

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Revisiting Intention and Motive in Criminal Law

MS. SATINDER KAUR¹

ABSTRACT

Indian Penal Code, 1860 incorporates many fault elements (mens rea) like intention, knowledge, rashness, negligence etc. but does not define them. Intention being one of the constituent elements of crime lacks a concrete definition. Many offences under Indian Penal Code, 1860 require intention as mens rea to be proved but it is nowhere defined in Indian Penal Code, 1860. The task of defining intention is therefore assumed by the Courts. It is important to give Intention a concrete definition to prevent any kind of ambiguity. In other jurisdictions, attempts have been made to give intention a concrete meaning and definition. Motive also being a mental element is made irrelevant for determining the culpability of the offender. There is an argument to this effect that it is impossible to form intention without the existence of motive. Hence, this paper is aimed at exploring the attempts made in different jurisdiction in order to give intention a concrete definition. Also, this paper examines the reasons as to why motive has been made irrelevant when it is impossible to form intention without motive.

I. INTRODUCTION

Indian Penal Code, 1860 incorporates many fault elements² namely; ‘voluntarily’³, ‘dishonestly’⁴, ‘intention’ and ‘knowledge’. The terms ‘voluntarily and fraudulently are defined with reference to intention and knowledge. Even though, there are specific offences which incorporate fault element like intention but the code nowhere defines intention. Intention being the gravest shade of *mens rea*, lacks a definite meaning under the Indian Penal Code, 1860 (hereinafter referred to as IPC). The judges define the term differently in different situations which tend to give different interpretations to the word. The precise meaning of the term intention is not there and hence it is important that a concrete definition

¹ Author is a Research scholar at Maharashtra National Law University, Mumbai, India.

² Stanley Yeo, Wing Cheong Chan, *et.al.* (eds.), CODIFICATION, MACAULAY AND THE INDIAN PENAL CODE 2011, p.59.

³ Indian Penal Code, 1860, s.39 reads as: A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

⁴ *Id.*, s.24 reads as: whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

is afforded to the term intention. This shade of *mens rea* is most difficult to prove as one cannot enter into the mind of the accused. Intention has to be gathered from surrounding circumstances. Intention is an invisible state of mind which has to be gathered from the circumstances such as nature of the weapon used, nature of injuries, multiplicity of injuries, force with which the attack has been made.⁵ Intention in general parlance means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse.⁶

Motive is also a mental element but it should not be confused with intention. If a man knows that a certain consequence will ensue from his act then it must be presumed that he intended the consequence although he may have had different motive for performing the act.⁷ The motive is not a sufficient test to determine the criminal character of the act or otherwise. Motive is something which pushes a person to do a certain act. It is a reason which impels a person to do a particular act or to engage in a criminal conduct. The criminal law does not concern with good or bad motive which is very problematic.

It is pertinent to say that it is practically impossible for an individual to form intention without having any motive.⁸ Motive at a very initial stage induces a person's intentions and actions. Pure motive does not relieve a person from the criminal liability and a bad motive does not go on to determine the guilt of the accused. The question that arises here is why is motive made irrelevant in determining the criminal liability of a person?

The answers to these questions need to be unpacked in order to look into the reason behind irrelevancy of motive in affixing the criminal liability. "*Mens rea* claims to be based upon individual justice through the operation of the fault element, completely ignores a normal mental element in human conduct in its attribution of fault."⁹

Motive and intention are always distinguished. Hence it becomes important to see "Is the difference between motive and intention fundamental or motive is merely a name for certain kind of intention?"¹⁰ It is even contended that the ulterior intent is the motive for example, when a thief commits theft, his immediate intent is to appropriate the money and his ulterior intent is to satisfy his hunger by buying food.¹¹ Therefore the meaning ascribed to the terms 'Intention' and 'motive' and difference between the two acquire great importance.

⁵ *Jai prakash v. delhi administration* (1991 SCR (1) 202).

⁶ Ratanlal & Dhirajlal, *THE INDIAN PENAL CODE*, 34th ed. 2014, pp. vi.

⁷ *Ibid.*

⁸ Alan Norrie, *CRIME, REASON AND HISTORY-A CRITICAL INTRODUCTION TO CRIMINAL LAW*, 3rd ed. 2014, pp. 43.

⁹ *Id.* at 42.

¹⁰ Walter Wheeler cook, "Act Intention and Motive in the Criminal law" 6 *YALE LAW JOURNAL*, Vol. 6 1916, p. 659.

¹¹ *Supra* note 7.

II. ABSENCE OF CONCRETE DEFINITION FOR INTENTION

*Meaning and approaches to intention*¹²

“Every crime is generally seen as composed of two elements: a) An act b) and the intention or the state of mind with which such an act is done.”¹³ Intention is usually used in relation to consequences.¹⁴ A person intends an action if he wants a particular consequence to ensue from his action, whether the consequence is very likely or unlikely.¹⁵ Intention is the purpose or design with which an act is done.

In *Jai Prakash v. Delhi Administration*,¹⁶ Intention was defined as “conscious state in which mental faculties are aroused into activities and summoned into action for the purpose of achieving the conceived end. It means shaping of one’s conduct so as to bring about a certain event.”¹⁷ Hence Intention is defined as goal oriented and purposive.

Intention does not require any kind of premeditation and can occur to the individual before the crime or at the time when the act is done. Intention is relevant in determining the criminal liability. The criminal law concerns with the intention. Intention is an immediate act i.e. intention can be divided into immediate act and ulterior object. For example if theft of bread is committed because the accused is hungry. The immediate act is theft and the ulterior object is to have food. The ulterior object is a motive, and hence is made irrelevant in determining the criminal liability.

The meaning of intention is not restricted to the consequences which are wanted or desired but also such consequence which accused might not want to follow but which the accused knows are virtually certain.¹⁸ The former is termed as direct intention and the latter oblique intention.

There are two approaches to intention, one is favored by Williams and Smith and Hogan’s and the other by Antony duff, John Gardner and Jeremy Horder.¹⁹ The approaches are:

- *The Formal Psychological approach*²⁰

¹² *Id.* at 57.

¹³ *Supra* note 9 at 646

¹⁴ Sir Anthony Cooper, David Ormerod (eds.), BLACKSTONE CRIMINAL PRACTICE, 2014, p. 19.

¹⁵ *Ibid.*

¹⁶ 1991 SCR (1) 202.

¹⁷ Facts of the case: The appellant had illicit relationship with the wife of the deceased and he used to visit her house frequently. This was objected by the deceased and his two brothers. One day an altercation took place when the appellant came to meet the wife of the deceased and he stabbed the deceased. The appellant was charged under section 300 Indian penal code, 1860.

¹⁸ *Supra* note 13 at 20.

¹⁹ *Supra* note 7 at 57.

²⁰ *Id.* at 58.

According to this approach, Intention basically means, to apply one's mind to a particular task and directing one's action to a particular aim or purpose. It talks about direct and oblique intention as mentioned aforesaid.²¹ Intention is, when the consequence was direct product of the aim or the purpose of the individual and also the consequence which will probably result from his act (*i.e* not the result that falls in line with the purpose of the individual but a side effect that he accepts is inevitable).²²

- *The morally substantive approach*²³

This approach emphasis on “whether the intention was in its intrinsic quality morally good or bad”.²⁴ According to this approach moral quality of what was intended has to be looked into for judging any harm. “The intention to do wrong is not a crime because a person has psychological intention to do a criminal act but because that intention manifests moral wrongdoing.”²⁵ With regard to formal psychological approach, person is guilty of murder where there is intention to kill or when death or serious injury is virtually certain (not mere probability). With regard to morally substantive approach even if person foresees (the probability of) death, he will be liable for murder.

Intention under Indian Penal Code, 1860

Intention is not defined under IPC. Various offences require intention to be proved as *mens rea* under IPC, for Example Section 299 and Section 300 of IPC talk about intention to cause death. It means that one of the law's core concept remains obscure and without any definition.²⁶ If in a case, examination of Section 299 of IPC has to be done, and intention to cause death or intention of causing such bodily injury as is likely to cause death is proved, the punishment falls under section 304 part I of IPC which is imprisonment for life or for a term which may extend to ten years.²⁷ If knowledge is proved then the punishment falls under part II of section 304 which is imprisonment for term which may extend to ten years. The reason behind discussing the punishment is to highlight the grave punishment in case the matter falls

²¹ *Supra* note 7 at 58.

²² Dennis Baker, GLANVILLE WILLIAMS TEXTBOOK OF CRIMINAL LAW, 2012, p. 106

²³ *Supra* note 7 at 59.

²⁴ *Id.* at 57.

²⁵ *Id.* at 61.

²⁶ *Supra* note 7 at 42.

²⁷ *Supra* note 2, s.304 reads as: Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

either under intention to cause death or intention to cause such bodily injury as is likely to cause death. Hence, it is significant that intention is not left as a term which defies precise definition. Taking into consideration the offences that are provided under IPC, intention should be defined depending upon the context in which it is used under many individual offences. For instance, intention may be seen differently depending upon on harm intended, such as an intention to kill or an intention to cause bodily injury.²⁸

Law needs to have reasonably precise definitions.²⁹ A pertinent question arises “Why does law of intention fails this most fundamental test?”³⁰

Attempts made in other jurisdictions to define Intention

Australian Criminal Code 1995 consists of definition of the term Intention. Intention is defined under section 5.2 of Australian Criminal Code, 1995 as follows:³¹

“(1) a person has intention with respect to conduct if he or she means to engage in that conduct.

(2) a person has intention with respect to a circumstance if he or she believes that it exists or will exist.

(3) a person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.”

Singapore Penal code is similar to IPC and also does not include the definition of the term intention but attempts were made by many academicians to propose model formulations in order to have a precise definition of the term Intention. Chan Win Cheong provided that:³²

“A person acts intentionally with respect to the result if he:

- a. Means to bring about it; or
- b. Is aware that absolutely certain it will occur”

He also added that “a person acts intentionally with respect to a circumstances if he is aware of the existence of such circumstance or believes that it exists.”³³ While explaining the model formulation, Chan Win Cheong gave a set of illustrations to further elaborate the definition. One such illustration is as follows; ‘A’ sets fire to a house knowing that ‘B’ is in the house

²⁸ Chan Wing Cheong, Stanley Yeo, *et.al.*, CRIMINAL LAW FOR THE 21ST CENTURY: A MODEL CODE FOR SINGAPORE, 2013, p. 83.

²⁹ *Supra* note 25.

³⁰ *Supra* note 7 at 43.

³¹ Australian Criminal Code,1995 *available at*: http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/notes.html (Last Visited on April 10, 2017).

³² *Supra* note 27.

³³ *Ibid.*

with the purpose of killing him. 'A' intends to kill 'B'.³⁴ This illustration very well explains the (a) part of the definition as given by Chan Win Cheong.

Another illustration which very well explains the part (b) *i.e* a person intends a result if he is aware that the result is absolutely certain is as follows; "'A' sets fire to a house and knows 'B' is in the house but his purpose was not to kill 'B' but only to frighten 'B'. 'A' is very sorry when 'B' dies in the fire. 'A' does not intend to kill, even if he knows that what he is doing is likely but not absolutely certain to cause death."³⁵ It cannot be said that 'A' had intended the result because neither he meant to bring about the result nor he was absolutely certain. It can be said that 'A' had knowledge but not intention.

To comprehensively elaborate on the definition as provided by Chan Wing Cheong, another illustration also throws light upon it. If 'A' administers pain killer to 'B' to alleviate his pain, A does not intend to cause death even though death is likely side effect of the drug.³⁶ It cannot be said that 'A' intended the result because he did not mean to bring about the result (death) and also was not aware that it is absolutely certain. This definition can help in differentiating between knowledge and Intention. The case wherein knowledge is proved, will fall under section 300 fourthly of IPC and not under section 300 firstly of IPC.³⁷

In order to promote consistency of law, it is important that the term intention is defined. Whether the accused intended the consequence or not, is determined by the judges on the basis of evidence without any statutory definition of the term. A concrete definition will lead to strict interpretation of criminal law which is an important aspect to be considered. A loose interpretation of criminal law can lead to violation of right to life and personal liberty.

III. IRRELEVANCY OF MOTIVE

Motive is said to mean the reason behind an action. Motive can be an answer to question that why an individual formed the intent to commit a crime. A motive is "that which incites to action; anything prompting or exciting to choose, or moving the will; reason; inducement;

³⁴ *Id.*, at 84.

³⁵ *Supra* note 27 at 84.

³⁶ *Ibid.*

³⁷ *Supra* note 2, s.300 reads as: Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

object.³⁸ Motive is the power which impels one to act for a definite result. Motive is seen as a psychological inquiry into the state of the mind of person. The ulterior object is also referred to as Motive. Motive is not the fundamental test to determine the criminal liability. Hence an act which is done with the intention will remain unlawful and will not be excused merely on the ground that it was done with good motive.³⁹ According to Alan Norrie, it is impossible to formulate intention without motive⁴⁰. Motive is something which prompts a man to form an intention.⁴¹ For example; A wants to inherit property from his uncle as early as possible therefore kills his uncle. Here the motive is to inherit property.

In *Sanjeev v. State of Haryana*⁴², it was held that to establish commission of murder by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. It is only either intention or knowledge which has to be seen in respect of the offence of culpable homicide.

Motive and Intention distinguished

Motive is the power which pushes and impels one to action for a definite result, whereas intention is the purpose or design with which an act is done. Motive is generally a psychological inquiry into the state of mind of a person whereas intention is manifested through the external conduct of the person. Motive is not considered an element of crime and is irrelevant in determining the liability whereas intention is relevant in determining the guilt of the person. The ulterior intent is called the motive for example, If A commits theft owing to starvation, the wrongdoer had some ulterior object. He intends the attainment of the ulterior object as he intended to commit theft. Here intent can be divided into 2 parts: firstly, the immediate intent i.e. the intention to commit theft; secondly, the ulterior intent which is to buy food. This ulterior intent is motive as mentioned aforesaid. The latter passes beyond the wrongful act but is the part of the total intent and the former lies within the wrongful act.

If A commits murder of B with intention to cause death, he will be liable even if he had good motive. Motive is irrelevant to criminal responsibility but is relevant as evidence (in certain cases) and in sentencing.

³⁸ Webster's International Dictionary as cited in Dwight G. McCarty, *PSYCHOLOGY FOR THE LAWYER*, 1929, p. 50.

³⁹ *Supra* note 5 at 5.

⁴⁰ *Supra* note 7 at 43.

⁴¹ *Basdev v. The State Of Pepsu* (1956 AIR 488); facts of the case: The accused was charged with murder of a young boy. The accused went to a wedding and asked the boy to set aside so that he can occupy a seat. The boy did not move and the accused shot him.

⁴²(2015) 4 SCC 387.

Motive is very important aspect:⁴³

- a. to highlight the intention of the accused
- b. in appreciating the totality of the circumstances including the evidence disclosed in the case.

Blurring the distinction between Motive and Intention

The motive is always seen in psychological form or as an emotion like jealousy, greed and also it is seen as specie of intention.⁴⁴ An example is given in Smith and Hogan's criminal law wherein:⁴⁵

“D intends (i) to put poison in his uncle's tea, (ii) to cause his uncle's death, and (iii) to inherit his money. We would normally say that (iii) is the motive. Applying the test of the intention one will say that (iii) is certainly also intended but, the reason why it is considered merely a motive is that it is a consequence ulterior to the mens rea and actus reus; it is no part of crime. If this criteria as to the matter of the nature of the motive be adopted then it follows that motive by its definition, is irrelevant to criminal responsibility.”⁴⁶

Motive can be a form and cause of intention.⁴⁷ Motive being a form of intention, is ulterior intention that is, formulation (iii) in the aforesaid example.⁴⁸ Ulterior intention should not be seen merely as motive wherein jealousy or greed goaded D to act in a particular way rather than we should look at it as ulterior intention to inherit money which is linked to the intention of D to satisfy his greed. In other words ulterior intention should not be contextualized as a cause of motive which pushed a person to act in a particular way. Therefore, here the distinction between motive and intention is blurred.⁴⁹

Walter Wheeler⁵⁰ while addressing the question-Is motive a kind of intention, answered in affirmative that the ulterior intent is motive.

Alan Norrie's conceptualization on exclusion of motive from legal responsibility

“Human beings conceive desired ends by a complex psychological and social process (the creation of motives for actions), and formulate intentions and perform actions designed to

⁴³ *Prem Kumar v. State of Bihar* (1995) 3 SCC 228.

⁴⁴ David Ormerod, *SMITH AND HOGAN'S CRIMINAL LAW*, 13th ed. 2011, p. 117.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Supra* note 7 at 43.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Supra* note 9.

achieve those ends.”⁵¹ These social and psychological processes lead a person to form motives which in turn lead mental faculties into action to achieve the set purpose. Motive in terms of psychology and that:⁵²

”No thought is given to the social context within which jealousy or greed are stimulated or to a particular context they embody. This analysis treats each individual as an isolated psychological figure....Yet it is clear that individual actions, intentions and motives are found within particular social contexts...Social conditions like unemployment, racism, bad housing and unequal opportunity were the context within which motivating passions would emerge.”

Hence it becomes important to look into the social context of the individual due to which such motives emerge. This link between social cause and individual motive is the reason behind exclusion of motive from determining the criminal liability of an individual. Irrelevancy of motive is deep rooted in the common law tradition as they wanted to avoid question of law breaking on the account of personal need of an individual. They turned a blind eye to the prevalent social causes like poverty, hunger, lack of property etc. Suppression of motive and irrelevancy of motive in determining the liability is to overlook the social causes prevalent in the society.

IV. CONCLUSION

Intention though is mentioned in Indian Penal Code, 1860, is not defined anywhere. The concept demands concrete rules. These terms need to be given precise definitions. Intention being one of the most important elements is left ignored and should be defined concretely in order to avoid any ambiguity. Criminal law is the highest deprivation of right to life and liberty; hence, there should not be any room for ambiguities. A chapter like General part should be added in IPC, (if added in the Indian penal code) which will explain the basic principles of criminal law and would include clear cut definition on the different shades of *mens rea* and on other matters as well.⁵³ By introduction of the general part in the Indian

⁵¹ *Ibid.*

⁵² *Supra* note 7 at 43 and 44.

⁵³ *Supra* note 1 at 10; The Indian penal code should be revised and revision can be conducted in two ways namely:

- a. Tidying up exercise of the ambiguities, inconsistencies and gaps existing in the code.
- b. Re-examination of the general principles of the criminal responsibility contained in the code.

The former though does not give the scope for examining the foundational basis and structure which run through the undercurrent of the code. The latter way requires the evaluation of the general principles vis-à-vis the contemporary thinking on the subject matter. The general principles are found in the code itself but are not clear. The revision can be done, in a latter way by adding a general part to the code which will clearly set forth the

Penal Code, 1860, several principles of criminal law will have a clear-cut meaning and ambit which will uphold strict interpretation of criminal law and preservation of right of life and liberty. Mental element is an essential requirement to be proved in order to hold a person criminally liable. Without a concrete definition, the term will be decided according to subjective understanding of the judges which can be problematic as no human is free from biases and prejudices. It is suggested that the term intention should be defined and the definition should be added in the Indian Penal code, 1860.
