



CRIMINAL ATTEMPT

Dr. Neetu, Assistant Professor, Faculty of Law, University of Delhi

Abstract

Attempt is an act done with intent to commit crime and forming part of series of acts which would constitute actual commission of the crime is not interrupted. Every crime passes through some stages i.e. first intention, guilty mind is very important to determine the conviction of any accused, second is preparation this is related to planning and design of the crime, mere preparation is not an offence except for some offences mentioned in the criminal law once the preparation stage is crossed it is attempt once the attempt is completed that leads to the commission of an offence. An attempt is the third stage of the crime which is punishable in law, it is a direct movement or action towards the commission of offence. Action which is unsuccessful due to some outside intervention or not converted into the crime i.e. attempt. An attempt is punishable because it is an alarming situation that if the first time accused remains unsuccessful to commit the crime next time with more planning and accuracy commit the crime. So it's better that at this stage it should be stopped and punished.

Keywords

Attempt, Intention, preparation, offence, Indian Penal Code, Bharatiya Nyaya Sahita, The proximity rule, Doctrine of locus paenitentiae, Impossibility.

INTRODUCTION

The term attempt has not been defined in the Bharatiya Nyaya Sahita 2023. Earlier the general term of attempt had been stated in section 511 of Indian Penal Code, 1860 (IPC), presently it is in section 62 of BNS. The provision language in BNS is similar to the language given in the repealed IPC. As per the author Stephen, "an attempt to constitute a crime is an act done with an intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted".¹ An attempt is an act done with the intent to commit a crime and forming part of a series of acts that would constitute the actual commission of the crime if not interrupted.² The court held that for convicting the accused under Attempt, it is sufficient that the accused having intention coupled with overt act is proved, once the attempt is completed i.e. direct movement towards the commission of offence without obstruction from outside intervention offence is done. An attempt is more than an intention to commit a crime and preparation to commit the crime.³

In one of the landmark cases, their lordships of the Supreme Court stated:

"We may summarise our view about the construction of section 511 IPC (repealed) correspondence with present sec 62 of BNS thus A person commits the offence of attempt to commit that particular offence when (i) he intends to commit that particular offence and (ii) he having made preparations and with the intention to commit the offence, does an act towards its commission: such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing the offence".⁴

"To constitute an attempt the act done must be immediately, and not remotely, connected with the commission of the offence. In other words, it must be something more than mere preparation for the commission of the offence". Indian law Attempt is the direct movement toward the commission after preparations have been made. An attempt to commit a crime must be something more than mere preparation.⁵

¹ Sir Herbert Stephen Bart, *The Digest of Criminal Law*, Art 50 (1894).

² K D Gaur, *Textbook on Indian Penal Code* 1119 (Lexis Nexis, Gurgaon), 2018.

³ *Sagayam V. State of Karnataka*, AIR 2000 SC 2161.

⁴ *Abhaynand Mishra V. The State of Bihar*, AIR 1961 SC.

⁵ *R.V Robinson* (1915) 2 K.B. 342.

STAGES IN THE COMMISSION OF CRIME

There are four stages of crime, the first is the intention to commit the crime, the second is preparation, and the third is an attempt to commit it, once the attempt, is done successfully, then the crime has been completed i.e. offence is done. In any case, the offence is not committed due to failure of attempt or obstruction by outside intervention. Attempt is punishable under the law though the offence is not completed.⁶ It is the direct movement towards the commission of an attempt and it would be successful if not interrupted by outside obstructions, it is an alarm that the offender does it again to complete the offence. If the attempt succeeds, he has committed the crime. if he fails due to reasons beyond his control, he is said to have attempt to commit the crime.⁷

Intention: To define intention is very difficult but under criminal law. Intention means the object, purpose, ultimate, aim, and design to commit the offence. the intention is always related to the mental element of the crime. Intention has a relationship with the consequence of crime. malafide intention or guilty mind is punishable under the law done with some overt or illegal act.

Preparation: In criminal law generally preparation is not punishable. Preparation is something different from motive. it is not punishable under the law because in most of cases, it is difficult to show that preparation is done with some evil motive, criminal intention, or directed to a wrongful end. Preparation is punishable under the law in exceptional cases. It differs widely from attempt which is the direct movement towards the commission after preparations are made.⁸

Attempts begin where preparation ends: Preparation in general is not punishable. While the attempt to commit a crime is punishable under criminal law, for convicting an offender it is sufficient that the illegal act has been done with criminal intention, it is clear that the offender has the intention to commit the crime and acts directly towards the commission of the offence, it is a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence such act must be an act during the course of committing that offence.⁹

Preparation and Attempt distinction: The dividing line between them may be thin, in some cases. Every case should be decided on its own facts and circumstances. "An attempt to commit an offence is an act or a series of acts, which lead inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An act done towards the commission of an offence, which does not lead inevitably to the commission of the offence unless it is followed or perhaps, preceded by other acts, is merely an act of preparation".¹⁰

The attempt's main elements are criminal intention and preparation to commit the crime. The culprit has the desire to complete the crime. when a culprit does an overt act with the intention to attain a certain end and fails due to some circumstances independent of his own will, then that man has attempted to effect the object at which he aimed. All that is necessary to constitute an attempt is some external act, something tangible and ostensible of which law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress is interrupted.¹¹

"The Supreme Court, linking the interpretation of attempt with the offence alleged to be an attempt said that the penal provision with which they were concerned have been enacted to prevent the evil of smuggling precious mental out of India. A narrow interpretation of the word attempt, therefore in these penal provisions which will impair their efficacy as instruments for combating the baneful activity has to be eschewed. The expression attempt is wide enough to take in its fold any one of the series of acts

⁶ PSA Pillai's, *Criminal Law* 119 (Lexis Nexis, Haryana) 2019.

⁷ *Abhaynand Mishra V. State of Bihar*, AIR 1961 SC 1698.

⁸ *Jain Lal V. Emperor* AIR 1943 Pat 82

⁹ *State of Maharashtra V. Mohd Yakub*, AIR 1980 SC 111.

¹⁰ *Abhaynand Mishra V. State of Bihar*, AIR 1961 SC 1698

¹¹ *State of Maharashtra V. Balram Bama Patil*, AIR 1983 SC 305.

committed beyond the stage of preparation as moving the contraband goods deliberately place of embarkation, such act or acts being reasonably proximate to the completion of unlawful export.”¹²

Commission: Attempt to commit an offence can be said to begin when preparations are complete and the culprit commences to do something with the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.

SCOPE OF SECTION 62 OF BNS

- (1) An attempt to commit an offence
- (2) Offence must be punishable under the BNS
- (3) Offence punishable with imprisonment
- (4) Done an act towards the commission of an offence.

This section is related to an attempt to commit offences in general punishable under the BNS, it deals with those attempts where no express provisions of punishment are provided under the BNS section 62 is not applicable in the cases, where the offence is punishable under any special or local laws. this section further leaves unpunished attempts to commit those offences punishable with a fine only. “An act done towards the commission of the offence consists in the solicitation itself. Intention alone or intention followed by preparation are not sufficient to constitute an attempt. But intention followed by preparation, followed by any act done towards the commission of the offence is sufficient”.¹³

Crime is the consequence of evil intention and overt act, once the crime has been done with a guilty mind the offence is committed if the offence remains uncompleted or not committed due to unreasonable circumstances or intervention from the external side then it is an attempt to commit a crime once attempt is successful it is a commission of an offence. Thus, Illustration (a) of section 62 of BNS, explains “the act of breaking open the box is done towards the commission. of the theft of the Jewels. The theft itself, that is actual removal of the jewels, remains to be done and it remains undone because it turns out that there are no jewels to remove. (b) fails to comply with the essentials of theft simply because there is nothing in the pocket. The words “does any act towards the Commission of the offence” must not be construed to include all acts. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt.” Acts remotely leading towards the Commission of the offence are not to be considered as attempts to commit it but acts immediately connected with it are acts done towards the commission of the offences. From the moment when an intention is formed to commit an offence, every act done which facilitates the commission of the offence and which is done with that object in view, is in one sense “an act done towards the commission of the offence”.

“The circumstance under which the act is done shows the intention of the person, where any act is done at dead of night, which can be done in a day. This revealed the intention of the accused that silver was to be exported.”¹⁴ The S.C has pointed out that in cases of attempt to commit murder by five arms, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires he does not do any act towards the commission of the offence and once he fires and something happens to prevent the shot taking effect, the offence of attempt to commit murder is made out. Expressions, in such case, indicating that one commits an attempt to murder only when one has committed the last act necessary to commit murder are not to be taken as precise exposition of the law, though the expressions in the context of the cases are correct.¹⁵ An attempt mens rea is generally presents no special difficulty because it is purely a matter of fact. Every attempt is based upon a specific intent that is an intent to commit some particular crime.¹⁶ Conviction of the accused depends on the intention attached to the overt act eg. The defendant threw the victim from a

¹² *State of Maharastra V. Mohd Yakub* ,AIR 1980 SC 111.

¹³ *Asgarali Nadhania V. Emperor* ,AIR 1933 Cal 893

¹⁴ *State of Maharastra v Mohd yakub and others* ,AIR 1980 SC111.

¹⁵ *Om Parkash V.State of Punjab* ,AIR 1961 SC 1782.

¹⁶ *R V Button*, (1900) 2 Q.B. 597.

third-floor balcony. At their trial for attempted murder, the judge directed the jury that they had to be sure that the defendant intended and tried to kill. The jury while deciding the case considered that : (i) There was a very high degree of Probability that the victim would be killed (ii) The defendant knew there was such high risk, then they were entitled to draw the inference that the defendant intended to kill.¹⁷

TESTS TO DETERMINE ATTEMPT

To determine the conviction of the accused under attempt some tests have been declared by the Supreme Court, on the basis of these tests it is determined whether that attempt has been done or not, like the test is whether the act, if uninterrupted and unsuccessful would constitute a crime, if the accused intended that the natural consequence of his act should result in death but was unsuccessful because of intervention from outside circumstances, he would be guilty of an attempt to commit the offence of murder.

The main issue in the case of an attempt is that a particular act done by the accused is merely at the stage of preparation or at the stage of attempt is a question of fact. The dividing line that the act done by the accused is mere preparation or an attempt is something thin and has to be decided on the facts of each case. An attempt is a direct movement towards the commission of offence and after the preparation has been made. For example on receipt of some secret information that silver would be transported in a jeep and truck, custom officers kept watch and followed the vehicles at midnight. The vehicles were halted near a bridge over a check and small and heavy bundles were removed from the truck and were kept on the ground. As custom officers surrounded the vehicles the sound of the engine of a mechanised seacraft from the side of the creek was heard by the officers. A number of silver ingots were found lying under saw-dug bays in the truck, the supreme court held that the accused had attempt to export silver out of India by sea in contravention of the law.¹⁸

The court has developed three principles to test the attempt.¹⁹

- (i) The proximity rule or test
- (ii) Doctrine of locus paenitentiae
- (iii) Impossibility test

(i) The proximity rule or test.

In order to designate an act as an attempt, it must be sufficiently near to the accomplishment of the substantive offence that the act of the accused should be considered proximate.

The Calcutta High Court considered the case where the prisoner had given an order to pay 100 forms similar to those formerly used by the Bengal Coal Company. The first proof of the forms was also corrected by the accused. At about the stage when the accused was to make the final corrections and alternations to the printed form to make them a paper exactly like the originals, he was arrested and charged with attempting to make false document under section (464, I.P.C repealed) 335 of BNS. However, the Court held him not to be guilty as the attempt could be said to be have been completed only after the seal or the signature of the company had been affixed. Consequently, the act done was not an act towards making one of the forms a false document, but if the prisoner had been caught in the act of writing the name of the company upon the printed form and had completed a single letter of the name, then, in the words of Lord Blackburn, 'the actual transaction would have commenced which would have entered in the crime of forgery and he would have been held guilty of the attempt to commit forgery.'²⁰

- (ii) Doctrine of locus Paenitentiae.

¹⁷ *RV Walker and Hayles* (1990) 90 Cr App R.

¹⁸ *State of Maharashtra V Modh Yakub*, AIR 1980 SCH111.

¹⁹ *Malkiat Singh and Anr. V. State of Punjab*, AIR 1968 SC 713.

²⁰ *R. v. Raisat Ali*, (1881) 7 Cal 352.

This refers to an act amounting to mere preparation if a man on his own accord gives it up before committing the offence. This principle was explained by the Supreme Court in Malkiat Singh's case given below:

the accused, driver, and cleaner, were intercepted at Samalkha barrier post in Punjab, which is about 14 miles from the Punjab-Delhi border, driving a truck containing 75 bags of paddy. They, along with others, were charged with the offence of attempting to export paddy in violation of Punjab (Export) Control Order, 1959. The Supreme Court acquitted the accused observing that 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 complete harmless.²¹

(iii) The impossibility test

The principle of impossibility test is provided in the illustrations to the section 62 BNS.

The Calcutta High Court upheld Arup Kumar Sarkar's conviction under the POCSO Act and IPC presently BNS. The court found the victim's testimony consistent and reliable, with no evidence supporting the false allegation claim. Citing the Malkiat Singh case, the court established the appellant's actions showed sexual intent, constituting an attempt under POCSO Section 7 and conviction was confirmed under POCSO.²²

CONCLUSION

Whether the acts constitute 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 act already done would completely harmless. But where the thing done in such as, it not prevented by extraneous Cause would fructify into Commission of the offence, it would amount to an attempt to commit an offence. An attempt to commit an offence does not cease to be an attempt merely because after the attempt is made and before the actual completion of the offence. the offender may be able to prevent its completion by doing some other act in pursuance of a charged intention.

“There is a thin line between the preparation for and an attempt to commit an offence Undoubtedly, a culprit first intends to Commit an offence, then makes preparations for committing it and thereafter attempts to commit the offence. if the attempt succeeds, he has committed the offence. Attempt to commit an offence therefore can be said to begin when the preparations are complete and the culprit to do something with the intention of committing the offence and which is a step towards the commission of the offence The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. In two cases Abhaynand Mishra AIR 1961 SC 1698 And Sajayam State of Karnataka AIR 2000 SC 161, the Supreme Court held that preparation to commit an offence is punishable only when the preparation is to commit an offence is done with criminal intention, it is a direct movement towards offence.

²¹ *Malkiat Singh v. State of Punjab*, AIR 1986 SC 63.

²² *Arup Kumar Sarkar vs. The State of West Bengal and Ors.* (2023)