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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



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AN ANALYSIS OF ATTEMPT UNDER PENAL LAWS

Authors: ADITYA RAJ PANDEY, Student of SYMBIOSIS LAW SCHOOL, HYDERABAD

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ABSTRACT

Attempt, an offence and now a days very debatable topic as well. The main debate is to decide the punishment for the attempt, as it is also considered as a crime under Indian penal Code. Attempt is a an inchoate crime whose literal meaning is those crimes or wrongs which is just started or it is in budding stage only. By adding some more to inchoate crimes, we can say that it can be left unfinished or just incomplete. Now, as we all know that everything which is wrongful or which violates any law is a punishable and hence we called it as a crime. With the objective to tackle the rate of crimes and hence to lowered it, we passed and enacted some set of rules and regulations by the name of Indian Penal Code. These set of rules was passed during the pre independence period and since then we are applying IPC to punish the wrongdoers. Indian Penal Code contains different punishments for various different crimes but there are always some dilemmas when it comes to attempt to commit any crime. Attempt in general sense, it the efforts we made for the completion of any work. In this research paper, we try to define attempt in the better manner and also try to study on attempt in the more thorough and comprehensive way possible.

Keywords – Inchoate Crimes, Attempt, Mens Rea, Actus Reus.

INTRODUCTION

Before, starting with the introduction of the analysis of the attempt, lets look at the definition of the attempt given by some eminent personalities.

According to James Stephen,

“an act done with intent to commit that crime and forming part of a series of acts, which would constitute its actual commission if it were not interrupted”

According to Andrew Ashworth,

“The Fault element which refers to guilt mind or the intention of the offender”

According to different scholars, there are different definitions given but in Indian Context Attempt, an offence which is not defined anywhere in the IPC¹⁷⁸, although it is punishable. Yes, it is very much astonishing, but true as well. Today, attempt is one of the biggest debatable topic in India, just because it is not defined in Indian Penal Code and also the punishments are not that much vibrant for different categories of crimes attempted. In Criminal Laws, the two essential we required to commit crimes are Mens Rea and Actus Reus. Mens Rea means guilty state of mind or those minds in which the planning is going on for the commission of any wrongful act whereas Actus reus means the actual crime we commit. Here, one of the most important point to note is that, Actus Reus is always preceded by Mens Rea. Id there is guilty state of mind then only the wrongful act can be committed by any person. Now, along with all these, we have four stages in the commission of any crime or wrongful act. These are Intention, Preparation, Attempt and Commission. In the Indian Penal Code¹⁷⁹, Intention and Preparation is not an Punishable offence at all because it is very problematic for the prosecutor to find and investigate that

¹⁷⁸ Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

¹⁷⁹ Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

whether the preparation is made for commission of some offence or not. Now, coming to the third level, which is attempt. Attempt is not defined in Indian Penal Code of 1872 but the punishments for attempts are provided under section 511¹⁸⁰ of IPC. Attempt just comes before the commission of crime and after the preparation. From here we can deduce the meaning of attempt which means, any act which is the outcome of thoughtful preparation and the person becomes unsuccessful in that particular act. It is because, if the person gets succeeded, then the attempt converts into commission of the crime.

Indian Penal Code contains the provision of punishments for both commission as well as attempt to commit crimes. Section 511 along with section 307¹⁸¹ and 309¹⁸² deals with attempt to commit crimes in IPC. Here, section 511 deals with attempt to commit crimes, which is in the general manner and the rest two section dealt with attempt to commit murder and suicide. The need for the punishment arose due to two different reasons. First, if some one comes with the full preparation to commit any crime and he failed to commit, then also he committed some wrong and hence he or she should be punished accordingly. Secondly, if someone created fear in the mind of other person or society at large without even actually committing any wrongful act, then also it a illegal act and hence it should be punished. Therefore, due to all these reasons, IPC was made and enacted during the pre independence period in India. Later on, after getting freedom from the colonial rule we passed Criminal Procedure Code and that too contains only punishments for different crimes.

RESAERCH QUESTION AND OBJECTIVE

The prime objective of the researcher is to study the provisions as well as punishments related to Attempt and when these are awarded to any wrongdoer. Along with this, the researcher also

focused his studies on the need of punishment for attempt and how we can identify that whether any act is preparation or attempt to commit any crime. Here, the researcher also tries to analyze and deeply study the background of attempt and its historical facet along with the latest laws or rules.

RESEARCH METHODOLOGY AND SOURCES OF DATA

The researcher in this research article tried to collect data from various secondary sources available on different online portals. The researcher collected theories on attempt, tests of attempt, its historical background, its need from various different sources on the internet and along with this the researcher also referred to articles, books as well as case laws on the topic of attempt. Thus, we can say that, the researcher focussed its collection from books, articles, research papers, case laws and other different online sources.

LITERATURE REVIEW

- (1) Koppula Venkata Rao vs State of A.P.¹⁸³ : The Honourable Supreme Court in this case stated that Attempt can be taken in usual & regular sense as well. The court also provides the ordinary meaning of attempt in this case, which can be, an act done by any person and the act eventually stops or did not able to get completed due to unforeseeable circumstances, then that particular act is called attempt.
- (2) Aman Kumar v State of Haryana¹⁸⁴: In this case, the court held that the word Attempt can be used in general sense or in ordinary terms as well. The apex court also tried to provide difference in between preparation and attempt in this case.

¹⁸⁰ Indian Penal Code, Section 511, No. 45, Acts of Parliament, 1860 (India).

¹⁸¹ Indian Penal Code, Section 307, No. 45, Acts of Parliament, 1860 (India).

¹⁸² Indian Penal Code, Section 309, No. 45, Acts of Parliament, 1860 (India).

¹⁸³ Koppula Venkata Rao v. State of Andhra Pradesh, Appeal (crl.) 84 of 1998.

¹⁸⁴ Aman Kumar v. State of Haryana, Appeal (crl.) 1016 of 1997.

- (3) Commonwealth v. Hamel¹⁸⁵: The honourable court in this case is of the view that proximity test takes into account the work which is yet to be done and not the work which is already completed by the wrongdoer. The court tried to analyse the same principle in this case and hence gave the verdict.
- (4) A Theory of Criminal Justice¹⁸⁶: The author Gross, in his book tries to evaluate and explain different theories related to crime and criminal justice system. Along with this, the author also explained the term attempt and the reason due to which any attempt to commit any crime should be punished by the authorities.
- (5) Attempt to Commit Crime¹⁸⁷: The author Gauraw Kumar in his paper tried to define attempt, show different types of attempt and also he provided the test which is used to differentiate between attempt and preparation. Not only this much, the author also delivers different penal provisions for attempting different crimes.

PART B

ATTEMPT UNDER INTERNATIONAL PANAROMA

An Inchoate crime is the type of crime which is just kicked off or the crime which is in the nascent and the budding stage. The principle feature of the inchoate crime is that it can be abandoned without finishing it or it can also be deserted at any moment. Similarly, talking about attempt, it is also a type of inchoate crime. Attempt means putting efforts in order to complete any work and it can be of any type either legitimate or illegitimate. If the act for which one person is putting efforts is illegal then the person is liable as he attempted to commit the crime. Thus, we can say that attempt is illegitimate and any person who tries to commit

any offence and put efforts for the same and still failed in the completion of that offence, than the person is liable for attempt to commit that offence.

Initially, Attempt was not considered as any type of crime world wide. But, as the time passes the lawmakers, legislators and the bureaucrats of different countries feels the need of the proper legislation for the attempt as well. In the continuance of these all events, the cases also started coming up in front of the courts for the attempt in the country of United Kingdom. The first and the landmark case for the offence of attempt in the court of England was REX v. Scofield. In this case, the honourable court for the very first time held any person guilty for the offence of attempt to burn the house of the owner. Soon after all these, another few cases started coming up in front of different benches of different level of courts and thus the laws were finally made by the law makers and hence attempt is also categorised as a type of offence now. Although, with the passage of time, we made ample developments in different fields and we become modern but still the word attempt despite of so much debate and arguments, is not defined anywhere under any penal laws of the world.

ATTEMPT UNDER INDIAN PANAROMA

Commonly, a wrongful offence is said to be committed if it goes through the four consecutive and succeeding stages. The four stages in the commission of the wrongful offences are Intention, Preparation, Attempt and Commission of the crime.

Here, before going through the deep analysis of Attempt, we need to understand that Intention is equivalently vital for the commission of any type of offence. If the intention or the desire to commit any crime is absent then the wrongful act cannot takes place and hence the crime do not happens. Thus, the guilty intention or the Mens rea is very much essential for any offence to takes place. Now, along with the intention we

¹⁸⁵ Commonwealth v. Hamel, No. 99 -P- 913

¹⁸⁶ A Theory of Criminal Justice, Hyman Gross, 540 pages, Oxford University Press Inc.

¹⁸⁷ Attempt to Commit Crime, Gauraw Kumar, i Pleadings (Law Sikho)

know that preparation should be done for commission of any kind of offence whether small or big one. Preparation here in the penal laws refers to the making of necessary arrangements for the commission of the crime. Both intention and preparation to commit any offence or wrongful act is not punishable though any laws in general but there are some exceptional situations present in which any person who is preparing to commit several types of offence like waging war, dacoity, forging currency notes can be punished. Now, once the preparation is made for the commission of offence then the person would definitely go for the attempt to commit any crime. Attempt, we can state that, is the direct crusade towards the commission of the wrongful offence. Also, an important point to note here is that, a person who is carrying out the crime must fail in the act then only his act led to the attempt of the crime. Here the most debate subject matter is where the preparation ends and the attempt starts. It is because both of them are very similar in nature and sometimes there are lots of confusion in deciding the case matter and hence awarding the judgement.

Therefore, to clarify the gap and to draw the rigid line in between preparation and attempt to commit the crime, the court of law provided several tests which are listed and briefed below:

- The Proximity Rule / Test – This rule is based on the principal that how much work a person has to do to complete the wrongful offence. The court through this principal didn't take the cognizance of the work done, rather the court will observe how much work has to be done by the wrongdoer for the commission of the offence.
- The Rule / Test of Locus Poenitentia – This rule applies to those persons who at the very last moment changes their mind to commit any wrongful offence. Although the person has already made all the preparation for the commission of

crime but did not attempted to do so. Therefore, in these cases, the honourable court ruled that the person is not liable for any criminal act.

- The Equivocality Rule / Test – This test works on the situation that if any person who intended to carry out any crime, attempted to commit that crime without any slightest hesitation or uncertainty, then the person is liable for attempt to commit the crime. The test of Equivocality is one of the most unswerving and consistent test to differentiate in between preparation and attempt.
- The Impossibility Rule / Test – The test of impossibility is based on two different assumptions. The first one is that, if any person who tries to commit any act which is impossible because of the facts not acknowledged by the person, then the person can be held guilty for the attempt to commit crime. Whereas according to second assumption, if any person attempted to commit any act which is not illicit but the person contemplates that the act is illegitimate, then the person cannot be held liable for the act which he performed.

Now, apart from the different tests laid down by the court to decide the matter on the clear basis, the penal law of India which is termed as Indian Penal Code, passed in the year 1860, also provides some set of sections to punish the offence of attempt. The punishment for the offence of attempt is not as simple and unpretentious as we all think so. It is little complicated but interesting as the same point. The attempt by the penal law of India categorised primarily into three different parts. The punishment for all these three distinctive parts varies from each other, as these categories are formed on the measure of grievousness of the offences. At the very first place, the penal code categorises the offence of attempt in such a manner in which the same

punishment will be awarded to the offender if he or she committed the act or just made an attempt to commit the act and hence failed in doing so. Therefore, at the very first place, we can say that there will be same punishment for both attempt as well as commission, and the few illustrations are sections like Section 121¹⁸⁸ of the IPC which deals with Waging or attempting war against the government along with other sections like section 124¹⁸⁹ of IPC which deals with Assaulting President or Governors, Section 124 A¹⁹⁰ which deals with sedition, Section 391¹⁹¹ of IPC deals with Dacoity and many more such sections. Now, moving on to second category in which IPC deals separately with the offence of commission and attempt. The distinctive sections are provided under the act and hence the punishments also varies. The most prominent example of this category is Section 307 of IPC, 1860, which deals with attempt to commit murder of any person. Section 307 particularly deals with attempt only whereas different section numbered 302¹⁹² deals with the chastisement for murder. Along with this, there is one more type of offence for which only attempt is indictable and that is offence of attempt to suicide. Here, in this case if any person attempted to commit suicide and failed in doing so, then the person will be booked under section 309 of Indian Penal Code. Last of all, moving on to the category in which there is one section numbered 511, dealing with all different type of attempts whose punishment is not stated in any other section of penal law. Under section 511, there are punishments provided for the attempt of various different offences. The main principal on which this section works is that, for the offence of attempt, the section provides exactly half of the punishment which is entitled for the commission of that particular offence. Hence, we can say that section 511 provides half

punishment for the offence of attempt than that of commission of the illegitimate criminal act.

Separately from all these, tests and types of attempt, another interesting factor to note here about attempt is, it is also known as inchoate crimes and the principle feature of this type of crime is it is incomplete or half finished by the wrongdoer. Inchoate crimes can never be completed and if the person succeeded in the attempt then the crime is not considered as a Inchoate type of crime. Thus, we can conclude by stating that, even if any person tries to commit the wrongful act and failed in doing so, then also the person will face charges for the inchoate crime or the offence of attempt under provision of penal law of India.

JUDGEMENTS BY HONOURABLE COURT OF LAW (CASE ANALYSIS)

The offence of Attempt is widely discussed and debated in Indian courts of law and hence many different principles comes out of the decisions pronounced by the courts in different matters related to attempt. Some of the landmark and important case laws related to the attempt are, Queen v. Dayal¹⁹³ – In this case, the honourable justice of a court stated that, if any person got convicted for the offence of attempt of any crime then the court should be of the clear mind that the attempt has been made for the commission of that particular offence only. This should be very clear with every judge stating their orders in the case of attempt. In the case of Narayandas v. State of West Bengal¹⁹⁴, the apex court sustained the decision of lower court that, a person who illegitimately without the permission of concerned authorities carried Indian National Currency outside India and hence held guilty for the attempt to commit any severe crime. The court in this case also marked that the person crossed the stage of preparation of the crime and hence attempted to commit the crime.

¹⁸⁸ Indian Penal Code, Section 121, No. 45, Acts of Parliament, 1860 (India)

¹⁸⁹ Indian Penal Code, Section 124, No. 45, Acts of Parliament, 1860 (India)

¹⁹⁰ Indian Penal Code, Section 124 A, No. 45, Acts of Parliament, 1860 (India)

¹⁹¹ Indian Penal Code, Section 391, No. 45, Acts of Parliament, 1860 (India)

¹⁹² Indian Penal Code, Section 302, No. 45, Acts of Parliament, 1860 (India)

¹⁹³ Queen v. Dayal, (1869) 4 B.L. R.A. Cr. P. 55

¹⁹⁴ Narayandas v. State of West Bengal, AIR 1959 SC 1118.

The last and the most astonishing case is of R. v. Nidha¹⁹⁵ – The Honourable H.C. of Allahabad put forward the opinion that applicability of section 511 is not permissible on the cases which is primarily related to attempt to murder. The reason behind this judgement is, Indian Penal Code provides the punishment for attempt to commit murder in section 307. Therefore, the honourable bench in case clearly mentioned that a general rule for attempt cannot be applied to those matters for which special provision is present.

CONCLUDING REMARK

Attempt, in the common term means efforts to complete any work and as soon as we succeed in that efforts then it is known as completion of the work or the commission of the task. This mechanism is followed world wide and the same applies to the field of law as well. Here, if someone tries to commit any crime and putting efforts for the same then it is known as attempt to commit the crime and as soon as the person succeeded then the commission of crime takes place. In India, Indian Penal Code primarily deals with the criminal offences and provides punishments for the same. Similarly, Attempt although not defined anywhere in Indian laws, but IPC provides the punishment for the wrongdoer under various different section of penal code. Also, an important point to note here is that, the punishments are not particularly defined under section of attempt. The punishments for attempt of different crimes varies accordingly with the original punishment of that particular crime. As we all know that the punishment for the offence of attempt should be less than the punishment for the actual commission of offence and hence the section of attempt in IPC works on the basic principle that the punishment for the attempt is one half of the original punishment. Therefore, we can say that, although the punishments are provided under different sections of IPC for the offence of attempt but the punishments should be more

precise and it should be properly fixed by some appropriate and more reasonable measures. Last but not the least, the offence of attempt should be defined clearly under the penal laws and it is the need of time as well because the gravity of the offence is increasing with the passing of each moment.

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¹⁹⁵ R. v. Nidha, (1892) 14 All. 38