

**Class: LL.M. IV SEMESTER**  
**CRIMINAL LAW GROUP**  
**Subject: Specific Principles of Criminal Law**  
**Code: L 4005**

**TOPIC: Inchoate Crimes**

**Introduction**

The criminal law punishes not only completed crimes but also short of completion of crimes. This category of uncompleted crimes is often called “inchoate crimes.” In this regard, incomplete criminal conducts raise a question as to whether it is proper to punish someone who has harmed no one or to set free that person who was determined to commit a crime.

The term inchoate crimes refers to acts engaged in toward the commission of criminal act, or which amount to indirect participation in a criminal act. While such an action may not be a crime in and of itself, it is engaged in for the purpose of furthering or advancing a crime. These types of acts are illegal because it is in the public’s best interest to deter people from engage in crime-promoting activity.

An inchoate crime as a criminal act that has just begun, or which is not fully formed or developed. Technically, inchoate crimes are incomplete crimes, in the sense that they involve such acts as:

- Planning and preparing to commit a crime
- Attempt to commit a crime, even if unsuccessful
- Conspiracy to commit a crime
- Aiding and abetting a crime
- Solicitation to commit a crime

The act may be sufficiently harmful to society as a whole by reason of its close proximity to the completed offence classed as a crime. A criminal attempt not only poses a threat to bodily and proprietary security but also infringes the right to security. Such an infringement constitutes, in itself, a harm that penal law seeks to punish. Criminal liability for attempt may be justified even in the absence of any harm. An attempt to commit a crime poses no less a menace to the legitimately confined interests of the individuals than does the complete crime.

**History of inchoate crimes**

Anticipatory incipient incomplete, and preliminary crimes are all other words for inchoate crimes act that imply an inclination to commit a crime even though the crime is never completed. The word “inchoate” means underdeveloped or unripened. Because of the social need to prevent crimes before they occur, the common law long ago established three separate and distinct categories of inchoate crimes- the crimes of attempt, conspiracy and

solicitation. Over the years, there has been little addition to this category of crime with the possible exception of possession (as in possession of burglar tools, bomb materials, gun arsenal etc) and another, seldom-heard offence based on the notion of preparation which has normally not been associated with inchoate crimes.

Traditionally, inchoate crimes have always been considered misdemeanours, but over the years they have been merged into felonies as society has put more power in the hands of law enforcement and prosecutors to deal with recalcitrant problems such as organized crime, white collar crime, and drug crime. Traditional rules that exist are (1) a person should not be charged with both the inchoate and choate offence, according to the so-called doctrine of Merger, with the exception of conspiracy which can be a separate charge (2) lesser penalties should ideally be imposed for inchoate crimes, but in many cases the penalty should be exactly the same as for the completed offense. (3) inchoate crimes should have specific intent, spelling out clearly what the mens rea elements are and (4) some overt action or substantial step should be required in the direction of completing the crime. This set of rules is sometimes referred to as the doctrine of inchoate crimes.

Generally all inchoate crimes are originally incorporated in Indian Penal Code of 1860. For example preparation, abetment, conspiracy and attempt. But criminal conspiracy was not originally in Indian penal code of 1860. It was incorporated in 1913 by way of chapter V A in Indian Penal code of 1860.

The main logic behind making the preparation, abetment, conspiracy and attempt punishable is to prevent the crime at its inception. Precaution is better than cure, so it is proper to make punishable, the very early stage of a crime.

## **Meaning and scope 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

There are four stages of a complete crime. Out of these four stages normally the liability under criminal law exists in the third and the fourth stages only, and the accused is generally not guilty if his act falls under the first or the second stage that is to say under the mental stage or the preparatory stage. For instance if A wants to kill B but does not do anything further in this regard he, being still in the mental stage, is not guilty for any crime. With such intention if he buys a revolver and gets a license for the same, even then he does not commit a crime because he is still in the preparatory stage.

As we have already noticed, two elements are always necessary to constitute a crime, namely, mens rea and actus reus. Where there is only mens rea, there is no crime. So also, a

mere evil intent or design unaccompanied by any overt act (prohibited act), which is technically called actus reus.

Though actus reus is necessary to constitute a crime, yet there may be a crime even where the whole of the actus reus that was intended has not been consummated. For instance, a person shoots at B, but misses the aim, no actus reus is consummated and so there is clearly no murder, but nevertheless a crime has been committed. Liability begins only at a stage when the offender has done some act which not only manifests his mens rea but goes some way towards carrying it out. These are known as inchoate crimes. Modern authors criticize the use of the term inchoate as misleading because the word inchoate connotes something which is not yet completed, and it is therefore not accurately used to denote something which is itself complete even though it be a link in the chain of events leading to some object which is not yet attained. The offence of incitement is fully performed even though the person incited immediately repudiates the suggested deed. A conspiracy is committed although the conspirator has not yet moved to execute the proposed crime and the performance of a criminal attempt must always have been reached before the end is gained. In all these instances, it is the ultimate crime which is inchoate and not the preliminary crime. The position indeed being just the same as in the example of a man who stole a revolver and committed other crimes to effect his purpose of murder. There the murder was inchoate but theft and other crimes including the attempt were completed.

## **Literal meanings of inchoate crimes**

### **Inchoate {in-koe-ate} adjective**

1. In an initial or early stage : incipient.
2. Imperfectly formed or developed: a vague, inchoate idea.

(Latin *inchoatus*, past participle of *inchoare* to begin, alteration of *inchoare*)

- Inchoately (adv.)
- Inchoateness (n.)

Formal: just begun and not yet properly developed

### **Following are general rules regarding inchoate crimes:**

- a) A person cannot be charged with an inchoate offense and the actual crime at the same time. For example, a person cannot be charged at the same time with attempted murder as well as murder. The person can only be charged with one or the other at the same time. However, conspiracy is an exception to this common rule. Accordingly, a person can be charged with murder and conspiracy to commit murder at the same time.
- b) To be convicted of an inchoate crime, it must be proven that the person to be convicted had the specific intent (*mens rea*) to commit or contribute to the actual crime.

- c) Inchoate crimes must involve some outward action or a substantial step in the completion of the crime. The person to be convicted should have done some act in furtherance of the crime.

An attempt to commit a crime is an act done with intent to commit that crime and forming part of series of act which would constitute its actual commission if it were not interrupted.

The doctrine of inchoate crimes is applied specifically to three crimes: attempt, conspiracy and abetment.

## **Attempt**

The term attempt has nowhere been described in the IPC chapter XXIII titled as of attempts of commit offences does not give any definition of attempt but simply provides for punishment for attempting to commit an offence punishable with imprisonment for life or imprisonment. The term however means the direct movement towards the commission of crime after necessary preparations have been made.

Attempt includes complete incomplete and impossible attempts. Complete attempts occur when the perpetrator takes every necessary step in the commission of a crime and yet is unable to commit it. An incomplete attempt occurs when the perpetrator takes some steps towards committing the crime but is stopped by some intervening force outside of their control before they are able to complete the attempt. An impossible attempt occurs when a perpetrator takes steps towards committing a crime, only to realize that there is something in the way making it impossible for the crime to be completed. This would include something like trying to commit murder when the target is already dead.

Statutes on inchoate crimes provide that individuals may be held criminally responsible for the intent to commit a crime, even if the crime is not actually committed. Inchoate crimes require that an individual have the intent to commit the criminal act and they take some step to achieve the goal.

### **The Indian penal code 1860 deals with attempt in three different ways:**

1. In some cases the commission of an offence and the attempt to commit it are dealt with in the same section and the extent of punishment is also the same for both.

Such provisions are contained in Section 121, 124, 124-A, 125, 130, 131, 152, 153A, 161, 162, 163, 165, 196, 198, 200, 213, 239, 240, 241, 251, 385, 387, 389, 391, 394, 395, 397, 459 and 460

2. In some cases attempts are treated as separate offence and are punished accordingly. There are four grave offences, attempts are described separately but side by side with the offence and specific punishment is prescribed for them. These are: -

- a) Murder is defined under section 300 penal provision is there in section 302 of Indian penal code 1860 and attempt to murder under section 307.
  - b) Culpable homicide not amounting to murder is punishable under section 304 and attempt to commit culpable homicide is under Section 308.
  - c) Attempt to commit suicide punishable under Section 309. However 309 stands as a class by itself as the completed offence here is not punished as it cannot be punished. This is a very controversial area and the constitutional validity of Sec.
  - d) Dacoity with murder is punishable under Section 396 and dacoity with an attempt to cause death is punishable under Section 397. Voluntarily causing hurt in committing robbery is punishable under Section 394 and attempt to cause grievous hurt in committing robbery is punishable under Section 397.
3. Provision has been made in Section 511 in respect of those offences which are not covered by the above two categories i.e. which are not otherwise provided for in the Indian Penal Code.

The Indian Penal code has not defined the word 'attempt'. Therefore it must be taken in its ordinary meaning. This is exactly what the provision of Sec. 511 requires. Sec. 511 is the solitary provision included in the last Chapter of the Indian Penal Code, 1860, under the title "of Attempt to Commit Offences". It makes attempt to commit a crime a punishable offence. This section provides for punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

The fifth Law Commission of India expressed its dissatisfaction about the manner in which the law of attempt, in general, and Section 511, in particular, is sketched and made operative in India. Terminology of Section 511, according to it, is most mystifying. It is not only of "little assistance" in defining "attempt" but, contrary to legislative intent, also suggests that each act, in series of acts done by an accused "towards the commission of the offence", is punishable as an attempt. Such an interpretation obliterates the inbuilt distinction between "preparation" and "attempt". So, the Law Commission, after making an enriching survey of prevailing definition of attempt, proposed some structural as well as substantive changes. It proposed deletion of Section 511 and insertion of a new Chapter VB entitled "Of attempt" consisting of the two Sections 120C and 120D after Chapter VA dealing with "Criminal Conspiracy". It is an effort to group inchoate crimes together.

## **Conspiracy**

A conspiracy occurs when two or more people agree to commit an illegal act and take some step toward its completion. Conspiracy is an inchoate crime because it does not require that the illegal act actually have been completed. For instance, a group of individuals can be convicted of conspiracy to commit burglary even if the actual burglary never happens. Conspiracy is also unique in that, unlike attempt, a defendant can be charged with both conspiracy to commit a crime, and the crime itself if the crime is completed.

**120A. Definition of criminal conspiracy** – When two or more persons agree to do, or cause to be done.

(1) an illegal act

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

**Explanation** – It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

**Ingredients** – The ingredients of this offence are:-

(1) That there should be an agreement between the persons who are alleged to conspire.

(2) That the agreement should be: (i) for doing of an illegal act (ii) for doing by illegal means an act which may not itself be illegal.

## **Elements of a Conspiracy**

Conspiracy first requires a showing that two or more people were in agreement to commit a crime. This agreement does not have to be formal or in writing. All that is required is that the parties had a mutual understanding to undertake an unlawful plan. Second, all conspirators must have the specific intent to commit the objective of the conspiracy. This specific intent requirement does not require that each individual knows all the details of the crime or all of the members of the conspiracy. As long as an individual understands that the act being planned is a criminal one and proceeds nonetheless, he can be charged with conspiracy.

Finally, in most states, conspiracy requires an “over act” taken in furtherance of the crime. This overt act does not have to be the crime itself, nor does it have to be an act that is illegal. Rather, the act must merely be a step taken in furtherance of the criminal objective, such as buying a weapon or holding a meeting to plan an attack. The act must also take place after the group of individuals has agreed to conspire. Actions taken before the agreement do not fulfil this requirement.

**General conspiracy and separate conspiracies** – In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. It is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found

expedient. New techniques may be invented and new means may be devised for advancement of the common plan.

In fact the steps adopted by one or two of the conspirators without the knowledge of others will not affect the culpability of others when they are associated with the object of the conspiracy. It is not necessary that a person should be a participant in a conspiracy from start to finish. Conspirators may appear and disappear from stage to stage in the course of a conspiracy.

## **Abetment**

Abetment will be examined in two parts. In the first portion, we shall examine the scope of s 107 providing for abetment and definition of abettor is s 108. In the second part, we shall study the provision proposing liability for abetment in its various manifestations and results, and the punishment imposed for the various offences.

Section 107 defines abetment of a thing. A person abets the doing of a thing when: (1) he instigates any person to do that thing: or (2) engages with one or more other persons in any conspiracy for the doing of that thing: or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The abetment, thus, may be by instigation, conspiracy or intentional aid.

The definition of abetment in the chapter is general in nature. It does not make the abetment of an 'offence' but of a 'thing', which may or may not be an offence. This makes the abettor solely liable in some case, even though the person abetted may be wholly innocent.

There are sometimes when the individual incites another to commit a crime for him, thus absolving him of any actus reus and thereby any responsibility for the crime. Through the offence of incitement and abetment, the legal system takes a strong stand against any wrongful act of an individual that leads to the commission of a crime. Thus, the main rationale behind inchoate crimes is to discourage individuals from the commission of a crime not only themselves, but also through the incitement.

In such offences, it is not the main aim that is being punished, but is the act or thought in pursuance of the main aim that is punished. It is of the belief that the offense that the individual wishes to commit is of such grievous nature that in case of failure to commit the said crime, it is in the public interest to prosecute the acts done in pursuance of the crime. People prosecuted for the commission of inchoate crimes do not commit direct harm through the actions undertaken, but for the harm that they could have caused if the act had been committed. Inchoate crimes are basically incomplete crimes are acts involving the tendency to commit, or to indirectly participate in a criminal offense.

## **Defenses to Inchoate Crime**

A person charged with an inchoate crime may have several options to present a defense. Possible defences to inchoate crime would vary by jurisdiction.

## **Abandonment**

An individual may claim, as a defense to inchoate crime charges, that he had abandoned his efforts to commit the crime, even though he may have engaged in some amount of planning. He may argue that he did not conspire, nor attempt, to commit the crime. In order to prove abandonment as a defense to inchoate crime, it must be shown that he had voluntarily and completely abandoned his efforts toward committing the crime. In fact, to successfully prove abandonment as a defense to an inchoate crime, the defendant must prove that he did at least one of the following:

## **Impossibility**

An impossibility defense relies on the defendant's claim that whatever illegal act he had been planning simply could not be accomplished because of some unforeseen event. Impossibility can be divided into two basic categories: legal impossibility, and factual impossibility.

### **Legal impossibility**

If a defendant argues that what he had intended to do turned out to not be a crime after all, he is taking a legal impossibility defense.

### **Factual Impossibility**

A defendant may claim a defense of factual impossibility if circumstances made it impossible for him to have completed the crime he intended to commit.

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