

VIPS

योग: कर्मसु कौशलम्
IN PURSUIT OF PERFECTION



Attempt

Anchal Mittal
Assistant Professor

Contents

- Meaning
- Case Law
- Distinction between Preparation & Attempt
 - Principles to determine stage
- Section 307 and Section 511

Attempt

- It is interesting to note that the IPC has not defined the term 'attempt'.
- Chief Justice Cockburn said, '*clearly conveys with it the idea that if the attempt had succeeded, the offence charged would have been committed.*'
- Attempt is the direct movement towards the commission of an offence after the preparations have been made.
- Once an act enters into the arena of attempt, criminal liability begins, because attempt takes the offender very close to the successful completion of the crime and so it is punishable in law like the completed offence.
- The act may be sufficiently harmful to society by reason of its close proximity to the completed offence classed as a crime.
- Section 511 provides punishment for a person who does any act towards the commission of the offence

Cont.

- It may be defined as an act which if not prevented would result in the full consummation of the attempted offence.
- It is, thus, an act done in part execution of a criminal design, mounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. An attempt to commit an offence consists in the intent to commit a crime, combined with the doing of some act for its actual commission.

Attempt under IPC

- The IPC has not defined attempt to commit a crime but has dealt with attempt in four different ways,

Firstly, the commission of an offence and the attempt to commit it are dealt with in the same section, the extent of punishment being the same for both the offence as well as its attempt. These are

- (a) offences against the State, such as, waging or attempting to wage war against the Government of India (section 121),
- (b) assaulting or attempting to assault the President of India, Governors of States, etc., with intent to counsel or restrain the exercise of any lawful power (section 124),
- (c) sedition (section 124A), waging or attempting to wage war against any Asiatic Power in alliance with the Government (section 125), public servant taking gratification (section 161), dacoity (section 391),

Secondly, attempts to commit offences and commission of specific offences have been dealt with separately, and separate punishment have been provided for attempt to commit such offences from those of the offences committed.

Cont.

- For instance, attempt to commit murder, attempt to commit culpable homicide not amounting to murder, and attempt to commit robbery have been dealt with in sections 307, 308 and 393, IPC whereas murder, culpable homicide and robbery are punishable sections 302, 304 and 392,

Thirdly, attempt to commit suicide is made punishable under section 309,

Fourthly, attempts to commit offences in general (except those falling in the above-stated categories) have been made punishable under section 511, IPC.

Case Law

- ***Koppula Venkat Rao v State of Andhra Pradesh*** AIR 2004 SC 1874

'attempt' is not itself defined, therefore, be taken in its ordinary meaning. ...An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this.

An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but failing short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime.

In other words, an attempt consists in it **the intent to commit a crime, failing short of, its actual commission or consummation or completion.** It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.

Cont.

- The SC observation and Section 511 reveals that there are three essentials of the offence of attempt to commit an offence that are required to be proved, namely:
 - he had an intention or *mens rea* to commit the contemplated or intended offence,
 - he has done some act or taken a step forward (ie, an act or a step which was more than merely preparatory to the commission of the intended offence) towards the commission of the contemplated offence,
 - he, for reasons beyond his comprehension or control, failed to commit the intended offence.

Section 511 (Chapter XXIII)

Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment

Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Cont.

- the last section of the Code, makes attempts to commit offences in general punishable.
- The scope of the section, however, is limited to only those attempts where no express provisions have been made by the Code for the punishment, as explained before.
- This section does not apply to attempt to murder which is fully and exclusively covered by section 307 of the Indian Penal Code. Again, attempt to commit an offence under a special or local law is not punishable under the Penal Code.
- The section further leaves unpunished attempts to commit those offences punishable with fine only.
- The section applies to-
- (i) attempts to commit an offence punishable with imprisonment, and
- (ii) attempts to cause such an offence to be committed and in such attempt an act is done towards the commission of the offence.

Cont.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

PREPARATION Visa Vis ATTEMPT BEGIN



- The Courts in India have stressed that there is a thin line between the preparation for, and an attempt to commit, an offence.
- It is also difficult to distinguish between the two.
- But such a task is crucial as, ordinarily, preparations to commit an offence, do not attract criminal liability. A doer becomes liable once he through his act or series of act enters the arena of attempt.
- Some principles have been evolved with the help of judicial pronouncements to determine at what stage an act or series of act would be an attempt. These principles are: *Proximity Rule*, *Doctrine of Locus Paenitentiae*, *Impossibility test*, *social danger test*, *equivocality test*.

Principle's

Proximity Rule

- An act, to be designated as an attempt, must be sufficiently near to the accomplishment of the substantive offence punishable.
- It need not be remotely leading towards the commission of the offence. In other words, the act of an accused is considered proximate if, though it is not the last act that he intended to do, it is the last act that was **legally necessary for him to do**, if the contemplated result is afterwards brought about without further conduct on his part.
- *For instance*, A, intending to kill Z, buys a gun and loads it with the intention to kill Z. A is not yet guilty of an attempt to commit murder. Buying the gun is simply an act of preparation which is not punishable.
- A shoots at Z, intending to kill him, but misses the mark. A would be liable for attempt to murder.

Contd.

Sudhir Kumar Mukherjee v. State of West Bengal AIR 1973 SC 2655

The Supreme Court explained attempt with the help of proximity rule in the following words.

- A person commits the offence of "attempt to commit a particular offence" when-
- (i) he intends to commit that particular offence, and
- (ii) he, having made preparation and with the intention to commit the offence, does an act towards its commission.

Such an act need not be penultimate act towards the commission of that offence but must be an act during the course of committing that offence.

Doctrine of Locus Paenitentiae Test (Time for Repentance)

- An act will amount to mere preparation if a man on his own accord gives it up, before the criminal act is carried out.
- It deals with those cases in which an individual made preparation to commit the crime but changes his mind at the end, thereby pulling out at the last instant. Such intentional withdrawal prior to the commission or attempt to commit the act will be termed as mere preparation for the commission of the crime and no legal liability will be imposed.
- For instance, A intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping. A is not yet guilty of an attempt to murder, because there is still time when better reason might prevail any moment and A might change his mind and desist from giving that food Z.

Cont.

Malkiat Singh v. State of Punjab AIR 1970 SC 713

- The appellant, who is a truck driver carries paddy out of the jurisdiction of the State of Punjab without a licence, in violation of the Punjab (Export) Control Order, 1959, was stopped 14 miles away from the Punjab-Delhi border, and was prosecuted for an attempt to contravene the said order.
- The Supreme Court, while allowing the appeal, said that the act of carrying paddy did not amount to a criminal attempt. The court observed:
- The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind, and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their minds at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey!

Impossibility Test

- If a person attempts to commit a crime which is impossible, then also it will be punishable under the Indian Penal Code.
- If a person attempts to kill someone by empty gun, or steal something from an empty pocket, or steal jewels from empty jewel box. Then it is considered as an impossible attempt of committing that crime but here intention to commit the crime is present and also a step is taken towards completion of that crime. Thus it is considered as 'attempt to crime' under Section 511 of the IPC.

The Equivocality Test

- The act must speak for itself. To constitute an attempt the act must be such as to clearly and unequivocally indicate the intention to commit the offence.
- If what is done indicates beyond reasonable doubt that the end is towards which it is directed, it is an attempt, otherwise it is a mere preparation. That is to say, the act must refer to the commission of the crime and it must be evident and clear on examination.
- As stated by Turner: Cinematographic films, which had so far depicted merely the accused person's acts without stating what was his intention, were suddenly stopped and the audience asked to say to what end those acts were directed. If there is only one reasonable answer to this question, then the accused has done what amounts to an attempt to attain that end. If there is more than one reasonably possible answer, then the accused has not yet done enough.'

Social Danger Test

- The seriousness of the crime attempted and apprehended of the social danger involved in it are taken into account to distinguish an act of attempt from that of preparation.
- A gives pills to a pregnant woman to procure abortion, but they have no effect because the drug turns out to be innocuous.
- A would be guilty of an attempt to cause miscarriage since the act would cause an alarm to society and would have social repercussions.

Attempt: Section 307 & Section 376

- Section 307 & S. 511
 - Om Prakash v State of Punjab, 1961
- Section 376 & S. 511
 - Sulekhan Singh v State of Rajasthan 1999

Thank You