

On the Job

The "On the Job" theory refers to whether an individual is actively engaged in the criminal act at the point of arrest or intervention. A critical aspect of this is the examination of whether the means employed were adequate to complete the crime, and whether the individual's actions constituted a direct move towards the crime after preparations.

This theory was notably discussed in **R v Osborne**, where the accused, who had provided innocuous pills claiming they would induce an abortion, was initially not held liable for an attempt as the means were absolutely unadaptable to bring about the intended consequence. This case was underpinned by the belief that since no harm was caused, or even likely to be caused, there was no societal alarm and therefore no punishable offence.

However, this case was overruled by **R v Spicer**, reflecting a shift in legal thinking—acknowledging that even attempts with inadequate means should be punishable if they demonstrate the actor's intent to commit a crime. This is because such an individual could pose a greater threat in the future.

Supreme Court's View

The Supreme Court of India has also provided substantial commentary on what constitutes an attempt. In **Abhayanand Mishra v. State of Bihar**, the Court held that the stage of preparation was completed when the accused had dispatched an application with fraudulent intent, marking the initiation of an attempt to commit fraud. This decision highlights the court's stance that an attempt crystallises when an act is done with the intention to commit a crime, moving beyond mere preparation.

The Probable Desistance Test

A nuanced aspect of this discussion involves the "probable desistance test," used to determine whether a defendant's conduct would likely have led to the completion of the crime if not interrupted. This is a predictive and counterfactual judgement, assessing whether the individual, unless stopped, would have continued their criminal behaviour to the final act necessary to complete the crime. This test argues that even if an individual abandons their attempt, the sufficient conditions for an attempt charge can still be met if it is reasonably predicted that they would have continued if not stopped.

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Example

Arjun plans to rob a local jewellery store. He gathers tools for breaking and entering, sketches out a detailed map of the store's layout, and notes the timing of the security shifts. On the night of the planned robbery, Arjun drives to the store, parks his car nearby, and approaches the back entrance with his tools.

Just as he is about to break the lock, Arjun receives a text message from his daughter that reads, "Dad, I need you. Please come home." At that moment, Arjun realises the gravity of his actions and the potential consequences on his family. He decides to abandon his plan, leaves the premises immediately, and returns home to his daughter.

Attempt: Arjun's actions have crossed the threshold from mere preparation to an attempt. He had a clear intention (*mens rea*) to commit the crime, and he took a substantial step towards its completion (*actus reus*) by arriving at the location with all necessary tools and initiating the break-in.

At the point of arrest or intervention, had he been caught at the scene before deciding to leave, Arjun would have been considered "on the job," as he was actively engaged in the commission of the crime. However, since he abandoned the crime voluntarily and before any external intervention, this theory would not negate his ability to claim *locus paenitentiae*.



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