

# **DIFFERENCE BETWEEN PREPARATION AND ATTEMPT- EXPLAINED**

*Written by **R Rohan***

*4th Year BA LLB Student, Hidayatullah National Law University, Naya Raipur, India*

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## **INTRODUCTION**

As the word might suggest to a common mind, 'Attempt' connotes inceptive efforts made by an individual towards attainment of a desired objective. In legal parlance, an act of crime is said to be attempted when a person intends to commit a crime with all the preparation required for commission of the crime and further partly executes it but fails to consummate.

Indian Penal Code doesn't define the term 'Attempt'. A provision dedicated to deal with any attempts of crime for which no express provision has been made by the Indian Penal Code is contained in section 511 of the code.

The reason why an attempt is required to be penalised albeit the crime in itself has not been committed is because the idea of an attempt being made to conclude a crime creates a havoc in the minds of people that constitute a society. Another reason being the moral guilt of the offender remains the same irrespective of whether the attempt is successful or not.

## **INCHOATE CRIME**

The word 'inchoate' connotes to anything that is not fully developed but is under process of formation. Similarly inchoate crimes are those which fall under the category of crimes even though outcome desired by offender is not accomplished. Therefore, the offender would be guilty of crime even if the offence initiated by him doesn't result in the penultimate act.

Actus reus and Mens rea, the action/conduct element of a crime and intentional knowledge of the wrongdoing respectively, are the essentials for a commission of any crime. In case of inchoate crimes, the Actus reus may fall short of completion but Mens rea would be considered completed in an attempt to commit crime as the attempt in itself is towards furtherance of completion of a crime.

The usage of the term 'inchoate' has been a matter of dispute for many critics as it is believed by them that offences like attempt, incitement and conspiracy are in itself complete even though they are the rudiments of achieving end results of a crime upon complete commission of the same.

### **SECTION 511 OF THE INDIAN PENAL CODE, 1860**

Section 511 of the Indian Penal Code, 1860 deals with "*Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonments*" and defines the same as follows: -

*"Whoever attempts to commit an offence punishable by this Code with<sup>i</sup> [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with<sup>ii</sup> [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both."<sup>iii</sup>*

### **DIFFERENT PHASES OF AN OFFENDER THROUGHOUT THE COMMISSION OF CRIME**

For a commission of crime to be regarded as complete, the following four conditions are required to be met:-

- Intention to commit a crime
- Preparation in furtherance of the crime
- Attempt to commit the crime
- Actual Commission of the crime upon successful attempt

### ***Intention***

When it comes to the commission of a crime, the intention of the offender is of the utmost importance as it marks the inception of the idea of commission of an offence. It is a factor that cannot be deduced by scouring the brain of the offender. It is more of a psychological factor and not a tangible physical one and hence it becomes difficult to bring out the actual guilt of the potential offender just by formation of an intention and therefore it would not be sufficient to penalise the offender on mere formation of intention. Depending upon the severity of some offences and the havoc it could cause, even the intention to carry out an offence of such nature has been made punishable. The exceptions to the where 'intention to commit a crime' has been made punishable are as follows: -

1. Sedition (Section 124A)<sup>iv</sup>
2. Waging a war against the State (Section 121, 122, 123)<sup>v</sup>

### ***Preparation***

After the formation of intention, the next probable action of the offender would be arrangement of resources to formulate and carry out the offence. Preparation cannot be conclusive of an offence and hence it becomes difficult to prove the guilt of the offender at this stage too. To understand this let us consider that 'A' buys scissors to stab 'B' but later his intention to stab 'B' changes and he uses the scissors to trim his beard. In such a case, A cannot be held liable for gathering the means and measure to commit an offence therefore mere preparation of a crime is not enough to penalise the potential offender. Just like few

exceptions discussed in the stage of Intention, a few of the exceptions exist for Preparation too which are as follows: -

1. Collecting arms, etc., with the intention of waging war against the Government of India (Section 122)<sup>vi</sup>
2. Preparation to commit the offence of Dacoity (Section 399)<sup>vii</sup>
3. Preparation to counterfeit coins and government stamps

### ***Attempt***

After the intention to commit an offence is formed and when the preparation to execute the same has been done, the subsequent step that follows is the actual execution in form of any act that would result in the commission of crime if not hindered by any other force whatsoever. The execution may even be partial in order to prove the guilty mind of the offender, because as and after an execution is made, be it even partial there can be no change in the mind that has already carried out an act of guilty nature. Hence attempt to a crime is punishable.

As observed in the case of *Aman Kumar And Anr vs State Of Haryana*<sup>viii</sup>, “An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.”

In *Abhayanand Mishra vs The State Of Bihar*<sup>ix</sup>, the Apex Court laid down the essentials of the attempt as follows:-

- i) Mens rea to commit the intended offence has to be proved on part of the accused

- ii) An executory step must have been taken (that is beyond the preparatory measures taken but less than the actual commission of the whole crime)
- iii) The attempt must not result in actual completion of crime

In *State of Maharashtra Vs. Mohd. Yakub*<sup>x</sup>, it was observed by the Supreme Court of India that ‘attempt to commit’ as the last proximate act that an offender does towards the completion of a crime, the completion of offence being interrupted by forces beyond the offender’s control.

A broad distinction between ‘preparation’ and ‘attempt’ has also been laid down in the same aforementioned case. It was observed that an attempt initiates on the completion of preparation. A person commits the offence of attempt to commit a particular offence when accused (i) intends to commit a particular offence, (ii) he having made preparation and with the intention to commit an offence, (iii) does an act towards its commission, 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 crime.

#### ***Actual Commission of Crime***

After when the attempt is made to commit a crime/offence and it is not hindered by any force and results in accomplishment of an offence, then as a result of actual commission of crime, criminal liability would be attracted on the offender as per the provisions laid down in the Code.

### **TESTS EVOLVED DURING THE COURSE OF TIME FOR DETERMINATION OF DISTINCTION BETWEEN ‘PREPARATION’ AND ‘ATTEMPT’**

Various tests have been evolved throughout the time in cases that seek to draw a fine line between the phases of ‘Preparation’ and ‘Attempt’. Let us discuss the same as follows: -

***The Proximity Rule: Proximity with regards to action and time or intention***

The Proximity rule emphasises on the offender's propinquity to the completion of the crime. Specifically, the lacuna between preparation and the completion of offence is required to be measured under this rule. In case of *R Vs. Taylor*<sup>xi</sup>, A bought a matchstick with the intention of lighting it near a haystack which he eventually does. After lighting it, he decided to extinguish it as he thought someone might be keeping an eye on him throughout the act. While deciding the events of the case it was observed that even if A did stop the fire but he cannot be exculpated of the responsibility as he anyhow did initiate the fire. The lighting of the matchstick was the requisite Actus Reus for him to be prosecuted for an attempt of crime.

In the remarkable case of *Commonwealth Vs. Jerry Hamel*<sup>xii</sup>, it was mentioned that the proximity rule deals with what remains to be done and not what has already been done.

***The Doctrine of Locus Poententiae***

The underlying doctrine deals with instances where the offender changes his mind after making all the necessary preparation to carry out the offence. In such a case where the offender withdraws his intention after making all the necessary preparation, prior to commission of their actual offence, it would attract no criminal liability on the offender.

Special reference to this doctrine has been made in the case of *State of Maharashtra Vs. Mohd. Yakub*, whereby the court observed that the doctrine in question is not a general principle and the usage may carry from case to case and therefore the courts are not bound by this doctrine for its strict application.

***The Equivocality Test***

This test seeks to differentiate 'preparation' and 'attempt' whereby the offender's conduct in itself portrays his intention to undoubtedly carry out a criminal act, in such a case the conduct per se is the attempt to commit that particular crime.

In the case of *State Vs. Parasmal & Ors.*<sup>xiii</sup>, it was observed that when a person intends to commit a particular offence, and then he conducts himself in such a manner which clearly

indicates his desire to translate the intention into action, and in pursuance of such an intention if he does something which may help him to accomplish that desire, then it can safely be held that he committed an attempt to commit a particular offence.

### ***The test of an Impossible Act***

The test of Impossible Act tries to analyse the attempt to an offence by considering the viability of the performance of the act. For example, 'A' fires a shot at 'B' with the intention to kill him. But since he wasn't aware that he was actually firing blank cartridges, thus 'B' survives the shot yet 'A' would attract criminal liability of attempting the act. Similarly, 'A' plans to rob B's storehouse and prepares everything to commit the crime but on reaching the storehouse, he finds it empty yet 'A' could be held guilty of attempt as he did execute the plan to rob after making necessary preparation for the same and it is a totally different thing that the storehouse turned out to be empty.

In the case of *Munah Binti Ali v Public Prosecutor*<sup>xiv</sup>, A woman attempted to abort another woman and the other woman who is the victim in this case raised a complaint alleging that she tried to get her aborted. Upon contention made by the accused and further findings it was observed that the victim was in fact not pregnant. The court while deciding the case rejected her contention taking into account the illustrations contemplated with the Section 511 of the Indian Penal Code, 1860.

## **CONCLUSION**

There are different stages of crime i.e. Intention, Preparation, Attempt and Accomplishment and the law meticulously draws a line between the ones which are to be penalised and the ones which are not. The necessity of drawing a line between them is meant to ensure that an individual may not be punished for mere swing of mind and also, he may not go unpunished for attempting to commit an offence that might eventually constitute an actual crime if accomplished. The way distinctions have been made, it can be said that a crime is not an act or omission of an act altogether. Attempt of certain offence creates equally appalling effect because one would

always be left with the possibility of what if the act would've reached the offender's desired objective and therefore actual commission is not mandatory to prove the guilty mind of the offender. Section 511 of the Indian Penal Code, 1860 thus lays down the provision for even a mere attempt to commit a crime.

## ENDNOTES

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<sup>i</sup> Subs. By Act 26 of 1955, section 117 and Such, for transportation for life(w.e.f. 1 January 1956)

<sup>ii</sup> Subs. By Act 26 of 1955, section 117 and Such, for certain words, w.e.f. 1 January 1956)

<sup>iii</sup> The Indian Penal Code, 1860, No. XLV, 1860

<sup>iv</sup> The Indian Penal Code, 1860, No. XLV, 1860

<sup>v</sup> The Indian Penal Code, 1860, No. XLV, 1860

<sup>vi</sup> The Indian Penal Code, 1860, No. XLV, 1860

<sup>vii</sup> The Indian Penal Code, 1860, No. XLV, 1860

<sup>viii</sup> 4 SCC 379 : 2004 SCC (Cri) 1266 : AIR 2004 SC 1497 : 2004 Cri LJ 1399

<sup>ix</sup> 1961 AIR 1698, 1962 SCR (2) 241

<sup>x</sup> AIR 1980 SC 1111 : (1980) 3 SCC 57

<sup>xi</sup> 1895 IF & F 511

<sup>xii</sup> 264 Mass. 564

<sup>xiii</sup> AIR 1969 Raj 65

<sup>xiv</sup> [1958] 1 MLJ 159