# IPC Section 238

Section 238 of the Indian Penal Code (IPC) is a relatively short provision that addresses attempts to commit unnatural offences, specifically those outlined in Section 237. Understanding Section 238 requires a thorough examination of its wording, its relationship with Section 237, the concept of attempt in criminal law, and the legal interpretations and challenges associated with its enforcement.  
  
  
\*\*The Text of Section 238:\*\*  
  
> Whoever attempts to commit an offence punishable under section 237 shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.  
  
  
\*\*Breaking Down the Section:\*\*  
  
1. \*\*"Whoever attempts..."\*\*: This phrase establishes the core element of the offence, which is the \*attempt\* to commit an unnatural offence. The section doesn't punish the completed act of an unnatural offence itself, but rather the attempt to commit such an act.  
  
2. \*\*"...to commit an offence punishable under section 237..."\*\*: This explicitly links Section 238 to Section 237. Section 238 becomes relevant only when there's an attempt to commit an act that would be punishable under Section 237 if completed. Therefore, understanding Section 237, which deals with unnatural offences, is crucial for interpreting and applying Section 238.  
  
3. \*\*"Punishment..."\*\*: The prescribed punishment for attempting to commit an unnatural offence is imprisonment for up to five years and a fine. This is a lesser punishment compared to the punishment for the completed offence under Section 237 (which can be life imprisonment or up to ten years imprisonment and a fine). This difference in punishment reflects the legal principle that an attempt, though punishable, is less culpable than the completed offence.  
  
\*\*Understanding "Attempt" in Criminal Law:\*\*  
  
The concept of "attempt" in criminal law is complex and has been subject to extensive judicial interpretation. An attempt to commit a crime involves an intention to commit that crime and an overt act towards its commission that goes beyond mere preparation. The line between preparation and attempt can be blurry and depends on the specific facts and circumstances of each case. Several tests have been developed by courts to determine whether an act constitutes an attempt:  
  
\* \*\*Proximity Test:\*\* This test focuses on how close the accused was to completing the offence. The closer the act is to the completion of the crime, the more likely it is to be considered an attempt.  
  
\* \*\*Equivocality Test:\*\* This test examines whether the actions of the accused clearly and unequivocally indicate an intention to commit the specific crime.  
  
\* \*\*Last Act Test:\*\* This test, though largely discarded in modern jurisprudence, considered an attempt to be complete only when the accused had performed the last act necessary to commit the offence.  
  
\* \*\*Impossible Attempt:\*\* Even if the intended crime is impossible to complete due to factual or legal reasons, an attempt can still be punishable if the accused believed it was possible and took steps towards committing it.  
  
\*\*Applying "Attempt" to Section 238:\*\*  
  
In the context of Section 238, an attempt to commit an unnatural offence would require the prosecution to prove:  
  
1. \*\*Intention:\*\* The accused must have had the specific intention to commit an act punishable under Section 237.  
  
2. \*\*Overt Act:\*\* The accused must have taken some overt act towards the commission of the offence that goes beyond mere preparation. This could involve actions like making advances, attempting penetration, or engaging in preparatory acts that clearly demonstrate an intention to commit an unnatural offence.  
  
3. \*\*Proximity:\*\* The act must be sufficiently proximate to the commission of the offence. The closer the act is to the intended penetration, the more likely it is to be considered an attempt.  
  
\*\*Challenges in Applying Section 238:\*\*  
  
Several challenges arise in the application and interpretation of Section 238:  
  
1. \*\*Vagueness of "unnatural offence":\*\* The definition of "unnatural offence" under Section 237 remains ambiguous. This vagueness spills over into Section 238, making it difficult to determine precisely what constitutes an attempt to commit such an offence.  
  
2. \*\*Proof of intention:\*\* Proving the specific intention to commit an unnatural offence can be challenging, especially in cases where the act is interrupted or doesn't reach the stage of penetration. Circumstantial evidence, including the accused's actions, words, and surrounding circumstances, may be relied upon to infer intention.  
  
3. \*\*Distinguishing between preparation and attempt:\*\* The line between preparation and attempt can be blurred in cases involving unnatural offences. Determining when preparatory acts transition into an attempt requires careful consideration of the specific facts and applying the relevant tests established by courts.  
  
4. \*\*Consent:\*\* The issue of consent can be relevant in determining whether an attempt has been made. If the intended victim consents to the act, then there's no offence under Section 237, and consequently, no attempt under Section 238. However, it's important to note that consent must be freely and voluntarily given. Coerced or obtained through deception, undue influence, or exploitation is not valid consent.  
  
5. \*\*False accusations:\*\* Due to the sensitive nature of these offences and the potential for social stigma, there's a risk of false accusations being made. Thorough investigation and careful scrutiny of evidence are essential to prevent injustice.  
  
\*\*Case Laws and Judicial Interpretations:\*\*  
  
While specific case laws directly related to Section 238 are limited and often not publicly reported due to their sensitive nature, judicial pronouncements related to "attempt" in general and Section 377 (before its partial decriminalization) provide some guidance. Courts have consistently emphasized the need for clear evidence of intention and an overt act going beyond mere preparation.  
  
\*\*Relationship with Other Laws:\*\*  
  
Section 238 should be read in conjunction with Section 511 of the IPC, which deals with punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. Section 511 provides a general framework for punishing attempts, while Section 238 specifically addresses attempts to commit unnatural offences.  
  
Furthermore, the POCSO Act provides specific provisions for dealing with attempts to commit sexual offences against children. In cases involving minors, the POCSO Act will generally take precedence over Sections 237 and 238.  
  
  
\*\*Conclusion:\*\*  
  
Section 238 of the IPC addresses attempts to commit unnatural offences as defined under Section 237. It penalizes the attempt itself, even if the intended offence isn't completed. Understanding the concept of "attempt" in criminal law and the complexities surrounding the definition of "unnatural offence" is crucial for applying Section 238 effectively. The challenges in applying this section include proving intention, distinguishing between preparation and attempt, and addressing issues of consent and potential for false accusations. Careful judicial interpretation and robust evidentiary standards are necessary to ensure that Section 238 is applied fairly and justly while protecting the rights of all individuals involved.