Page 1024 - 1034 **DOI:** *https://doij.org/10.10000/IJLMH.112618*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

An Analysis of Attempt under Indian Penal Code

MAANVI TRIVEDI[1]

ABSTRACT

The main aim of this research paper is to have a detailed look into the concept of "Attempt" under the Indian Penal Code (IPC). It commences by comprehending its doctrinal definition as well as the common law meaning of 'attempt.' It also gives a brief look into the history of the concept of attempt It is accompanied with numerous case laws. Furthermore, the study attempted to comprehend this notion of its mental component and the series of tests utilized to evaluate it. It also establishes the difference as well as the link between the inter related concepts such as Attempt and Preparation, the elements of crime and attempt etc. Lastly, the paper analyses and concludes the stance of attempt under the Indian Penal Code.

Keywords: *Attempt, IPC, Actus reus, Preparation, Crimes.*

I. INTRODUCTION

When it comes to attempts to commit crimes, the law is "more complex and challenging than any other aspect of criminal law." Offenses can be perpetrated with or without criminal intent. Crimes of this nature are so arbitrary in their nature, so unforeseen, and so combustible that it is tough to crack them down into discrete stages for investigation. Due to their very short duration, the steps of planning and attempt coincide in such circumstances. In contrast, the criminal's well-planned activities are on the other end of the spectrum of crime. It was not a violation to attempt under the early English common law. It wasn't long until attempts to do serious injury were penalized as crimes, rather than offences. For example, in 1784, *Rex v. Scofield, Cald*. Scofield's worker who tried to vandalize his master's residence with a burning candle was sentenced to a minor charge of crime. Following Rex v. Higgins, a conviction for attempted theft was affirmed under English law.

Law recognizes four steps in the commission of certain types of crimes: -

1. Intention
2. Preparation

[1] Author is a student at Symbiosis Law School, Hyderabad, India.

 [ISSN 2581-5369]

3. Attempt
4. Commission of Crime

Attempts are made after preparations have been made. As a result of a deliberate preparation, an attempt fails in object or fails owing to factors unrelated of the individual attempting it. He has sought to achieve his goal by performing an intentional deed in hopes that it will result in the desired outcome.

Attempt is the act of heading straight away to commission when the preparation has been completed. It is a deliberate act of preparing for a future event or situation and is autonomous of the individual who attempts to achieve it or fails.

The criminal law penalizes both completed crimes as well as Inchoate Crimes i.e. the crimes that are in the early stages and are yet to be completed. As a result of the inchoate act of attempt, conduct that is sufficiently close to the commission of a criminal offense, when performed with intent to perform the act, is punished. Under the English courts, the law of attempt was complicated and ambiguous.

One of the most evident reasons for establishing a universal law of attempt is to avoid potential illegal injury. Even in the early days of the common law, there was a worry about damages that had not to be recognized.

When robbery was first introduced in the 12th century, it punished anyone who arrived walled towns or occupied properties at dawn with the purpose to commit a criminal act. Such an entrance posed a threat to society, and it wasn't required to prove if the offence D had in mind had been committed or not. For the same reason, the assault crime was created as a way to punish hazard of impending attack, as opposed to the battery crime, which condemned real force.

In the following research paper ***doctrinal methodology*** has been used. So basically, laws that already exist and different statutes and related cases have been followed and analytically discussed. Following are the ***research questions*** of the study:

1. What is the historical background of attempt under different laws?
2. What are the different tests which assist in knowing whether or not an act can be classified under attempt?
3. What is the response of judiciary regarding attempt under the Indian Penal Code?

The following are the main ***objectives*** of this research paper: -

 [ISSN 2581-5369]

- To analyze in detail the aspects and meaning of attempt as per the criminal jurisprudence.
- To understand in detail the elements of attempt and the role of mental element in the same
- To conduct a brief study on attempt as per the IPC and the provisions related to attempt.

(A) Literature Review

In the Research paper , " ***Criminal Attempt under Polish Laws***" the author is of the view that an attempt, made after the completion of preparations but before the completion of the act, whose boundaries have been defined by both the definition of preparatory activities and the acknowledgement of the awareness of all the requirements of a specified category of prohibited act, as well as by listing in the requirements of attempt, the meeting of which defines the circumstances of the criminal's obligation. According to him, the elements leading up to the completion (intention, preparation, and attempt) are only conceivable in the event of purposeful crimes at this time. It will be difficult to arrange or attempt unintentional crimes because the required ingredient of these stages of conduct is the offender's purpose.

Gross in his book "***A Theory of Criminal Justice***" is of the view that, "When there is only attempt liability, the conduct itself may usefully be regarded as a second order harm; and that, by itself, is a violation of an interest that concerns the law. The interest is one in security from harm and merely presenting a threat of harm violates that security interest."

Lord Mansfield in his study on Attempt was of the view that, "when an act rests in bare intention, it is not punishable by our laws. Law does not take notice of mere thought of a person. The reason is obvious. It is impossible to prove the mental state or man and a tribunal cannot punish a man for that which he cannot know. But when such evil intent is expressed in words and can be inferred from his acts, the person can be held criminally liable."

II. ATTEMPT AS PER CRIMINAL JURISPRUDENCE

In the *Webster's Seventh New Collegiate Dictionary*: "Attempt means an unsuccessful effort". While Chamber's Twentieth Century Dictionary defines 'Attempt' as "any act that can fairly be described as one of a series which, if uninterrupted and unsuccessful, would constitute a crime". As stated in the Jowitt's Dictionary of English Law, "Attempt means an endeavour to commit a crime or unlawful act; the doing of some overt act for the purpose of committing some offence; an act done with intent to commit a crime, and forming a part of a series of acts, which would constitute its actual commission if it were not interrupted." An act that is just preliminary to the conduct of a crime is not a violation, nor is it a crime to have the desire to

 [ISSN 2581-5369]

perform a criminal act. It is not always essential for the suspect to be capable of doing a crime. It is not always essential for the accused to be capable of executing the crime in issue.[2]

The Eighth Edition of Bouvier's Law Dictionary defines 'Attempt' as, "an endeavour to accomplish a crime carried beyond mere preparation, but falling short of execution of the ultimate design in any part of it. An attempt, in general, is an overt act done in pursuance of intent, to do a specific thing, tending to the end, but falling short of complete accomplishment of it." Three essentials required in an attempt to commit it are: -

1. The desire to execute it
2. the action of committing it
3. Inability to accomplish it[3]

In the case of *State of U.P. v. Ram Charan*[4], the Allahabad High Court stated that , Though it is impossible to convey an accurate or extensive meaning of attempt it can be widely asserted that attempt is a purposeful conduct that an individual accomplishes to the crime but fails in its element due to scenarios beyond that individual's control.

III. ELEMENTS OF CRIME AND ATTEMPT

In the presence of Mens Rea there is no crime. However, even if "an actus reus is required, there may be a crime even if the entire actus reus that was intended has not been completed.[5]" Actus reus is amongst the critical ingredients of an accomplished crime, i.e., human behaviour that is illegal if performed with mens rea. The actus reus can sometimes be found in the action itself. The commission of certain conduct is generally referred to as actus reus.[6] If elements prevail that equate to a valid reason or explanation, "there is no actus reus and no crime."[7] It is not unusual for the previous adjacent action to go uncompleted or to fail to accomplish the desired mischievous outcome. Due to this reason, criminal justice system detects attempts to conduct penal injustices and penalize them with varying degrees of intensity depending on the type of the intended offence. [8] There is no criminal responsibility when a mens rea is accompanied by a conduct that serves no purpose other than to reveal the mens rea. Accountability does not begin until the accused has committed some act that not only demonstrates his mens rea, but also helps him carry it out. [9] It can be said that, a public act of

[2] Yusuf Abdulla v. R.N. Shukla (1969) 72 Bom LR 575.
[3] S.S. Huda, "Principles of Criminal Law in British India", Eastern Book Company, Lucknow, 1993.
[4] AIR 1962 All. 359
[5] Nigam R.C, "Law of crimes in India" Chap.V, p. 112
[6] Kenny, C.S, "Outlines of criminal Law" Chap.V, p. 91
[7] Walker, "The Oxford Companion to law, p. 22" cited in B.H.Gandhi, "Indian Penal code", p. 743
[8] Huda.S. "The Principle of law of crimes in India" p.46
[9] Supra Note 3

 [ISSN 2581-5369]

representation is taken into consideration by the law. Through this current perspective, we can conclude that while just ill purpose is not penalized by law, there must be action taken to carry out the crime.[10] It is vital to evaluate the various stages of crime in this regard.[11] The first step is the element of preparation or desire to commit the crimes. Following this stage of deliberation, comes the stage of preparation, which involves creating or taking the steps required to execute a crime. Preparations to conduct an unlawful act are generally not penalized. It would harass those suspected if it were made punishable. However, there are rare exemptions, in which the sheer readiness to execute the crime is penalized since it decreases the chance of an innocent intent. The attempt stage is the third stage.

In *Sudhir Kumar Mukharjee v. State of W.B*[12], Supreme Court held that, ""attempt to commit an offence begins when the preparation is 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."

In *Abhyanand Mishra v. State of Bihar*[13] , Supreme court held that, "the movement culprit commences to do an act with the necessary intention, he commences his attempt to commit an 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".

The deliberate approach further toward the execution of a crime once preparation is rendered is referred to as an attempt. The final phase is when the desired offense is actually committed. If the act is accomplished, the offense is said to have been committed.

IV. INCHOATE CRIMES AND ATTEMPT

Mens rea and actus reus are two factors that must always be present in order for a crime to be committed. There is no crime where just mens rea exists. A solitary unlawful intention or plan that isn't accompanied by any unlawful act (forbidden act), also known as actus reus, in pursuit of that purpose isn't actionable. [14] The term actus reus refers to an action, or the tangible effect of human action. When a nation's penal legislation considers an action to be substantially damaging, it forbids it and strives to keep it from happening by imposing a punishment or consequence on those who commit it. Even though actus reus is required to constitute a crime, there can be a crime while if the entire actus reus intended has not really been fulfilled. As a

[10] Kenny, C.S, "Outlines of criminal Law" Chap.V , p. 91
[11] Huda.S. "The Principle of law of crimes in India" p.46
[12] (1974) 3 SCC 357
[13] AIR 1961 SC 1698
[14] Kenny, C.S, " Outlines of criminal Law" Chap.V , p. 91

 [ISSN 2581-5369]

basic guideline, where mens rea is simply accompanied by certain conduct that does not go beyond evident mens rea, there is no criminal culpability. Only after the accused has done anything that reveals his men rea, but also moves him closer to executing it out, does he become liable. These are referred to as "inchoate crimes." The term "inchoate" is appropriate because it implies that anything is incomplete.

The phrase "incipient" likewise misses the ability to convey the true meaning of what we want to convey, namely, an accomplished crime. 'Inchoate' means 'just started, undeveloped.' Other definitions include foundational, incomplete, and so forth. As a result, inchoate crimes allude to activities that have commenced but have not yet concluded to the point where the violation has been performed. According to this viewpoint, trying to do a crime is an assertive action which should not be permitted to pass unprosecuted.

(A) Attempt

The phrase 'attempt' implies that the act claimed would have been accomplished if the failed effort had succeeded. An attempt is a deliberate effort for the execution of an act after planning also is done. As per English law, an individual can be convicted of intending to break a law once he does something is much more than just pre - commissioning to the execution of the crime, and an individual can be liable of attempting to violate the law while the circumstances make it impossible to accomplish the criminal offense. [15] An attempt causes concern, that is a harm in and of itself, and the accused's responsibility is the same as if he had successful. Because of its closeness to the accomplished act categorized as a crime, the conduct may be significantly detrimental to community. As a result, contrary to legislation, penal code recognizes and condemns attempts to conduct penal wrongs, depending on the type and severity of the intended crime. If the third stage is accomplished, the act is accomplished, and the suspect is held accountable for the act he performed. As a result, attempting to commit a crime does not have to be the final act. Once there is actual intention associated with some act or omission in implementation, it is sufficient in law. In principle, there are four phases to committing a crime by an individual.

a) the formation of the purpose or mental elements,

b) the arrangements for the conduct of the acts,

c) responding on the premise of the planning, and

d) the execution of the action leading in an incident prescribed by the legislation. Some judicial

[15] Gaur K.D. , " Indian Penal Code" Chap.XXIII p. 842

 [ISSN 2581-5369]

systems levy fines as early as the planning stage. They designate specific acts to be illegal and penalized from the stage of preparation, based on the significance the administration places on the principle of "criminal deterrence." Insofar as attempt is an act of intent, it may not be possible to hold someone accountable if they were irresponsible or reckless. Furthermore, the accusation of attempt can be supported by awareness, negligence, or carelessness in comprehending the essential surrounding circumstances.

V. MENTAL ELEMENT AND CRIME

The overall tendency in current criminal procedure is to expand mens rea to reflect intention and recklessness, however the conventional view is that the mental element necessary for an attempt is that if explicit intent to carry out the actus reus of the planned offence. It has long been known that the intent required for determining culpability in an attempt is exact. It is not enough to establish that the defendant attempted to do something that may have resulted in the offence for which he is accused. Whereas it is acceptable to establish intention to inflict severe damage in murder, it is required to convince the Court in an attempt to murder that the actions were committed with the explicit purpose to kill even if this outcome was not reached. Whether or if such an intent persists is a matter that must be evaluated by the Court. Because it is just a statement of fact,[16] Mens rea in an endeavor provides no unique difficulties. Every effort is motivated by a' specific purpose,' that is, a desire to dedicate a specific crime.

VI. ATTEMPT IN IPC

The laws involving unlawful attempts in the Indian Penal Code and other Criminal Acts may be divided into five categories:

1. The circumstances in which the conduct of an offence as well as the attempt to do it are addressed with in the same section, and the level of penalty recommended for both is the same. In this situation, both the real committing of the infraction and the effort to commit the offence are made equally punishable.
2. Different provisions cover the circumstances in which distinct penalties are imposed for attempting to commit a crime. In terms of the Indian Penal Code, the crimes of attempt that are not covered by the preceding two sections are controlled by the general rules found in Section 511.
3. The scenarios where an attempt to execute a crime is considered to be the performance of the crime itself.

[16] S.S. Huda, “Principles of Criminal Law in British India”, Eastern Book Company, Lucknow. 1993.

 [ISSN 2581-5369]

4. Cases in which additional laws pertaining to attempt under the Act have been enacted, although the penalties imposed for an attempt of an offence under the Act is just like the punishment provided for the execution of the crime itself. [17]

VII. TESTS LAID DOWN BY COURTS

(A) Dangerous Proximity Doctrine or Social Danger Test

In the dangerous proximity test, the accused still has not accomplished each of the actions required to qualify the crime, i.e., he or she is still in the planning stages, however has gone further to compel penalty for the interest of humanity's security. The factors to consider when determining whether a certain act constituted an attempt are as follows: -

1. The intensity of the desired crime,
2. the proximity of the actions to the execution of the offense,
3. the possibility that the behaviour would lead in the desired crime are all. The stronger the grounds for considering the conduct an attempt, the greater the severity and likelihood, the closer the act would be to the attempt.

The test is built on the notion that the objective of penalizing attempts is to prevent inappropriate conduct, even though there are insufficient grounds to dissuade the action of the accused until it becomes significantly risky.

The severity of the act committed is among amongst the elements used to determine culpability in attempted crimes. The act of attempting is accomplished if the underlying evidence of an instance culminate to involvement with the subsequent repercussions being severe. In fact, the fear of social risk, which is what the specific act is designed to elicit, is what sets the culpability of an attempt. If the circumstance is only an initiation phase in the event of significant criminal attempts, the plaintiff may lose[18]. The 'social danger' test is often not talked about much, but it's evident that it's taken into account when the numerous different criteria are used. The gravity of the anticipated often se and the societal threat posed by it are variables that lead jurists to categorize specific actions as attempts when they would instead be classified as basic preparedness. Hence, it is not the closer the act is to accomplishment of the anticipated violation in terms of duration or place, that could negate the legitimate anticipation of a modification of intent, that defines the course of thought that emerges out from conduct near to a given level commencing by facto innocent.

[17] Monica Chawla, "Criminal Attempt and Punishment", First Edition, Deep and Deep Publications, Delhi, 2006

[18] Glanville Williams (1983). "Textbook of Criminal Law".

 [ISSN 2581-5369]

(B) Equivocality Test or Res Ipsa Loquitor Test

When the aim of criminal procedure is to prohibit completed offences as well as the execution of planned offences, then there is no need to penalise someone when the research proves beyond a possible suspicion that he intended to execute the offense. However, until the suspect has approached alarmingly near to achieving his goal, the true significance of his actions will be insufficient to establish a conviction for attempt. According to the equivocality test, a suspect executes the actus reus of attempt only if he has made enough measures into committing the offence and his actions directly suggest that his intent was to do the offence.

The equivocality study took a completely distinct perspective to the planning issue, claiming that an attempt is made when the accused's behaviour indicates that he or she aims to perform an offense. "The conduct would be considered in relation to all the surrounding circumstances exclusive of representations made by the accused about his intentions, but presumably representations of the accused, which negative a criminal intent, would be admissible to disprove the intention imputed." The goal of this method is to expose the accused to attempted liability behaviour that clearly establishes that the accused is acting with an intent to commit a crime.

(C) Locus Paenitentiae Test

The locus paenitentiae test says that the legislation provides each criminal a chance or term for redemption prior to actually placing him in the grasp of the law. Every individual has the right to locus paenitentiae before being subjected to criminal procedure, according to the law. The concept states that an individual would not be penalised as long as it is fairly believed that he will cease further action in furtherance of his illegal purpose on his own volition. The machinery of criminal justice will only interfere when the offender takes a decisive move and therefore definitively commits himself to the accomplishment of the criminal purpose. If the probable accused retraced his actions and withdraws from the anticipated attempt of his own free will, he still could have successfully taken full advantage of the advantages of the principle of locus paenitentiae because, in this kind of a scenario, he could still be at its worse during the planning period, which is not penalised as a basic guideline.

In the case of , Padala Venkatswami[19] the defendant, planning to acquire the planning of a fraudulent claim, had a duplicate compiled, obtained stamp document wherein the file would have to be authored, and inquired a bystander to provide the timeline, supposedly for implantation in a file he aimed to have published. The defendant could not even be acquitted

[19] Padal Venkata Rama Reddy Vs Ramu vs Kovvuri Satyanarayana Reddy & Ors, 1881

 [ISSN 2581-5369]

of attempting to commit fraud, the court said. "The legislation permits a locus paenitentiae and will not conclude that an individual has undertaken an offense unless he has progressed further than the phase of planning," the court stated. Abandonment is a locus paenitentiae defence because it demonstrates that the accused's criminal intent was inadequate to complete all his preparations to execute a crime. It is asserted that culpability for intended offense exists only if the attempt is halted or misses to deliver the desired impact due to factors beyond the accused's control. The abandonment claim is applicable when the act fails for circumstances that are wholly due to the accused's desire.

VIII. Conclusion

After going through all the research, it is concluded that there is damage when a criminal act is undertaken, namely a risk to safety. We have the entitlement to physical and personal safety in our environment; an attempt to execute an offence jeopardises these privileges. This violation of our privileges is a wrong that the penal code attempts to punish in and of itself. In the absence of any injury, penal punishment for attempts may be supported on utilitarian grounds. An individual intending to execute an offence is hazardous and should be prevented. Thus, this kind of an individual also need recovery and discipline for self - deterrence; else, he may attempt to perpetrate the offense again, being more cautious for the further attempts. Nonetheless, it is dubious that penalty for prevention purposes will serve here; individuals who attempt offenses, by virtue, aspire for accomplishment; if penalty for the entire offense is ineffectual discouragement, penalty for an attempt to execute the act accomplishes nothing. The rationale for establishing liability for intentional acts has been said to be to restrict risky activity or individuals. Individuals commit crimes in four stages: creation of the intent or guilty mind, preparation for execution of offence, responding on the foundation of preparedness, and completion of the act leading to an event forbidden by law. These four stages are engaged in criminalising attempts, however the final stage refuses to finish. Liability for criminal acts does not commence till the accused has done anything that reveals his mens rea but also contributes to executing that out. In this sense, in order to commit the offence of attempt mens rea, preparation and actus reus are required elements, but the actus reus is insufficient. In general, these elements penalize the attempt and impose penal punishment on the individual who executes the crime of Attempt.

*****

 [ISSN 2581-5369]

IX. REFERENCES

1. " Indian Penal Code, 1860.

2. Webster's Seventh New Collegiate Dictionary.

3. Chamber's Twentieth Century Dictionary.

4. 4.New Encyclopaedia Britannica

5. Mike Molan, "150 Leading Cases". Criminal Law, Second Edition, Old Bailey Press, UK, 2002

6. Monica Chawla, "Criminal Attempt and Punishment", First Edition, Deep and Deep Publications, Delhi, 2006.

7. Peter Seago, "Criminal Law", Third Edition, Sweet and Maxwell, London, 1989.

8. K.D. Gaur, "Indian Penal Code", Third Edition, Universal Publishing Company, Delhi.

9. S.S. Huda, "Principles of Criminal Law in British India", Eastern Book Company, Lucknow, 1993.

10. B.B. Pande "An attempt on Attempt" (1984) 2 SCC Jour. 42 p.5"

11. Rex vs. Scofield Cald., 1784

12. Yusuf Abdulla v. R.N. Shukla (1969) 72 Bom LR 575

13. State of U.P. v. Ram Charan

14. Sudhir Kumar Mukharjee v. State of W.B

15. Abhyanand Mishra v. State of Bihar

16. Padal Venkata Rama Reddy Vs Ramu vs Kovvuri Satyanarayana Reddy & Ors,1881.

*****

 [ISSN 2581-5369]