt to murder is tried under Section 307/511 IPC. Section 307 is therefore exhaustive and its scope cannot be narrowed down by Section 511.

Limitations in Section 522 relates to such offences as an attempt to commit murder, or an attempt to commit suicide or an attempt to obtain illegal gratification which are expressly punished by other Sections of the Code.[10]

'ACTUS REUS' OF AN ATTEMPT

The *actus reus* of an attempt marks the moment at which the non-criminal planning of an offence turns into a criminal attempt.[11] However, not only does the *actus reus* of every offence differ, but each offence can be committed in a variety of ways and circumstances. It depends upon what is regarded as the justification for punishing attempts.

In *Houghton v Smith*[12], it was said that it must be left to common sense in each case to determine whether the accused has gone beyond mere preparation. Though an *actus reus* is necessary, there may be a crime even where the whole of the particular actus reus that was intended has not been consummated.

'MENS REA' OF AN ATTEMPT

The *mens rea* of an attempt is an intention to commit the offence. Where there is only *mens rea*, there is no crime. A mere evil intent or designed unaccompanied by any overt act (prohibited act), which is technically called *actus reus*, in furtherance of such design, is not punishable.[13]

As a general rule, there is no criminal liability where *mens rea* has only been followed by some act that does not no more than manifest *mens rea*. Liability begins only at the stage when the offender has done some act which not only manifests his *mens rea* but goes some way towards carrying it out.

10 *Hem Chandra Singh. Emperor, (*1926) 27 Cri. LJ 1244 (Pat.).
11 JONATHAN HERRING, Criminal Law, (Eastern Book Company 5th ed.) 452.
12 (1973) 3 All ER 1109.
13 AHMAD SIQQUIE, Criminology & Penology, (Eastern Book Company 6th ed.) 36.

The *mens rea* with regard to the offence is intention as to the conduct, and suspicion as to the circumstance. In those circumstances, if the defendant is to proceed with his intended conduct, he would necessarily commit the full concealment offence. He should thus be convicted of an attempt when he takes a more than merely preparatory step towards that end.

ARE ATTEMPTS OFTEN PROSECUTED?

The police and the other prosecuting authorities do not generally wish to add to their load by generally prosecuting attempts. The required attention is frequently hard to prove, and anyway the police may think that a warning is sufficient. If they make a charge, they may well prefer a charge of a specific offence like carrying a firearm. Nevertheless, attempts to commit serious crimes are prosecuted from time to time; and the law of attempt frequently supplies a justification for arresting a would-be- offender. [14]

PUNISHMENT FOR ATTEMPT

On conviction of attempt the Court may (with a few exceptions) impose any penalty that would be within its powers for the completed offence. In practice, however, the punishment for the attempt will be less than for the consummated crime. If a man shoots at another, intending to kill him and succeeds, he is sentenced for "life". If he misses, although he could receive a life sentence, in practice he will be treated much more leniently.[15]

ATTEMPT AND PREPARATION DISTINGUISHED

Preparation is to arrange or devise necessary means or measures, whereas attempt is the direct movement towards the commission of the crime after preparation is complete. In the case of *Sudhir kumar Mukharjee* v. *State of W.B*[16] , Supreme Court held that, attempt to commit an offence begins when the preparation are complete and the culprit commences to do something with the intention of committing the offence and which is a step forward toward the commission of the offence.

14 GLANVILLE WILLIAM, Textbook On Criminal Law, (Universal Law Publishing 2nd ed.) 404
15 *Taylor* (1978) Crim. L.R. 236.
16 1974 SCR (1) 737.

However, there is a very thin line between preparation and attempt and a person id guilty when he crosses that line. An attempt to commit an offence begins when preparation is complete and the culprit does something for commission of the offence. Such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.[17] In other words, if a person has proceeded far enough and lost the opportunity to repent, he is in the stage of attempt.

If the act is near enough to actual offence, it is an attempt and if the act is too remote from the actual offence, it is preparation. That is why preparation being initial stage is not punishable but attempt being an advanced stage is always punishable.

The test to find out the difference between the two is whether the acts already done are such that if the offender changes his mind and does not proceed further, the act already done would be completely harmless. If it is so, it is mere preparation and if it is not so, it is an attempt. The crucial test is whether the last act, if uninterrupted and successful, would constitute a crime.[18] However, the sharp clear cut difference between the two is difficult to draw as one shades into the other and dividing line can only be decided with reference to the facts of each case.

An attempt to commit a crime must be distinguished from an intent to commit it or preparation of its commission.[19] There is a greater degree of determination in attempt as compared with preparation.

CONCLUSION

To be guilty of an offence, it has to be proven that the defendant has the *mens rea* and has committed the *actus reus*. To be guilty of an attempt, however, requires less, as the essence of the crime of attempt is that the defendant has failed to commit the *actus reus* of the full offence; therefore it only has to be proven that the defendant possessed the *mens rea* as the offence has not been committed, even if the defendant intended it to be.

17 *Abhayanand Mishra v. State of Bihar*, AIR 1961 SC 1698.
18 *T. Munirathnam Reddi, re,* AIR 1955 AP 118.
19 *Sagayam v. State of Karnataka*, (2000) 4 SCC 454.

However, there are bound to be conceptual difficulties, especially when the primary offence embraces different states of mind and its commission includes both result and circumstance outcomes. Nevertheless, none of this can alter the plain meaning of intent in the imposition of attempted criminal liability.

Hundreds of offences, including many of the oldest and most serious, prohibit conduct that it only preparatory, and prohibited because it is only preparatory to the commission of yet other offences. On the similar lines, forgery is a crime only because it is a preparation for obtaining by deception or by other similar fraud.

'A person, who genuinely attempts to commit a criminal offence and fails, still deserves to be punished just as much as a person who succeeds in committing an offence.'

To conclude, the author agrees with the view of 'attempt' given in the statement above, as no matter what, it is an attempt that has been committed instead of the full offence. The law states that the defendant is still guilty and the law also suggests that, dependant on proximity, there isn't much difference in an attempt and committing the crime as the *mens rea* for both is the same whatever the crime may be, both of which the author agrees with as well.

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