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Gauging the Liability in Criminal Attempt

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Abstract

Articulation of the principle of mens rea and recognition of its limiting function can clarify judicial decisions on liability. Only voluntary conduct warrants criminal liability and voluntary conduct includes at least knowledge of the risk of harm. Prognosis of the true intent at the time of the injury is pivotal to the objective of the study. The principle of liability on mens rea further restricts substantial and effective cause and the residue is imputable or legal cause. To assert that certain behavior is the imputable cause or legal cause of harm is to maintain that it is a type of substantial cause which includes a relevant mens rea. The present study is aimed at removing the glaring inadequacies of the adoption of the concept of mens rea on which the criminal justice system stands. With a view to spreading a healthy skepticism for the criminal justice agencies and those who strive to capture the truth in theoretical principle, a critical analysis on measuring criminal liability against criminal attempt is made. The present system of criminal justice is unable to dispense accurate and proportionate judgment.

Key words: *justice, principle of liability, mens rea*

I. Introduction

In recent decades the public has become more aware of the glaring inadequacies of the criminal justice system particularly in gauging liability in criminal attempt. A perfect judicial decision depends upon articulation of the principal of *mens rea* and recognition of its limiting function. The *mens rea* as a device to ascertain its dimension in interest visualize the microcosm with it specific character. Mental element assumes paramount importance in criminal attempt. The principle of *mens rea* is the ultimate evaluation of criminal conduct.

If the judicial decision without articulation of the principle is made, it will become a cataclysm.

The prohibited conduct has been clearly marked in statutes as a target by its precise definition. The law would penalize only conduct purposely undertaken to affect the breach of the Criminal Code by distinguishing premeditation from intended outcome. A legal system cultivates predictability that a definite consequence will follow prohibited misconduct. Such misconduct may draw punishment. But the punishment is never absolutely certain. The procedural rules for imposing punishment may be inconsistent in respect of the quantum of punishment actually need to be granted according to the amount of guilt. The crimes other than those excluded from criminal responsibility should ideally be ascertained by the administration through *mens rea* and award punishment for the actual amount of crime committed. To sock out the accurate legal norms in a statute by relinquishing its vulnerability to variability in time and place, the enactment of law should be the responsibility of a group of neutral and thoughtful persons instead of

dominant interest groups. The existing practices of framing criminal statutes by a group with political power persists influences and intends of the segment. Under this circumstance it becomes necessary to isolate and classify norms transcending political and other boundaries into universal categories, regardless of their incorporation in legal Codes. For an accurate correctional system the penal statutes are to maintain utmost efficacy by strict incorporation of sound and constructive goals and principles. The Indian Penal Code, 1860 consists of some eloquent deviations from the constructive principles and goals. As a result, deserving punishments to the perpetrators cannot be awarded or awarded un-proportionately by using discretionary powers by judges given in the statute.

II. Materials and Methods

The study was conducted in doctrinal methods and the sources of materials comprises of books, commentaries, law journals and law reports. The relevant cases and concepts were borrowed from the decisions of courts and periodicals. In this study no hypothesis is formed to be proved or disproved as it has not been felt necessary for the study.

III. Discussion

The objective of the present study has drawn attention of some legal thinkers in the past, *Cesare Baccaria* culminated in the conclusion drawn in his book "*An Essay on Crime and Punishment* " that punishment should not be "an act of violence, or one, or of many, against a private members of society." *Baccaria's* assumption was identical to the findings of the present study that a normative census created by persons capable of reasons, was the proper basis upon which punishments should be apportioned. The social contract theory, the acceptance of which propounded by *Baccaria,* that individuals would want to surrender the smallest portion of liberty possible and aggregate of these small portion forms the right of punishment that extends beyond this is abuse, not justice.[2] The provisions of the legal system, presently in operation imply a neutrality of the stage in its use of legitimate coercion against criminality and impersonality in the application of predictable official actions, regardless of the social position of the accused.

The quantum of criminality and proportionate punishment to the wrong-doer which is the issue culminated in the study explore a more profound meaning of criminal behavior. Many extended areas connected to criminal behavior are involved in this search for truth concentrating prime importance on the individual criminal. The punishment for committing a crime is to be ascertained according to the status of mind and *actus reus*. To create a bridge between the mental element and quantum of punishment deserved, the relevant case reference may be supportive material. Some cases are there which are difficult to prove due to anomalous character of criminality. These are-

Death by vehicle,
Pushing to death.

In such type of cases it is difficult to say whether the accused deliberately does so. If he deliberately did so, some other questions may arise, such as-

a) Did he desire the death of the victim?

b) Whether he conceived the knowledge that the victim would die?

c) If he did not desire the death of the victim, then why he should be exempted from criminal liability against the death of the victim caused by his act?

To answer these questions a critical analysis on the part of awarding proportionate punishment is needed. An attempt to commit an offence is possible even when the intended offence is impossible to commit.[3] The manifestation of the attempt for liability is arrived at crossing the preparation stage. This finding is supported by *K. I. Vibhute*.[4]

In criminal attempt, the liability arise, when there is an intent coupled with some overt act in execution thereof.[5] This finding is similar to the present finding. The decision of the Supreme Court in the case *State of M.P. v. Saleem* [6] that intent coupled with overt act is sufficient to penalize irrespective of the *actus reus* is in support of the present findings. In case of failure to complete the crime, whether due to voluntary withdrawal or intervention, the steps taken towards the commission of an offence are sufficient to penal liability. It is logical that, once the steps taken towards the commission of an offence are sufficiently far advanced to commit an attempt, it can make no difference whether the failure to complete the crime is due to a voluntary withdrawal by the prisoner, intervention of the police, or any other reason. [7] In *Tailor*[8] the court has taken similar view. In *Om Prakash's* [9] case the Supreme Court decided that the attempt to commit murder by firearms is sufficient to awarded penal liability irrespective of his failure to complete the crime in a prevalent circumstance. Failure to complete the commission of the crime under intervening circumstances is no defense in penal liability.[10] However, the criminality must be manifest to convict the offender in case of any factual impossibility showing the charter of his dangerousness. But it will be a defense in case of physical impossibility also if the criminality is not manifest, *e.g.* putting sugar in a cup of tea thinking it to be arsenic. Whereas, harmless dosage of cyanide will not be a defense as the criminality is manifest in these types of cases, showing clearly his dangerous character.

IV. Findings

Attempt and punishment for it recommended in statutes in variation of its interpretation on the gravity of the offence. The findings of the present study are that the existing provisions of the Indian Penal Code, 1860 consist of some eloquent deviations from the constructive goals and principles. As a result, deserving punishment to the perpetrators cannot be awarded. An attempt to commit a crime may be a successful or unsuccessful one. But the gravity of the offence should be taken into account for gauging liability against the wrongful or unlawful act.

Section 299 of Indian Penal Code, 1860 dealt with culpable homicide. Section 302 and Section 304 of IPC dealt with punishment for murder and punishment for culpable homicide not amounting to murder respectively. These two sections impose liability on alternative bases of intention. Intention becomes very crucial in the offence of culpable

homicide as it determines the degree of intention so as to impose proportionate penal liability.

But the imposed under Section 302 and 304 becomes disproportionate to the amount of culpability due to the exception given in the statute. Section 307 and 308 provides maximum discretion to the judges for awarding punishments which is unable to reflect accurately the notion of *mens rea* doctrine. Again Section 309 creates some controversies from the beginning with regards to constitutionality and adoption of literal rule in interpreting Article 21of the Constitution of India. The provision (i.e. Sec.309) has given discretion to the judges for awarding punishment to a person who is attempting to commit suicide, which has been regarded as a very immoral act for a long since.

The law of criminal attempt is a difficult task to deal with, for its protean face. In case of impossible attempt punishment is given on the basis of mental element without allowing for diversion of the principle of *mens rea.* Similar discrepancies appeared in some other provisions of IPC on criminal attempt including sexual offences.

V. Conclusion and Suggestions

1) Instead of providing unlimited discretion there should be some reasonable and specific punishments for the offences where presence of mental element is prime requisite for conviction.
2) The responsibility to form a criminal statute should be given to a neutral and knowledgeable body of criminal scientists instead of entrusting the duty to the political dominant power having sectional interest.
3) As suggested by the 5th Law Commission of India, the prevailing definition of 'Attempt' needs substantive and structural change in deviation from the interpretation of Section 511 of the Indian Penal Code, 1860.

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