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COURSE NAME- LLB, Ist Sem

SUBJECT CODE-LLB-103

## **LECTURE-43**

### **[III] Attempt to Commit Crime- SECTION 511 OF IPC**

Attempt' in general meaning is said to be an effort to achieve tasks or activities. "An 'Attempt to crime' is when someone tries to commit a crime but fails. 'Law of Attempt' under IPC prevents offenders from attempting the offence again and helps keep society safer.

'Attempt' is not defined in the Indian Penal Code. Section 511 of the IPC only dealt with punishment for attempting to commit offences.

'A' makes an attempt to steal some valuable things by breaking a box and finds after opening the box, that there is nothing in it. In this case, there is no crime occurred but it is punishable under the Indian Penal Code because it is considered as an "Attempt to Commit a crime".

What is an Attempt to Commit a Crime?

Attempt to commit a crime occurs when a person makes a proper mindset to do a criminal act and put a step forward for fulfilling by arranging the means and methods necessary for the commission of that crime but fail to do so.

A person with a proper mindset to commit a crime and also put a step forward to commit that crime by arranging the means and methods necessary for the commission but fails. Then we will say that the person has attempted to commit a crime.

Why is an Attempt to Commit a Crime Punishable?

An attempt to commit a crime is a crime under the Indian Penal Code. Every attempt, falls short of success must create a threat in the mind of people which by itself is an injury and the moral guilt of the offender is the same as if he had succeeded. According to Section 511 of the IPC, only half of the punishment is awarded because the injury is not as great as if that crime had been committed.

An Attempt to Commit a Crime – An Inchoate Crime?

The term "inchoate" means "undeveloped", "just begun", "incipient", "in an initial or early stage".

Inchoate offences cannot be understood in isolation and must be read in conjunction with substantive offences. A characteristic feature of these offences is that they are committed even if the substantive offence does not reach a stage of completion and no consequence ensues.

Thus, if the offence of crime has not been completed, even then a person can be guilty of an attempt to commit a crime.

Actus reus and mens rea are essentials for a commission of any crime.

Actus reus: Action or conduct which is an element of a crime,

Mens rea: The intention or knowledge of wrongdoing that constitutes part of a crime.

Here, actus reus to commit a crime is not completed but mens rea to commit the same crime is completed in an attempt and therefore attempt itself would be said to have been committed at this stage.

However, some scholars disagree with the usage of the term “inchoate” because according to them, offences like a conspiracy, attempt, and incitement are complete in themselves although they form steps in the process of reaching an end, that is Actual commission.

#### The Indian Penal Code 1860 and the Law of Attempt

The word attempt is not defined in IPC but there are some cases in which the Supreme Court has tried to clear the concept of attempt.

In the case of Koppula Venkata Rao vs State of A.P. the Supreme Court has said that ‘Attempt’ should be taken as ordinary meaning. The ordinary meaning of ‘Attempt’ to commit an offence is an act or 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.

Section 511 of IPC deals with “Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonments”.

This section deals with the one-half of imprisonment for life or one-half of fine as provided for offences or both.

#### Stages in the Commission of an Offence

There are four stages in the commission of an offence:

- **intention** to commit an offence;
- **preparation** to commit an offence;
- **attempt** to commit an offence; and
- the **actual commission** of the offence.

1. Intention: Everyone cannot prove malice by looking at the brains of criminals. It is a psychological factor. It is impossible to know exactly the intention of a person. However, the

acts of people and the context in which they act are often used to clearly indicate the intention of a person. So, it is not punishable.

But there are some exceptions in which 'Intention to commit a crime' are punishable. These exceptions are:

i) Waging war against the Government (Section 121,122,123)

ii) Sedition (Section 124 A)

2. Preparation: Preparation means 'to arrange the means or measure for intending criminal act'. It is difficult to prove that the preparation was made for committing an offence.

For example: 'A' buys a knife for the purpose of killing 'B' but after some time, his intention to kill 'B' has changed and he used that knife in the kitchen. In this way, we can not be held liable for arranging means and measure for murder. So, mere preparation is not punishable under IPC.

But there are some exceptions in which mere preparation is punishable in IPC:

i) Preparation to commit Dacoity (Section 399);

ii) Preparation for counterfeiting coins and government stamps;

iii) Waging war (Section 122).

3. Attempt: Attempts to commit a crime are basically a positive step toward committing the contemplated crime after preparations have been made. The trail cannot be cancelled. Once an attempt is made, the perpetrator cannot change his/her mind and return to its original state without committing a crime.

4. Commission of Crime: The actual commission of the offence leads to criminal liability. If the accused succeeds in his attempt, the offence is accomplished. If he missed then it is considered as an attempt.

"If 'A' shoots 'B' by pistol to kill him. If 'B' dies, then 'A' is liable for murder. If 'B' is injured, then 'A' is liable for Attempt to murder".

"If 'A' makes an attempt to pick the pocket of 'Z' by inserting his hand into Z's pocket. 'A' fails in the attempt in reason of Z's having nothing in his pocket. But 'A' is guilty under Section 511 of the 'Indian Penal Code' because he has attempted to commit the offence by putting a positive step towards the commission of the offence.

## An Attempt to Commit all Offence: Approach of the Indian Penal Code 1860

There are four different ways to deal with an offence in the Indian penal code:

- In some cases, the commission of offences and attempt to commit that offence have been dealt with the same section and the same punishment is prescribed for both. Such provisions are contained in Sections 121, 124, 124-A, 125, 130, 131, 152, 153-A, 161, 162, 163, 165, 196, 198, 200, 213, 240, 241, 251, 385, 387, 389, 391, 394, 395, 397, 459 and 460.
- Attempt to commit offence and commission of the same offence, both have separate punishment in Indian penal code e.g. Section 302 dealt with punishment of murder and Section 307 dealt with an attempt to murder.
- Section 309 dealt with punishment of attempt to commit suicide.
- There are some cases where no specific provisions are made regarding an attempt. Section 511 of the IPC deals with such type of cases, which provided that accused shall be punished with  $\frac{1}{2}$  of the longest term of imprisonment mentioned for the offence or with fine mentioned for offence or both.

## Attempt- Stages in the Commission of an Offence and Essential Elements

An attempt is defined in the case of Aman Kumar v. State of Haryana as follows:

- Attempt consist in it the intent to commit the crime.
- If any person failed to achieve that intention.

## Abhayanand Mishra v state of Bihar

In this case, the Supreme Court has described essential elements of 'Attempt' as follows:

- i) Accused has an intention or means rea to commit the intended offence.
- ii) He has taken a step forward (that is an act or step which was more than preparatory to the commission of the intended offence towards the commission of the contemplated offence).
- iii) He failed to commit that intended offence by any reason.

## **When does Preparation end and Attempt Begin?**

In Aman Kumar v State of Haryana, the Supreme Court held that the word 'Attempt' is to be used in its ordinary meaning. There is a difference between intention to commit offence and preparation. Attempt begins and preparation ends. It means when any step is taken towards committing that offence is considered as ends of preparation and begins of attempt.

## **Tests for Determining Whether an Act Amounts to a Mere Preparation or an Attempt to Commit an Offence**

At what stage an act or series of acts is done toward the commission of act intended would be an attempt to commit an offence. Some principles have been evolved to solve that issue:

- *(a) The Proximity Rule: Proximity in Relation to Time and Action or to Intention?*

The Proximity test examined how much the defendant close to completing that offence. Measured difference is the distance between preparation for the offence and successfully completion of that offence. In the case of Commonwealth v. Hamel, it was held that the proximity rule amount left to be done, not what has already been done, that is analyzed.

- *(b) The Doctrine of Locus Poenitentiae*

It deals with those cases in which an individual made preparation to commit the crime but changes his mind at the end, thereby pulling out at the last instant. Such intentional withdrawal prior to the commission or attempt to commit the act will be termed as mere preparation for the commission of the crime and no legal liability will be imposed.

- *(c) The Equivocality Test*

‘Equivocality Test’ is used to differentiate between preparation and attempt in a criminal case. When a person’s conduct, in itself, shows that the person actually intends to carry out a crime without reasonable doubt, then the conduct is a criminal attempt to commit that crime. An act is proximate if it indicates beyond reasonable doubts what is the end towards which is directed. The Act to commit a specific crime is constituted when an accused person does an act which is a step towards the commission of that crime and doing of such an act cannot reasonably be regarded as having another purpose than the commission of that specific crime.

- *(d) Attempting an Impossible Act*

If a person attempts to commit a crime which is impossible, then also it will be punishable under the Indian Penal Code.

If a person attempts to kill someone by empty gun, or steal something from an empty pocket, or steal jewels from empty jewel box. Then it is considered as an impossible attempt of committing that crime but here intention to commit the crime is present and also a step is taken towards completion of that crime. Thus it is considered as ‘attempt to crime’ under Section 511 of the IPC.

Conclusion

- Actual commission of the offence is not important to prove anyone guilty. Anyone can also be guilty of mere commission or attempt to an offence under Section 511 of the IPC. There are three essential for the attempt to the offence. The initial stage is to prepare a proper mindset for the offence. Secondly, proceed a step forward toward the commission of that offence. Lastly, fails to commit that intended offence.

### MCQs-

**i. What is the minimum term of imprisonment in case of, at the time of attempting robbery or dacoity, the offender is armed with any deadly weapon, he is punished with imprisonment of not less than:**

- A. four years under Section 397, IPC
- B. five years under Section 397, IPC
- C. six years under Section 397, IPC
- D. seven years under Section 397, IPC

**ii. The motive under section 81 of IPC should be:**

- A. prevention of harm to person
- B. prevention of harm to property
- C. both (a) and (b)
- D. either (a) or (b).

**iii. Section 82 of IPC provides that nothing is an offence which is done by a child under:**

- A. six years of age
- B. seven years of age
- C. nine years of age
- D. ten years of age.

**iv. A person is stated to be partially incapax under section 83, IPC if he is aged:**

- A. above seven years and under twelve years
- B. above seven years and under ten years
- C. above seven years and under sixteen years
- D. above seven years and under eighteen years.

**v. Section 83 of IPC lays down:**

- A. a presumption of fact



- B. an inconclusive or rebuttable presumption of law
- C. conclusive or irrebuttable presumption of law
- D. irrebuttable presumption of fact