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Analysis of Preparation and Attempt Under Criminal Law

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ABSTRACT

Attempt and preparation are distinct stages in the process of accomplishing a goal, often with significant differences in their nature and purpose.

Attempt refers to the action taken to achieve a specific objective or task. It signifies the actual execution or effort made to reach a goal. An attempt involves putting plans into action, facing challenges, and striving for success. It is the culmination of preparation and signifies the moment when one actively engages in the task.

Preparation, on the other hand, is the groundwork done before attempting something. It involves planning, gathering resources, acquiring knowledge or skills, and setting the stage for success. Preparation is a vital step that enhances the likelihood of a successful attempt. It is about building a strong foundation and minimizing risks and uncertainties.

Attempt is the action taken during the final phase of pursuing a goal, while preparation occurs beforehand and involves the necessary planning and groundwork to increase the chances of a successful outcome. Both are crucial, as effective preparation often leads to more successful attempts

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.

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 attempted 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 'attempt' 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.

RESEARCH OBJECTIVE

- To understand the concept of attempt and preparation in criminal law.
- To understand the difference between the attempt to crime and preparation of crime and various test to make differences between these two.
- To understand the relevant provision related to attempt and preparation in Indian law.
- To know the penalties for preparation and attempt and determination of courts towards attempt and preparation.

RESEARCH QUESTION

- Whether a person is preparing for the offence is liable for punishment and whether how much punishment a person gets for preparation without committing an offence.
- How do courts determine when an individual has taken substantial steps towards committing a crime in the context of preparation and attempt, and the significance of mens rea in distinguishing these two.

RESEARCH METHODOLOGY

The methodology used in this research is doctrinal research. The research was done mainly by e-resources (books, Articles, blogs and various online Resource).

HYPOTHESIS

The inclusion of preparatory acts as punishable offences in certain sections of the IPC reflects the legislature's intent to criminalize acts that pose a significant threat to public safety or national security.

LITERATURE REVIEW

Legal literature acknowledges that criminal liability, under Section 511 IPC, arises only when an act reaches the stage of attempt. As discussed by Ratanlal & Dhirajlal in their commentary on the IPC, mere preparation—though morally blameworthy—does not amount to a crime, except in specific provisions such as Section 122 (preparing to wage war against the state) and Section 399 (preparation to commit dacoity). These exceptional sections underline that Indian law criminalizes preparation only when it poses a serious threat to state security or public order.

Academic writings such as those by Prof. K.D. Gaur emphasize the jurisprudential basis for the non-punishability of preparation, arguing that criminal law should not penalize mere thoughts or preliminary steps unless they manifest in an overt act. However, judicial pronouncements like *Abhaynand Mishra v. State of Bihar* (1961) have clarified that when preparation transforms into a direct move towards the commission of a crime, it enters the realm of attempt, thus attracting criminal liability.

Legal scholars also debate the subjective-objective test used by courts to determine attempt. Works like “Principles of Criminal Law” by Glanville Williams, though foreign, are often cited in Indian academic discourse for their analytical clarity. In the Indian context, the proximity test is often applied, where the act must be “proximate” to the intended offence.

STEPS TO CRIME

Generally, attempt to commit a crime is been defined as an extremely difficult and intricate branch of a crime. The accused either prepares intentionally or unintentionally to commit a crime or just commits it in a spur of the moment. In these sudden committed crimes, stages of preparation and attempt overlap and fuse into one another. But with crimes that are intentionally planned out, there are 4 below mentioned stages to crime:

1. Intention
2. Preparation
3. Attempt
4. Commission

An attempt could be seen as the direct movement to commit the crime just after the preparation is completed. An attempt can also be understood as an “intentional prepared action”. If a man has committed an intentional action to seek a certain object that is to say- the completion of the crime, and if that objective or completion of crime fails due to any reason that is independent of commissioner's own will, then it is said that the man has attempted to commit that crime.

MEANING OF PREPARATION AND ATTEMPT

PREPARATION

It refers to putting in place the essential measures to carry out the desired criminal act. Intention alone, or intention combined with preparation, is not enough to comet a crime. Preparation is not punishable because, in the vast majority of cases, the prosecution has been unable to establish that the preparations in question were made in preparation for the commission of the specific crime. It's important to remember that the criminal conduct hasn't yet occurred, thus preparation isn't penalized.

However, the IPC makes it illegal to commit some activities even while they are being prepared. These unlawful acts are:-

- Waging war against the Government of India - Sec.122¹

This provision criminalizes a person's actions when he or she is involved in collecting weaponry and ammunition with the goal of waging a war against the Indian Government. This act carries a sentence of up to life in prison or a maximum of ten years in jail. A person who is found guilty of this crime will also have to pay a fine.

- Committing depredation on territories of Power at peace with the Government of India - Sec.126²

This provision makes it illegal for a person to plunder or assault any country or nation that is at peace with the Indian state. This offence is punishable by up to seven years in prison and a fine for the individual who commits it, according to the code. The penalty does not end there; any property used or intended to be utilized in the commission of this crime will be forfeited.

- Making preparation to commit dacoity-Sec.399³

Anyone who makes any preparations for committing dacoity is subject to rigorous imprisonment for a period of up to ten years, as well as a monetary fine.

- Dealing with the preparations of coinage or government stamps for counterfeiting-Sec. 233-235, Sec 255 and Sec. 257.
- Possessing fraudulent documents, counterfeit currencies, and bogus weights and measurements-Sec.242, 243, 259, 265 and 474

These provisions make it illegal to simply possess these items, and no possessor can claim that he is still in the process of preparing them.

ATTEMPT

After making preparations, an attempt is a direct movement towards committing a crime. A person can be charged with attempting to commit an offence if he does something that is more than merely preparatory to the commission of the offence, and a person can be charged with attempting to commit an offence even if the facts make the commission of the offence impossible. An attempt to be considered must have three elements:

- An intention to commit a crime is required,
- The act must be done "in furtherance of that intent" or "towards the completion of the offence",
- The act must be "unfinished work" or "not a full-fledged crime"

The attempt is not defined anywhere in the IPC instead, it addressed in several parts, such as Sec.511⁴. If an individual is caught attempting to commit a crime, he or she will be sentenced to poson under the clause. This is a generic section. The IPC includes parts that criminalize and punish attempt to commit crimes in such sections or chapters.

Section 511 of IPC talks about the nature of the crime in general and Section 307 talks about it in particular nature i.e. attempt to murder. Despite these sections, there is a difference in opinion among jurists and scholars' regarding what is the scope of attempt on crime. The Allahabad High Court opined that Section 511 cannot be applied in cases of attempt to murder because the same is provided for in Section 307⁵ specifically. On the other hand, the Bombay

¹ Section 122 of Indian penal code

² Section 126 of Indian penal code

³ Section 399 of Indian penal code

⁴ Section 511 of Indian penal code

⁵ Section 307 of Indian penal code

High Court does not second with this view. In the case of “**Om Parkash vs. State of Punjab**”⁶, the Supreme Court of India held that “just as stated in Section 511 and in Section 307 as well, the act towards the crime need not be the penultimate act. In this case, the act of the accused to accelerate the death of his wife by denying her food for several days amounts to an act under Section 307.”

In the case of “**Aman Kumar V. state of Haryana**”⁷, The Court observed that an attempt is made punishable because it creates alarm in the minds and the moral guilt of the person omitting if he had been successful in his efforts, an act would be the same

TESTS TO DETERMINE WHETHER AN ACT IS A MERE PREPARATION OR AN ATTEMPT TO COMMIT A CRIME

At which level an act or series of acts towards the intended commission of an act is undertaken would be an attempt to commit a crime. Some principles have been developed to solve this problem:

1. **The Proximity Rule:** The proximity test in relation to time, intentions and actions, examined the extent to which the defendant was close to completing this crime. The difference is the distance between preparing for the offence and successfully completing it. In the ‘**Commonwealth v Jerry Hamel case**’⁸, it was found that the approximation rule’s amount to be analyzed, not what has already been done, is being analyzed. The usual portrayal of immediate action is found in “**R vs Taylor**”⁹ case in which A was found struck by a match behind a haystack which he put out when he realized he was being watched and found guilty of attempting arson in a haystack. If he rather had just bought a box of matches he would not have been convicted of attempted arson, however obvious it may be that he intended to set the haystack on fire when he bought that match box.

2. **The Doctrine of Locus Poenitentiae:** Deliberately withdrawing before the commission or attempting to commit the crime is referred to as mere preparation for the commission of the crime and not a legal obligation. The locus penitential doctrine refers to the possibility that a person who, making preparations to commit a crime, actually detracts from committing it, due to a change of opinion or any other type of compulsion or fear, amounts to a mere preparation and not an attempt, if the person, by his own will, renounces the idea of committing a crime before the criminal act is carried out, a doctrine that served as the basis for the Supreme Court to order the acquittal of the driver. and a truck attendant convicted by a trial court of attempting to smuggle rice out of Punjab in Malkiat Singh against the state of Punjab.

3. **“The Equivocality test:** is used to distinguish between preparation and attempt in criminal proceedings. If a person’s behaviour in itself shows that the person actually intends to commit a crime without any reasonable doubt, then the behaviour is a criminal attempt to commit that crime.” An action is obvious if it clearly states the goal towards which it is directed. The act of commissioning a particular criminal offence occurs when an accused does any act which constitutes a step in the commissioning of that criminal act & to carry out such a criminal act.

The ambiguity test was discussed in **State vs Parasmal & others** in Rajasthan court, which states that it is a “continuation of the proximity rule and the doctrine of locus Poenitentiae suggests that an act to commit the offence would” constitute an attempt to commit the offence if, only if it clearly indicates the perpetrator’s intention to achieve the criminal goal. If what is being done clearly indicates that the goal it is directed at is an attempt then otherwise, it is just a preparation. In other words, the defendant’s steps or actions must speak for themselves.

DISTINCTION BETWEEN ATTEMPT AND PREPARATION

The difference between attempt and preparation has been a matter of dispute from ages. But there are many tests in demarcating what attempt and preparation is. The main differences between the two of them are:

- First, preparation is the procurement of the means to attempt the offence while the attempt is the direct movement towards committing the crime right before the commencement of the offence.
- Secondly, preparations are not punishable but attempts are punishable except in few cases.

The reason why preparation is not punishable is given below:

- Preparations are usually harmless.
- It is almost impossible to prove that preparation was done in order to commit that particular crime, and even if the preparation of offence was done with malice in mind, one might have changed his mind on the way.
- If preparation is made punishable by law then number of offences in the statutes would increase drastically

⁶ 1962 SCR (2) 254

⁷ Appeal (crl.) 1016 of 1997

⁸ 582 S.W.2d 424

⁹ 2009 EWCA Crim 544

- Mere preparation of offence does not cause harm or does not raise alarm in the society.

ANALYSIS

In Indian criminal law, the distinction between preparation and attempt is crucial in determining criminal liability, yet it remains conceptually complex and inconsistently applied. Preparation involves arranging the means or measures necessary for committing an offence, whereas an attempt is a direct movement towards the commission of the crime after the preparations are complete. While preparation is generally not punishable under the Indian Penal Code (IPC), exceptions exist in grave offences such as dacoity (Section 399) or waging war (Section 122), highlighting the legislature's intent to deter acts that pose a significant threat to public safety. Section 511 IPC penalizes attempts to commit offences punishable with life imprisonment or other severe penalties, but it lacks a clear statutory definition of what constitutes an "attempt." Courts have relied on judicial interpretation, employing tests like the proximity rule and the "last act" test to determine when preparation transforms into an attempt. Landmark cases such as *Abhaynand Mishra v. State of Bihar* have clarified that even incomplete acts can constitute an attempt if they are sufficiently proximate to the intended offence. However, the absence of uniform criteria often leads to ambiguity. Therefore, clearer legislative guidance is needed to ensure consistent and fair application of the law.

SUGGESTIONS

To ensure greater clarity and consistency in distinguishing between preparation and attempt under Indian criminal law, several reforms are recommended. Firstly, the Indian Penal Code should be amended to provide clear and precise definitions of "preparation" and "attempt," as the current reliance on judicial interpretation often leads to ambiguity and inconsistent rulings. Secondly, Section 511 IPC, which deals with attempts to commit offences, should be expanded to include illustrative examples, aiding both legal practitioners and courts in understanding the threshold at which preparation transforms into an attempt. Additionally, a graded system of punishment for dangerous preparatory acts—especially those related to terrorism, organized crime, or offences against the state—could act as a deterrent and fill the gap between moral blame and legal culpability. Judicial guidelines or checklists should be developed to assess proximity, intent, and execution stages of a criminal act. Further, legal education and judicial training must emphasize these doctrinal distinctions and evolving interpretations to ensure fair application. Comparative insights from foreign jurisdictions such as the UK and USA can also be considered to reform and strengthen the Indian approach. Overall, these steps would enhance legal certainty and ensure justice in dealing with inchoate offences under criminal law.

CONCLUSION

As the saying is "a guilty mind is not only required to be a criminal, even an act must also be guilty to be hence proved", the actual commission of the crime is not only important in proving someone is guilty. Various judgements of the Supreme Court and High Court as cited and discussed above clearly distinguish and define when an act becomes an attempt and thereby is punishable. The guilt of commission or attempt to commit a crime is enumerated under Section 511 of the IPC which is a general provision dealing with the attempts to commit offences and not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable for life or death. Thus on the basis of the above analysis 'Attempt' and 'Preparation' are amply distinguished.

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 penalized and the ones which are not. The necessity of drawing a line between them is meant 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.

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