

Subject: Criminology

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Paper : Fundamentals of Crime, Criminal Law and Criminal Justice

Module : Stages of Crime



ज्ञान-विज्ञान विमुक्तये


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Quadrant I- Description of the Module



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Description of Module	
Subject Name	Criminology
Paper Name	Fundamentals of Crime, Criminal Law and Criminal Justice
Module Name/Title	Stages of Crime
Module Id	11
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	<p>To have an overview of the various stages involved in the commission of a crime.</p> <p>To understand the nuances of the stage of intention.</p> <p>To understand the meaning of preparation and the legal consequences attached to the preparation of a crime.</p> <p>To understand the meaning of attempt and to appreciate the difference between preparation and attempt.</p> <p>To appreciate the different tests which have evolved to differentiate between preparation and attempt.</p> <p>To find out if the attempt to do an impossible act is punishable in law.</p>
Key Words	Intention, contemplation, preparation, attempt, proximity test, Locus Poenitentiae, test of equivocality

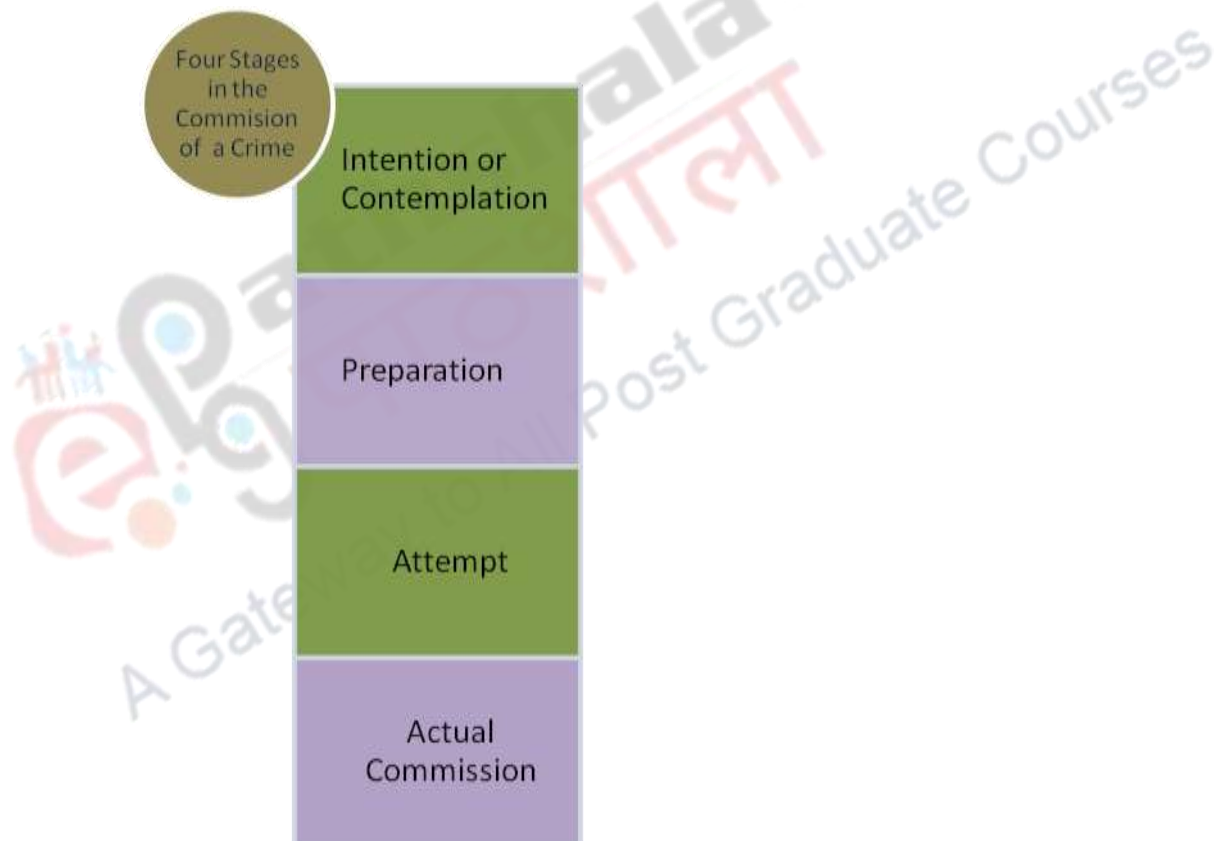
Quadrant- II- E-Text

Introduction

The commission of a crime involves a variety of actions which can be classified into different stages in terms of their relevance in determining their liability of a person. It is important to understand what are the different stages involved in the commission of a crime and what are the legal liabilities, if any, attached to these different stages.

The following are generally identified as the four sequential stages in the commission of a crime¹;

1. Intention or Contemplation
2. Preparation
3. Attempt
4. Actual Commission



1. Intention or Contemplation

The first stage in the commission of a crime is to contemplate its commission. This is the stage where the intention to commit a crime germinates in the minds of the offender and takes a concrete shape. This is the mental state which is generally described subsequently as the requisite *mens rea* to commit an offence.



Generally, having an intention to commit a crime is not punishable in law.² There are a number of reasons because of which the contemplation of a crime in the mind of a person is not punishable. Firstly, no harm is caused to anybody by a person thinking to do something. Mere thoughts unless accompanied by overt acts do not cause any kind of injury to anybody.

To understand this proposition, let's consider an example;

X is at the house of his friend Y for a party and notices an expensive watch lying on the table of Y. X has a huge weakness for watches and maintains a small private collection of different variety of watches in his house. The minute he notices the watch, he develops a desire to steal and take it along with him.

At this point, though X has decided to steal the watch of Y, Y has suffered no harm due to X harbouring such thoughts. Y will suffer a loss only if X in furtherance of his decision steals the watch.

Secondly, thoughts are fleeting and temporary. A thousand thoughts can come up in our mind in a day and a person can change his thoughts in an instant. Thus, unless the person harbouring the thought has shown a commitment to it by engaging in an overt act in furtherance of the thought, it does not make sense for such person to be punished simply for having a thought.

To understand this proposition, let's consider an example;

X and Y have a history of personal feud. One day when X is travelling with four of his friends in a car, he notices Y coming alone in a bike from the opposite end of the road. Watching Y, X's first thought is to beat him up taking advantage of the fact that he is alone right now and X is with his friends. However, it occurs to him that such an act will only increase the bitterness of feud which may be harmful to him or his family in the future. Thus, he lets Y be on his way.

Here, punishing X for his initial thought of beating up Y would be plainly premature and unfair as he has immediately changed his mind as well.

Thirdly, human race is yet to develop techniques where the thoughts of a person can be reliably investigated and proved. What goes on inside the mind of a human is a mystery to all but himself. It is impossible to know for certain what a person is thinking unless we have some evidence of the same through his external conduct. The mere intention of a person unaccompanied by any external action is a thing of supposition and not of fact. A person is punished for the facts that are proved against him and not because of the suppositions held against him.

To understand this proposition, let's consider an example;



In a party, X, a man, notices a beautiful girl, Y. Bewitched by Y's beauty, X wants to have carnal knowledge of her at any cost. Y has consumed a lot of alcohol and by a stroke of change, the host of the party requests X to drop Y home. On their way back, as X is driving his car, Y passes out in the seat next to him. X decides to take advantage of this situation and have sexual intercourse with her while she is unconscious due to the effect of alcohol.

If X were to be apprehended at this exact point of time where he is yet to commit an overt act in furtherance of his decision, what evidence can be adduced to prove that he intended to rape Y? X can very well contend that he was merely dropping Y as a good citizen at the request of his friend. There would be no way to reliably prove what was running in the mind of X unless there is some external conduct which indicates his state of mind.

There are certain exceptional situations however, where the evidence of the intention of a person, if available, makes him criminally liable. For example, under section 503 of the Indian Penal Code, when X threatens Y of injury to get Y to do something which Y is not legally bound to do, X commits the crime of criminal intimidation. Thus the crime of criminal intimidation does not consist of the actual infliction of injury on another person but the communication of one's intention to cause injury to another person.

2. Preparation

After the stage of intention to commit a crime comes the stage of preparation for committing the crime so intended. Preparation refers to the stage where the person intending to commit the crime seeks to make the necessary arrangements to enable himself to commit the crime so intended.³ Preparation may involve the procurement of the necessary tools for the commission of a crime or may also involve planning of the manner in which the person seeks to execute the crime.

Lets consider the example below;

X knowing that Y has kept gold jewellery in his house decides to rob him. In order to do so, X purchases a gun from a known contact, Z.

Till the time X had only decided to rob Y, the crime was only at the stage of intention. The minute X initiates contact with Z to buy a gun for the purpose of robbing Y, it enters the stage of preparation. Here X has sought to procure the necessary tools in order to commit the crime that he has in his mind.

Lets consider the same example in a modified form;

X knowing that Y has kept gold jewellery in his house decides to rob him. X already owns a gun. He conducts surveillance on Y's house for a couple of nights to acquaint himself with the sleeping pattern and other habits of Y, Y's family members and also of Y's neighbours.



Here, the preparation does not involve the procurement of the tools for the commission of the crime. Here, the preparation consists of determining the manner in which the crime would be committed.

Generally, preparation for the commission of a crime is not punishable. Firstly, like the stage of intention, preparation does not indicate the certainty that the person so preparing will definitely commit the crime. A person might make full preparation and yet not commit the crime with a change of heart.⁴ Secondly, it is very difficult to judge from the preparation whether the person intends to commit a criminal act or an otherwise innocent act.⁵

Lets consider the example below;

X goes to the market and buys rat poison.

Here, X's act of purchasing rat poison definitely indicates a preparatory stage. However, how can it be known for certain if X intends to poison his wife Y or use it in his home as he has a genuine rat infestation problem?

In such circumstances, making preparation punishable will lead to mostly unjust results. Many regular acts of individuals in the daily course of life are capable of being interpreted as being the preparation for a criminal conduct. Regular acts like going on a drive in a secluded road can be interpreted as the preparation to kill the co-passenger and dump the body in a deserted space. A simple act of buying a knife can be interpreted as preparation for killing somebody. Purchasing combustible fuel like petrol or diesel can be interpreted as preparation for committing arson. Purchasing a hockey stick can be interpreted as the preparation to assault somebody.

If preparation were to be made punishable, it will lead to a lot of harassment of innocent individuals due to the fact that almost every action of a human being can be suspected as being the preparation for the commission of a crime.⁶

It is for these reasons that generally, the preparatory stage of a crime has not been made punishable under the law. However, there exist certain exceptional situations where even the preparatory stage of a crime has been made classified as a crime in itself and made punishable under law. These are primarily such situations where the crime for which preparation is being made is grave in nature or poses a significant threat to the general safety of the public or to public order. In certain other cases, where the nature of the preparation leaves no scope of the preparation being for the purpose of any innocent activity.⁷ Thus, preparation to wage war against the government is classified as a crime and has been made punishable under law. Preparation to commit the crime of dacoity is also punishable under law.

3. Attempt

The initial two stages in the commission of a crime; intention and preparation are generally not punishable. The stage of attempt is subsequent to the stage of preparation and is punishable under law. The stage of attempt refers to the effort made by an individual in



furtherance of his intention and on the basis of his preparation to commit the crime. It is the overt action on the part of the individual seeking to fulfil his contemplation.⁸

It needs to be noted that a person is held liable for attempt only when his efforts to commit the intended crime are unsuccessful. When he succeeds in his effort, he is punished for the actual commission of the offence.

Lets consider the example below;

X intends to kill Y because of some insulting things which Y had said about X's father. In order to kill Y, X procures a gun and approaches his house and knocks on his door. When Y opens the door, X points the gun at Y's head and pulls the trigger.

In this case, if the gun fires and Y is killed, X will be liable for culpable homicide amounting to murder. However, if for some reason the gun does not fire and X runs away from the place, he will be liable for attempt to commit culpable homicide amounting to murder.

In the scheme of Indian Penal Code, the issue of attempt as a crime in itself has been dealt in primarily four different ways. Firstly, on certain occasions, the crime and the attempt to commit the crime have been dealt with in the same section. An example of this is the offences against the State under section 122, 123 etc. Secondly, on certain other occasions, the definition of the crime has been provided in one section and the attempt to commit the crime has been made punishable under another section. One example of this is the attempt to commit murder which has been made punishable under section 307. Thirdly, there is one situation where only the attempt to do something is punishable but not the actual commission itself. Section 309 makes it a crime to attempt to commit suicide. For obvious reasons, actual commission of suicide is not punishable as it would be impossible to punish the person who is already dead. Fourthly, section 511 of the Indian Penal Code provides for the general rule regarding attempt which is applicable in all such cases where attempt to commit has not been specifically described as a crime and punishment for the same has not been prescribed. It is important to remember that section 511 is applicable to only to the attempt to commit such offences which are punishable with imprisonment for life or other imprisonment. Section 511 provides that whenever any person attempts to commit an offence which is punishable with imprisonment for life or other imprisonment and no express provisions has been made in the Indian Penal Code for the punishment of such an attempt, such person shall be punished with imprisonment of any description provide for the offence attempted to be committed by him 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 the offence being attempted by him or with such fine as is provided for as a punishment for such offence or with both.

Distinction between Attempt and Preparation

The major challenge in the law regarding attempt is to determine properly when the conduct of the individual has matured from the stage of preparation to the stage of attempt.⁹ It is to be noted that 'attempt' has not been defined under the Indian Penal Code. It is generally understood that when a person commits an act which is considered to be beyond mere



preparation and is considered as an effort to commit the crime itself, the same is deemed as an attempt. However, the challenge is to identify the specific point at which the acts of the individuals stops being mere preparation and becomes an attempt to commit the crime. Being able to maintain the distinction between preparation and attempt is crucial as in one case, the individual would be criminally liable whereas in the other case, he would not generally be liable.

One view is that the cue lies in the term 'mere preparation'.¹⁰ According to this view, one needs to consider whether the individual has commenced the execution of the crime. Thus, attempt begins when the individual has progressed beyond 'mere preparation' and is engaged in a conduct which can be considered in furtherance of the actual commission of the crime. Preparation involves everything a person may do in order to facilitate the commission of the intended crime but it turns into attempt the minute the person seeks to execute the commission of the crime.

Thus, in the example given above about X wanting to shoot Y, the attempt begins only when Y opens the door and X points the gun at him in order to shoot him. Knocking on the door of Y cannot be considered as an attempt to murder Y and has to be identified as preparation. On the other hand, pointing the gun at Y and pulling the trigger can definitively be classified as attempt.

Different tests have been forwarded to distinguish between the stage of preparation and the stage of attempt. While none of these tests are either accepted or applied as a rigid rule, it is important to have a clear understanding in order to better appreciate the distinction between preparation and attempt.

Test of Proximity

This test is based on the proposition that an act will qualify as an attempt if it proximate to the commission of the offence.¹¹ This principle can be illustrated in the form of the following example;

X seeks to set fire to a stack of hay belonging to Y. He lights the matchstick but realises that he is being watched by Z, the neighbour of Y. He puts out the matchstick.

In this situation, X will be held liable for attempt as his act of lighting the matchstick is directly proximate to his intended crime of setting the hay stack on fire.

Thus, when a person has committed himself to an act which is proximate to the ultimate act that he has intended, it can be safely said that he has begun the attempt to execute the crime.

Locus Poenitentiae

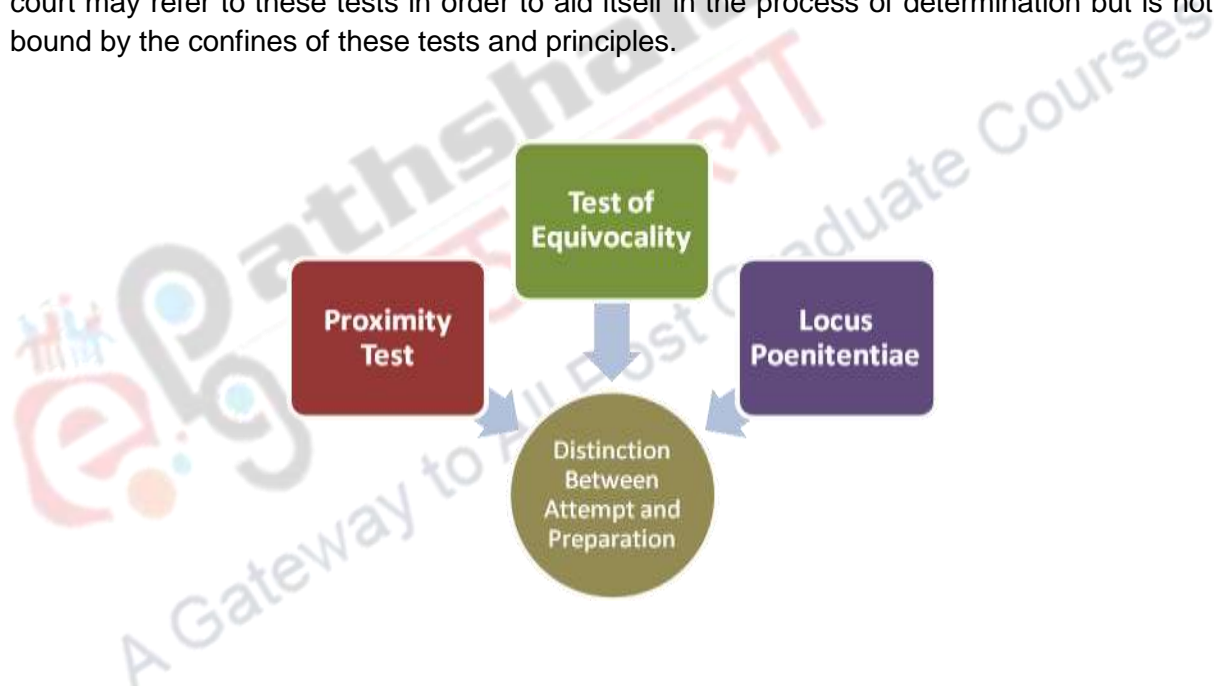
This doctrine is based on the proposition that a person can change his mind about committing an act even in the last possible minute. According to the doctrine, the relevant fact for determining whether the act of the accused constitute preparation or attempt is to consider the nature of consequences which would have followed if the accused had

changed his mind after committing the act.¹² If the consequence would be harmless then the act can be reasonably said to be in category of preparation. On the other hand, if the act has the potential to lead to harmful consequences, then it more fittingly deserves to be classified as an attempt.

Test of Equivocality

The test of equivocality is based on the premise that a man should not be punished unless his actions reflect a clear and unambiguous intention to commit the crime. Thus, an act will be considered as attempt if it unequivocally points to the intention of the individual to commit the crime. Thus a man will be punished only if there is no doubt about the consequences he sought to achieve through his conduct.

It is important to remember that all the tests described above are indicative and not definitive. Whether a particular conduct qualified as attempt or preparation is for the court to determine depending on the peculiar facts and circumstances of each individual case. The court may refer to these tests in order to aid itself in the process of determination but is not bound by the confines of these tests and principles.



Attempt to do an Impossible Act

It may sometimes happen that the accused might be trying to do something which is impossible, either by reason of physical impossibility, legal impossibility or out of sheer inefficiency. For example, X is trying to shoot Y, who is at least 1000 metres away with a gun which has a range of only 500 metres. In this case, what X is trying to achieve is physically impossible. The question is whether he can be punished for attempt when he was clearly intending to commit a crime but the commission was impossible due to physical factors. The answer is in affirmative. The impossibility of the act does not detract from the *mens rea* of the accused and from the fact that he has committed an act which is an effort to execute his intentions.¹³ This proposition is confirmed by illustrations (a) and (b) of section 511 as well where impossibility of an act does not neutralise the liability for having attempted it.



4. Actual Commission



The final and last stage of a crime is when the attempt to commit the crime is successful and the crime is said to have been committed. In the case of commission of a crime, the offender is always liable.

Summary

1. The four stages in the commission of a crime are Intention, Preparation, Attempt and Commission.
2. The first stage in the commission of a crime is to contemplate its commission. This is the stage where the intention to commit a crime germinates in the minds of the offender and takes a concrete shape.
3. Generally, having an intention to commit a crime is not punishable in law.
4. After the stage of intention to commit a crime comes the stage of preparation for committing the crime so intended. Preparation refers to the stage where the person intending to commit the crime seeks to make the necessary arrangements to enable himself to commit the crime so intended.
5. Generally, preparation for the commission of a crime is not punishable.
6. However, there exist certain exceptional situations where even the preparatory stage of a crime has been made classified as a crime in itself and made punishable under law.
7. The stage of attempt is subsequent to the stage of preparation and is punishable under law. The stage of attempt refers to the effort made by an individual in furtherance of his intention and on the basis of his preparation to commit the crime.
8. Preparation involves everything a person may do in order to facilitate the commission of the intended crime but it turns into attempt the minute the person seeks to execute the commission of the crime.
9. The impossibility of an act does not neutralise the liability for having attempted it.
10. The final and last stage of a crime is when the attempt to commit the crime is successful and the crime is said to have been committed. In the case of commission of a crime, the offender is always liable.

¹ Vibhute K.I., (2011) *PSA Pillai's Criminal Law* (pp.245- 246)

² Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 111-112)

³ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 111-112)

⁴ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 115-116)

⁵ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 115-116)

⁶ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 111-112)

⁷ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 111-112)

⁸ Vibhute K.I., (2011) *PSA Pillai's Criminal Law* (pp.245- 246)



- ⁹ Ormerod D., (2008) *Smith and Hogan Criminal Law* (pp. 379-380)
¹⁰ Ormerod D., (2008) *Smith and Hogan Criminal Law* (pp. 389-390)
¹¹ Ormerod D., (2008) *Smith and Hogan Criminal Law* (pp. 390-391)
¹² Malkiat Singh v. State of Punjab (1969) 1 SCC 157
¹³ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 122-123)

