

MODULE 3.6

PREPARATION AND CRIMINAL ATTEMPT

A. MAIN NOTES

1. Introduction
- 1.2 Intention
- 1.3 Preparation
- 1.4 Attempt
- 1.5 Treatment of 'attempt' under Indian Penal Code
- 1.6 Distinguishing Preparation and Attempt: The Theories
- 1.7** Scope of Section 511 I.P.C
- 1.8** Difference between Section 307 and 511 I.P.C.

B. REVISION NOTES

C. CASES TO REMEMBER

1. Introduction:

- Every crime has ***four successive stages.***

Intention



Preparation



Attempt



Actual commission

1.2 **Intention :-**

- Intention to commit a crime is **not punishable under IPC** unlike penal laws of other countries.
- This is the position as it is **impossible to read the mind of a man or to understand what someone contemplates to do in future.**

1.3 **Preparation:**

- Preparation in general is **not punishable because without motive mere preparation is a harmless act.**
- Mere preparation does not ordinarily affect the sense of security of an individual or the society at large e.g. purchasing a gun is not punishable unless anyone having procured the gun pursues his enemy and fires without affect.
- However there may be **certain acts** where those **acts in contemplation of an offence are so grave** that the same requires to be **stopped at the preparatory stage** itself. The scheme of IPC seeks to punish such exceptional cases.

S. 223 to 235 and 257
Making or selling or being in possession of instruments for counterfeiting coins or Govt. stamps

S. 299
Making preparation to commit dacoity

Offences of Preparation under IPC

S. 122
Collecting arms etc with the intention of waging work against the Govt. of India

S. 126
Committing depredation on territories at peace with the Govt. of India

S. 242, 243, 259 and 266
Possession of counterfeit coin, Govt. stamp, false weights or measures

1.4 **Attempt:**

- The word 'attempt' clearly conveys with it the idea that ***if the attempted had succeeded, the offence charged would have been committed.***
- Attempt is the ***direct movement towards the commission*** of an offence after preparations have been made. Thus attempt is something more than preparation.
- An act of attempt marks the ***commencement of criminal liability.*** Since it ***creates an alarm which of itself is an injury*** and the moral guilt of the offender is the same as if he had succeeded.
- Therefore unlike civil law, criminal law seeks to punish attempts to commit punishable wrongs and punishes them according to the nature and gravity of the offence.
- To summarise :-

An Intention

Some overt action in execution

Attempt

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1.5 **Treatment of 'attempt' under Indian Penal Code:**

<p>1. Offence and attempt dealt together in same Section</p>	<p>(a) Offences against the State such as wage war against Govt. of India (Section 121).</p> <p>(b) Assaulting or attempting to assault the President of Governors with intent to compel or restrain the exercise of any lawful power (Section 124).</p> <p>(c) Sedition (Section 124A), waging or attempting to wage war against any Asiatic power in alliance with the Govt. (Section 125), public servant taking gratification (Section 161), dacoity (Section 391).</p>
<p>2. Offence and attempt dealt separately with different punishment</p>	<p>Attempt to commit murder, Culpable Homicide not amount to murder and Robbery have been dealt with in Section 307, 308 and 393 I.P.C. whereas Murder Culpable Homicide and Robbery are punishable under section 302, 304 and 392 I.P.C. respectively</p>

3.	A particular attempt has been made punishable	Attempt to Commit Suicide (Section 309 I.P.C.)
4.	Attempt in general has been made punishable	Section 511 I.P.C., which makes attempt to commit any offence except those falling under the above said categories and those minor offences which are punishable with fine only.

1.6 *Distinguishing Preparation and Attempt : The Theories*

(i) The proximity rule :

- This implies that an act in order to be an **attempt must be sufficiently near to the accomplishment of the substantive offence** punishable.

E.g. A, intending to kill Z buys a gun and loads it with an intention to kill Z. This is mere preparation and not punishable.

However, if a shoots at Z intending to kill him but misses his objective, this becomes an attempt to murder because A has done what was legally necessary for him to constitute an offence of attempt.

- In ***Sudhir Kumar Mukherjee vs. State of West Bengal*** (1973), the Supreme Court explained that in terms of the proximity rule in order to constitute an act of offence, 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 offence.

(ii) **The doctrine of Locus Paenitentiae (Time for repentance):**

- This rule implies that an act will remain mere preparation if a man on his own accord gives it up, before the criminal act is carried out i.e. to say so long there is a probability than a man shall give up his design to commit a crime, the acts will be treated at the stage of preparation.

E.g. A intending to murder Z by poison, purchases poison and mixes the same with food. A is not yet guilty of an attempt to murder because there is still time when he can change his mind and desist from giving that food to Z.

- In ***Malkait Singh vs. State of Punjab***, A truck driver carrying paddy without a licence was apprehended 14 miles away from the Punjab-Delhi border. The Supreme Court said that since the driver was yet to cross the state boundary there exists a possibility that he might change his mind. Accordingly the appeal was allowed and the offence of attempt to commit a punishable act was not sustained.

(iii) **The impossibility test:**

- When a person attempts to commit a particular offence but his ***own act or the resources used for such act renders the commission of such offence impossible***, such act does not fall within the definition of criminal attempt.

- Thus in ***Asgar Ali vs. Emperor*** while the accused attempted to cause a miscarriage by administering the complainant a liquid and a powder and none of the chemicals were found to be capable of

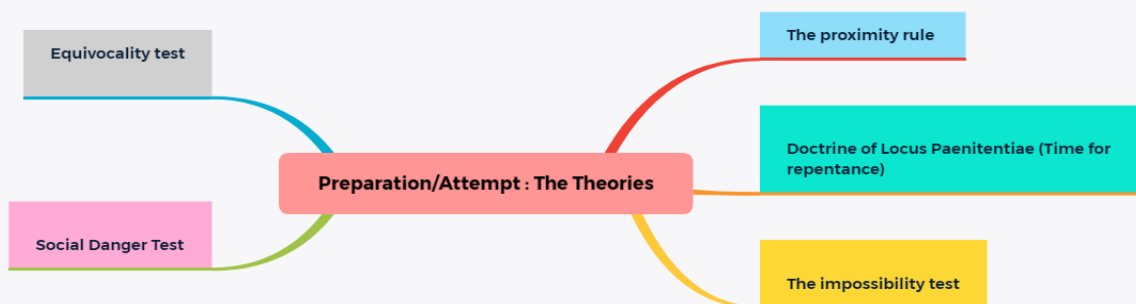
operating as an abortifacient, the Appellate Court held that the appellant cannot be convicted for attempt to cause miscarriage because what he did was not an act towards the commission of the offence.

(iv) Social danger test:

- The seriousness of the crime attempted and apprehension of social danger likely to be caused out of such act should be taken into account to distinguish attempt and preparation.
- E.g. A gives pills to a pregnant woman for abortion but the pills turn out to be ineffective. A would be guilty of an attempt to cause miscarriage since the act would cause an alarm to society and would have social repercussions.

(v) Equivocality test:

- To constitute an attempt the act must be such as to clearly and unequivocally indicate the intention to commit the offence.
- If what is done indicates beyond reasonable doubt that the aim is towards which it is directed, it shall be an attempt.



1.9 Scope of Section 511 I.P.C

- **Section 511:**

Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—

- *Whoever attempts to commit an offence punishable by this Code with 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 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.*
- *Illustrations*
- *(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.*
- *(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.*

- Section 511 I.P.C makes attempt to commit offences in general punishable except where express provisions have not been made by the Code. (E.g. Section 307 – Attempt to murder).
- Attempt to commit offences under a special or local law is not punishable under I.P.C.
- Does not cover those offences punishable with fine only.
- Covers cases where:-

(i) Offence is punishable with imprisonment and

(ii) An act is done towards the commission of that offence.

- Prescribes punishment that may extend upto half of the imprisonment for life or one half of the longest term of imprisonment provided for that offence.
- In ***Avayanand Mishra vs. State of Bihar*** – Explaining the scope of section 511 I.P.C. the Supreme Courts held that the accused was guilty of attempt to commit cheating when the accused prepared his application by means of forgery and fraud and submitted the same to the University. The moment he dispatch it, he entered into the realm of attempting to commit the offence of cheating. Even though he finally failed to deceive the university in obtaining an admit card.

1.10 Difference between Section 307 and 511 I.P.C.

- There exists conflicting views as to whether section 307 is necessary when in general Section 511 is available to cover attempt to murder.
- However, under section 307 to convict a person, he must commit an act which must have been capable of causing death, whereas under section 511 it is only necessary to prove an act done in the attempt towards the commission of the offence. Thus S. 511 does not cover only the penultimate act towards the commission of offence but other prior acts also.
- The Law Commission of India in its 42nd report had suggested deletion of section 511 and insertion of a new chapter 'Of attempt' consisting two sections 120C and 120D with a view to group inchoate crimes together along with section 120B.

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PREPARATION AND CRIMINAL ATTEMPT

REVISION NOTES

- Every crime has *four successive stages*.

Intention



Preparation



Attempt



Actual commission

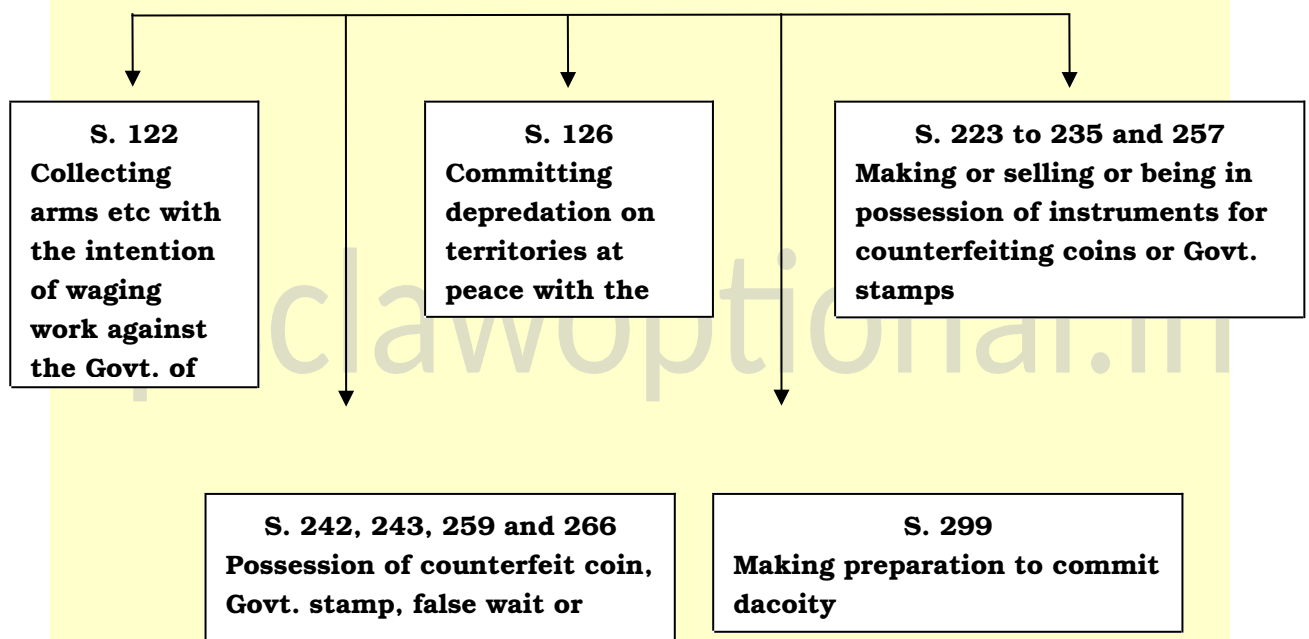
Intention :-

- Intention to commit a crime is ***not punishable under IPC*** unlike penal laws of other countries because ***impossible to read the mind of a man or to understand what someone contemplates to do in future.***

Preparation:

- Preparation in general is **not punishable because without motive mere preparation is a harmless act. Certain acts** where those **acts in contemplation of an offence are so grave** that the same requires to be **stopped at the preparatory stage** itself have been made punishable in IPC.

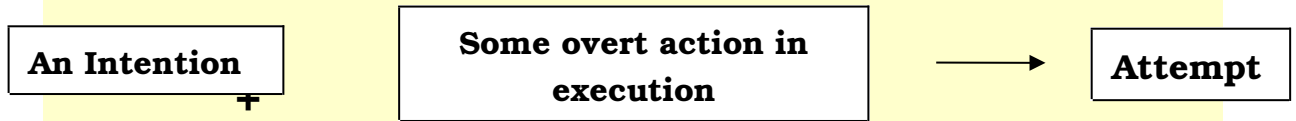
Offence of preparation: Under Indian Penal Code



Attempt:

- The word 'attempt' clearly conveys with it the idea that if the attempted had succeeded, the offence charged would have been committed. It is the direct movement towards the commission and marks the commencement of criminal liability since it creates an alarm which of

itself is an injury and the moral guilt of the offender is the same as if he had succeeded.



- **Treatment of 'attempt' under Indian Penal Code:**

1.	Offence and attempt dealt together in same Section	(a) Offences against the State such as wage war against Govt. of India (Section 121). (b) Assaulting or attempting to assault the President of Governors with intent to compel or restrain the exercise of any lawful power (Section 124). (c) Sedition (Section 124A), waging or attempting to wage war against any Asiatic power in alliance with the Govt. (Section 125), public servant taking gratification (Section 161), dacoity (Section 391).
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- **Distinguishing Preparation and Attempt : The Theories**

(i) The proximity rule :

(ii) The doctrine of Locus Paenitentiae (Time for repentance)

(iii) The impossibility test:

(iv) Social danger test:

(v) Equivocality test:

- **Scope of S.511:**

- Section 511 I.P.C makes attempt to commit offences in general punishable except where express provisions have not been made by the Code. (E.g. Section 307 – Attempt to murder).

- Attempt to commit offences under a special or local law is not punishable under I.P.C.

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- **Difference between Section 307 and 511 I.P.C.**

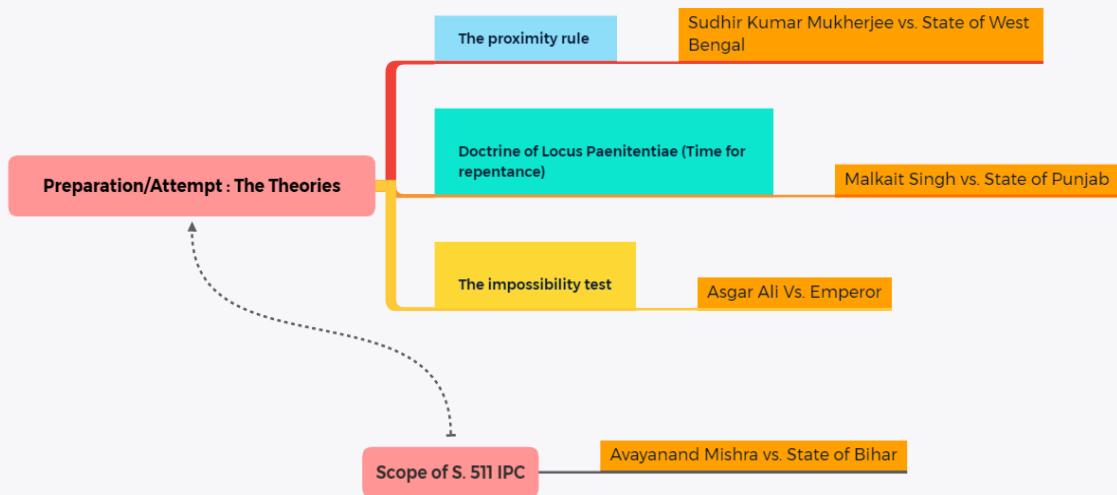
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LIST OF CASES



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Sudhir Kumar Mukherjee vs. State of West Bengal

2. The doctrine of Locus Paenitentiae (Time for repentance):

Malkait Singh vs. State of Punjab

3. The impossibility test:

Asgar Ali vs. Emperor

4. Scope of Section 511 I.P.C

Avayanand Mishra vs. State of Bihar