

Inchoate Aspects of Attempted Crimes: Revisiting Criminal Law for its Effective Management

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Abstract: *Actus Reus is known as the external element of the objective component of Criminal Law. Mens Rea, the guilty intention, determines the criminal responsibility. Mens Rea and Actus Reus both are the components of a criminal activity that determines the liability of the accused person.*

An action carried out in furtherance of criminal activity doesn't become an attempted crime unless it is confirmed by the illegality for which it was conducted. An attempted crime is an action that reveals the illegal intention on its face.

The aspects of a crime such as the Mens Rea, Actus Reus, intentional crime, unintentional act caused as a result of carelessness, motivates to indulge in violating the provisions of law. The four theories of law such as the rule of proximity, the test of unequivocally, the indispensable element approach and the test of social danger are the elements of a crime.

Index Terms: *Attempt; inchoate; criminal law; Mens Rea; deterrence; culpability*

I. INTRODUCTION

An attempt for committing a criminal activity takes place if a criminal possesses the intention of carrying out illegal activity and makes a considerable move in the direction of conducting that action; however, the ultimate resultant criminal activity fails to take place as a result of some external forces which are not applied by the accused. The attempt to committing a specific criminal action is itself a crime. A criminal attempt is a kind of inchoate criminal activity, which is not conducted in a complete way. The activity of criminal attempt has two components, such as the intention or purpose of the crime; and the steps taken towards completing the illegal action. The fundamental nature of the crime of criminal attempt under the law is that the accused person becomes unsuccessful in carrying out the Actus Reus of the entire offensive act, even though it has the specific and direct intention of carrying out that entire offense. The common rule for the establishment of criminal responsibility is to confirm an Actus Reus along with a Mens Rea at the appropriate time.

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II. THE IDEA OF CRIMINAL ATTEMPT

A criminal attempt is the effort to carry out any criminal activity which falls short of accomplishment of the illegal action. In the case of *Sudhir Kumar Mukherjee v. the State of West Bengal*¹, the Supreme Court of India has held that the criminal effort of carrying out a criminal action starts at the point when the phase of preparation is accomplished. At this point, the defendant begins to do something with the plan of carrying out the illegal activities and this is a move in the direction of the conduction of the criminal activity. On the other hand, in the case of *State of Bihar v. Abhayanand Mishra*, the Supreme Court was of the view that steps taken by the accused individual for doing an action with the required intent is the attempt for carrying out illegal activity.

The term 'attempt' apparently conveys the concept that if the criminal effort had turned out to be successful, the criminal action suspected would have been carried out. It can be stated in alternative terms that criminal effort is the direct movement in the direction of the conduction of a criminal action subsequent to the completion of the preparation. In accord with British Law, an individual will be held guilty if a criminal effort is taken for carrying out an illegal activity the accused does an action beyond the stage of preparation for the carrying out of the criminal activity.

The moment, in which an act makes entry into the arena of criminal effort, criminal culpability commences. This is for the reason that illegal effort takes the wrongdoer near to the accomplishment of the criminal activity. The attempt becomes complete once the essential steps in the completion of criminal activity are carried out. An unfinished criminal effort takes place when the person responsible for the action takes a number of steps overcoming all interfering forces.

An attempted effort is the endeavor of carrying out an illegal action that fails to achieve the accomplishment of the criminal activity. The assessment of these cases depends on the criminal effort sustained by being criminal or non-criminal causing harm on the social norms. In logical terms, this is the only tangible foundation for the judgment of the categorization of an illegal effort even though, in reality, the majority of the criminal actions are carried out with the heinous motives.

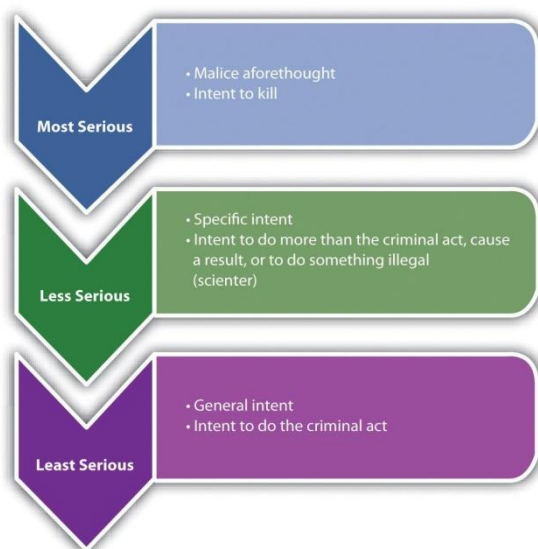


Fig. 1 Classifications of intentions in Crime

III. MENS REA IN AN ATTEMPT

A majority of the criminal activities have the requirement of *Mens Rea*, which means 'guilty mind'. It can be stated alternatively that these are the intentions of the accused person at the time of committing the criminal activity. *Mens Rea* differentiates the motions of criminal justice stressing on 'to carry out the criminal activity'; and 'setting out to execute a criminal activity with intent'.

IV. ACTUS REUS IN ATTEMPT

Actus Reus is the term used for describing an illegal action. For establishing *Actus Reus*, a legal representative has to justify the fact by evidence alleging that the activity of the accused is forbidden under criminal law. The *Actus Reus* consists of just intentional physical movements, in particular, one in which the human society has a concern in its prevention. As a consequence of this, if an accused person acted on spontaneous effect with no ill motive, the conduct of the accused would not fall within the dimensions of *Actus Reus*.

Actus Reus is generally described as an unlawful activity which is the outcome of intentional physical movement. Every criminal act which includes injury/ causing death to a person or damaging public property will be taken into consideration as an *Actus Reus*.

V. CRIMINAL ACT VERSUS CARELESSNESS ACT

A careless act is generally known as an act that has not been done with pre-thought mind and design and doesn't invite civil accountability. It is merely a situation of negligence, causing injury to the rights of.

In criminal law, carelessness may be described as the state of mind in which an individual unintentionally follows a course of activity paying no attention to any of the risks flowing from it. Carelessness is less liable than planned evil, even though is ensued with criminal actions. This idea of punishing for setting the criminal law in motion is also followed in ancient days.

VI. INTENTIONAL ACT VERSUS UNINTENTIONAL ACT

Inadvertent harmful actions can be classified into two categories, viz. mistake of fact and mistake of law. Every action becomes illegal if done with illegal motive also a good motive too does not render an illegal act legal. The absence of motive makes the act as a mistake.

'Mistake in fact' implies that the accused person has acted on the basis of wrong information even though the behavior of the defendant matches with the explanation of criminal activity in an ideal sense. For instance, an individual can unknowingly trade with prohibited drugs, on the assumption that he is dealing with powdered sugar. Lack of required mental intent or *Mens Rea* is essential under a law related to the prohibition of drugs, for the reason that he or she did not have the intention of selling an illicit drug.

I. Analysis of Fault and Conduct element

To make a person guilty of a criminal attempt, there must be an act with the intention to make it an offense. This meaning of fault element has both the substance and interpretation. To analyze the situation proper weight has to be given to the direct objective of the act stressing on the intention which is needed for committing the entire unlawful action for finding out if there is any reckless activity in committing the act.

II. Conduct element

There must have presence of two elements viz. the prohibited conduct and the mental element of a guilty mind to become of criminal nature,. The prohibited conduct is the striking and the mental element, or guilty mind, is the intention to strike/hurt/injure. For example, driving a vehicle under the state of intoxication with ill intent is considered a conduct crime. The social damage is the illegal conduct of driving at the time of being intoxicated. This conduct element does not need a damaging outcome for being guilty. It is where the conduct used is the wrongdoing, and there is no requirement of the result element. The cases of robbery, the conduct of robbing away the possessions of other people, can be regarded as conduct element.

III. Criminal and Non-Criminal attempts

At present, there is a requirement of consistency in the cases of 'attempt'. The criminal attempt was equally applied in the old days during 14th and the 15th centuries which was adopted from the Latin word '*voluntasreputabitur pro facto*'. This phrase means 'will be taken care of the deed'. On the strength of the implementation of that set of guidelines, it can be concluded that the failure to achieve the desired outcome is penalized as a criminal act. An effort of killing or committing robbery is castigated as a criminal act under the principle of '*voluntasreputabitur pro facto*'. Rationally, this is the only concrete foundation for the determination of the categorization of an effort.

IV. Theories with respect to the law of attempt

a. Proximity Rule

The rule of proximity is derived from the Latin maxim *cogitationis poenam Nemopattus*, which implies that for every offense there must be defined punishment. No Punishment can be inferred on a person for his guilty acts if not determined previously. It swathes cases in non-production of the result might be exclusive as a result of wanting of skill on the part of the wrongdoing or it might be because of other reasons functioning on the defendant.

b. Unequivocality Test

The theory of unequivocality highlights that there is no practical difference between the states of criminal effort and preparation, and lies entirely on the evidence establishing *Mens Rea*. An action becomes justified if proved logically. It can be stated otherwise that the actions have to be evidently referable to the task of misdemeanors and have to be discussed for themselves.

c. Indispensable Element Approach

A large of judgments appear to put up with the proposal that, if the victorious achievement of a criminal act needs the consent or activities of a third party, that action or assent has to be impending prior to the actor could be culpable of a criminal attempt. Thus, in a certain context, if two persons make a plan of defrauding a life insurance company by making up a scenario that, the person who is insured, is not alive anymore, and if the person who is the beneficiary, have to file an official claim prior to the payment of any proceeds, it has been believed that the actions of the first two persons are not capable of amounting to a criminal attempt for defrauding the insurance company until the third person files a formal claim or agrees to file a claim.

d. Test of Social Danger

For making a distinction between preparation and criminal attempt, the second aspect that is contributed is the significance of the criminal attempt. In this examination, the conduct of the accused person is not tested merely in part but the outcomes of the states of affairs and the completeness of the details are taken into account.

VII. TESTS AND DEFENSES IN ATTEMPTED CRIMES

Proximity

In accordance with the English law, the subscription to anyone approach or theory with respect to "proximity" can be taken into consideration as main, even though the law of the case reveals components of each and every approach that has been considered so far. However, the prerequisite of the proximity of the demeanor to the accomplished criminal activity is necessary along with the acts of preparation, whether or not in combination with other prerequisites for determining an act of criminal nature.

In general, the reference is restricted to the statement which works vaguely leading in the direction in carrying out of the criminal activity. In other words, there remains a hope or prospect for the accused person for changing his or her mind, if the level of simple preparation had not been gone ahead of.

The test of proximity measures the progress of the accused considering the journey he has achieved with a similar intention. If the criminal intention of the accused person is clear, the accused person does not have to accomplish the criminal action. In general, the accused person does not need to attain the final stage to become guilty.

V. Impossibility

a. Significance of impossibility in criminal attempts

'Impossibility' is a small section of the law of criminal attempts even though the assessment of its effect is considered seriously. It draws the legal liability and moral accountability in justifying it. The liability of criminal attempt is exceptional for the reason that it has the requirement of the courts for imposing a penalty for incomplete behavior which was not the cause of any objective damage. This is additionally made complex by the constituent of impossibility.

If the impossibility is pertinent to the liability of an attempt, every set of guidelines has to be interpreted for including cases in which sentence is deserved. It can be argued that ascriptions of responsibility generally are founded on the conditions of the specific criminal activity and the doctrine of impossibility in accomplishing the said act.

Further, the ordinary set of guidelines of the law of impossibility has been condemned as unreliable, inconsistent, and arbitrary adding to an unstable and unjust legal system. If the authority of the government is to be efficiently managed, the criminal law has to be comparatively unambiguous in its effect.

b. Effect on the factual impossibility

Factual impossibility is that type of impossibility which as a result of the fact makes the illegal act incapable of being accomplished. Factual impossibility is present when the intention of a person while doing a criminal activity turns out to be unsuccessful for the reason not known to the accused. The instances of factual impossibility are as follows:

- A pickpocket who puts his or her in the empty pocket of the victim
- An abortionist who starts the process of surgery on a woman who is not pregnant
- An impotent man who is attempting to rape a woman
- An attacker who shoots into a bare bed in which the victim sleeps generally

Factual impossibility takes place when the intended actions by an accused person are forbidden by the criminal law, even though a factor a circumstance that is not known to the accused person put off him or her from leading to the planned outcome.

VI. Punishability

In general, in accomplishing a criminal act, an individual has to undergo four levels of involvements:

- The making of the psychological element or the formation of the criminal intent
- The making of preparations for carrying out the criminal activity
- The acts by the attempted based on the plans and the preparations
- The conduction of the final action leading to an incident that is laid down by the law

There are a few legal systems that punish the accused people right from the second level of preparation. They rely on the significance of the system and value the thought of preventing criminal activity by declaring that a number of wrongdoings are punishable and criminal from the level of preparation. There might not be the liability for the illegal effort if the individual was reckless or negligent to the extent that criminal attempt is carried out. However, negligence, recklessness or knowledge is capable of supporting the charge of criminal attempt in valuing the surrounding circumstances of the materials.

VII. Locus Poenitentiae

The expression, 'Locus Poenitentiae' has been derived from the Latin language which implies a place or a location where a breach of contract, delict or criminal activity took place. In other words, this action will be considered as simple preparation if an individual on his or her agreement, prior to the illegal act, surrenders it.

For this reason, it is likely that he or she may of its own agreement or as a result of the apprehension of unpleasant outcomes which may pursue, ceases from the accomplished criminal effort. Locus Poenitentiae is related to the law of contracts that implies an opportunity for withdrawing from an obligation or contract prior to its accomplishment that has been planned.

VIII. Equivocality

The theory of equivocality recommends that action is proximate if it points to something that is ahead of any logical doubt which can come to the mind of human being.

In short an accused can take the following defences as mentioned in the Diagram.

| Elements & Defenses to Inchoate Crimes and Accomplice Liability | | | | |
|--|--|--|--|--|
| Elements & Defenses | Solicitation | Accomplice | Conspiracy | Attempt |
| Actus Reus Not Guilty If No Overt, Voluntary Physical Act | Incite, Counsel, Advise, Induce, Urge, or Command Another to Commit a Crime | Aid, Counsel, or Encourage Before or During Another's Crime | Agreement To Achieve Unlawful Purpose (Modern Majority: Agree To Commit a Crime & Overt Act) | Substantial Step Beyond Mere Preparation (Last Act, Danger, Prox.) |
| General Intent Not Guilty If General Intent Not Present | Intent to Ask | Intent to Aid, Counsel, or Encourage | Intent to Agree | Intent to Do the Act |
| Specific Intent Not Guilty If Specific Intent Not Present | Intent that Person Solicited Commit Crime General Approval Not Enough | Not Specific Intent Crime But Must Have Intent to Aid Here Knowledge Not Enough | Intent to Achieve the Objective of Agreement | Intent to Accomplish the Crime |
| Specific Intent Defenses: Duress; Unreass. Mistake; Voluntary Intoxication | If Defense Negates the Specific Intent | If Defense Negates Intent to Aid | If Defense Negates the Specific Intent | If Defense Negates the Specific Intent |
| Merger | Merges With Target Crime (or with Consp.) | Not Applicable Crime Already Committed | No Merger (Old Rule Allowed Merger) | Merges With Target Crime |

Fig. 2 Elements & Defences permitted under Criminal Law

Source: <http://www.brendanconley.com/barexam/wp-content/uploads/2013/08/Inchoate-Crimes-Elements-and-Defenses-1.jpg>

VIII. CONCLUSION

The research concludes that in general attempted offense takes place when a person has a true intention for carrying out a criminal activity, which under the law implies specific intention and takes a direct step in the direction of the accomplishment of the said illegal action. If the criminal act is accomplished once, then the charges of the completed crime would be levied going beyond the consequences of the attempted crime.

In short entire attempt can be classified into following categories:

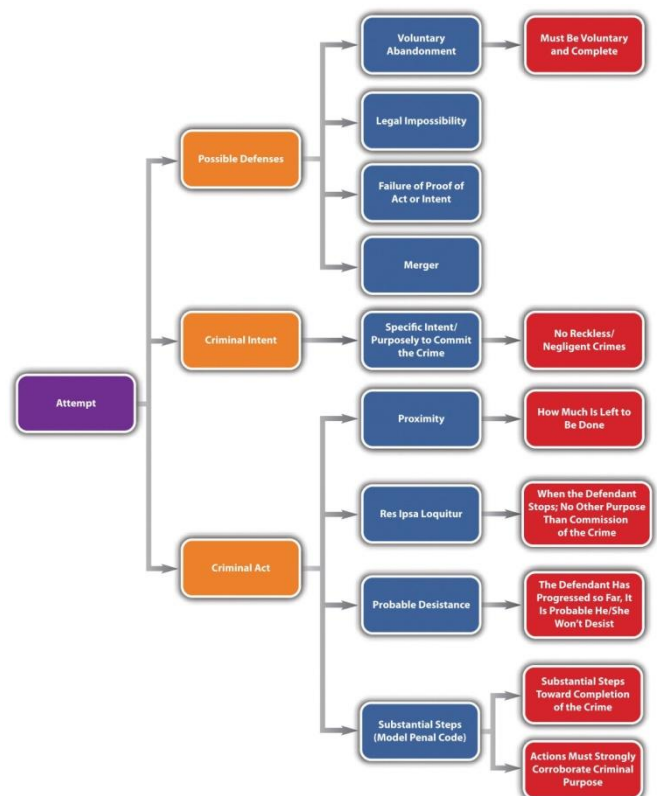


Fig. 3 Diagrammatic representation of various Classifications of attempt

In legal terms, all criminal activities cannot be considered as being attempted. Only the activities that have a specific intention can be attempted.

'Specific intention' refers to the mind state in which a person has the plan of carrying out a particular illegal action, knowing about the implications of the consequences. In some countries, the actions taken for a criminal attempt have to go ahead of the stage of just preparation for the illegal activity.

In these events, the accused individual will have to take materialistic moves for carrying out the assassination in actual fact, regardless of any pre fixed plans.

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