

LAW CAPSULE



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ATTEMPT- THE LAW OF INCHOATE CRIMES

Offences can be generally divided into four distinct and successive stages –

1. Intention to commit
2. Preparation
3. Attempt to commit it
4. The actual commission of the offence

Preparation as a general rule is not made punishable because of " *Doctrine of Locus Paenitentia*" or the time for repentance

Law of attempt formulated in *R v. Scofield* (1784) and *R v. Higgins* in the Common Laws scheme.

Three elements of liability in an attempt –

- A. There must be evidence of liability of some overt act
- B. There must be evidence of *mens rea*
- C. There must have been an interruption to the series of acts and omissions which, but for the interruption would have culminated in the commission of the offence

Elements of Section 511 of Indian Penal Code

- I. The offence attempted to be committed should be punishable under IPC
- II. There must be an element of *mens rea* or intention in attempting to commit a particular offence
- III. Finally there must be some specific act or *actus reus* committed towards achieving the intention

Abhyanand v. State of Bihar

The Supreme Court laid down Rules in *Abhyanand v. State of Bihar*. A person commits the offence of attempt –

RULE 1- He intends to commit that particular offence ; and

RULE 2- He having made preparation and with the intention to commit the offence , does an act towards it commission , 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

Tests for determining whether an act amounts to preparation or attempt to commit offence

TEST 1 – The Proximity Rule or test - Proximity not in relation to time and action but to intention (eg. *R v. Tylor* – Match box – Striking a match – behind hay stack)

Cogitationis poenan nemo patitus – which means that no man can safely be punished for his guilty purposes save so far as they have manifested themselves on overt act which themselves proclaim his guilt. It may be mentioned that the proximity rule was the basis for the SC ruling in *Abhyanand Mishra's* case (1961) and *Sughir Kumar Mukherjee* (1973). In the case of *State of Maharashtra v. Mohammad Yakub* the accused was attempting to smuggle silver ingots out of India – Chinnapa Reddy J held that the measure of proximity is not in relation to time and action but in relation to intention.

TEST 2 – Doctrine of Locus Paenitentia – Landmark judgment is the case of *Malkiat Singh v. State of Punjab* – Attempt to smuggle Paddy in violation of Punjab (Export Control) Order, 1959

TEST 3 – The Impossibility Test – Punishing the guilty mind even when the act itself is innocent. (eg. Illustrations (a) and (b) of Section 511 of Indian Penal Code) the finest example of this test is the Malaysian case of *Mumah Binti Ali v. Public Prosecutor*.

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