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INTENTION; A QUESTIONABLE ESSENTIAL IN LAW

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I. ABSTRACT

Intention is a mental aspect. It shows what one wanted to do by his actions. It cannot be measured. But it can be determined by the acts of a person in committing a crime or a breach of contract or a tort. Intention is considered as an essential in various situations in Indian law. Intention can be essential in some situations and can also be avoided to determine a few exceptions. But does the existence of exceptions make it a questionable essential? The answer to this question will be given by the end of this research paper. Also, the concept that increases confusions about intention is reasonable foresight, both of these are different terms. They are not to be used interchangeably. The degree of reasonable foresight is more than intention. The difference between intention and reasonable foresight will appear more clear by the end of this research paper. The two issues stated above shall appear to be clarified and solved.

Keywords: Intention, Essential, reasonable foresight, interchangeable, exceptions.

II. RESEARCH METHODOLOGY

The approach that will be employed for this study is doctrinal and comparative research. The major data sources for this study were the Indian Contract Act of 1872 and court precedents. Secondary sources of data included printed books, journals, academic publications, internet journals, research reports, and others. The scope of the paper is limited to the Indian law. Anything that the paper does not include and any purpose related to the topic chosen which the paper does not serve is because of time and geographical constraints.

III. INTRODUCTION

The common definition of intention is that if an action is taken with the intent to produce a particular result, then it is generally agreed that the defendant intended to cause that result. The jury needs to be convinced beyond a reasonable doubt that the defendant wanted the outcome to happen.

Intention in a contract, indicates that for an agreement to be enforceable between the parties, the parties must have agreed to it. An objective method must be used to assess if this

requirement has been met. Intention to form a legally binding agreement or contract is the definition of intention to establish legal relations. One of the requirements for the establishment of a contract is the intent to establish legal relations. This is due to the fact that a party must be willing to accept the legal consequences of entering into an agreement in order for their purpose to establish legal connections. Every contracting party must have the requisite intention to engage into a legally binding contract.²⁵⁷ Intention is not codified in The Indian Contract Act but, it has become an essential for breach of contract through precedents.

Intention in a crime, indicates the guilty mind of a person. Criminal intent is described as a person's resolution or purpose to do a crime. Criminal intent can take one of three forms: (1) general intent, which is inferred from the act of commission (e.g., speeding); (2) particular

²⁵⁷ Intention in Contract Law, Chamberlain's, <https://chamberlains.com.au/contract-law-intention/>, Last Accessed on 5th July 2023- 12:01 PM.

intent, which needs prior preparation and propensity; and (3) constructive intent.²⁵⁸

IV. SITUATIONS WHERE INTENTION IS ESSENTIAL

A. One of the tenets of criminal law is that if the individual who committed the conduct is innocent and not guilty in their opinion, the act cannot be considered criminal. *Actus non facit reum nisi mens sit rea*, which literally translates to "The Act and the Intent Must concur to Constitute a Crime," is the basis for the fundamental concept of criminal responsibility. Simply said, it states that a person's actions won't be regarded as criminal activity until they are carried out with malice aforethought.²⁵⁹

B. Intention is unavoidable in torts like malicious prosecution, and assault. The defence cannot claim that intention was not present. Intention is *prima facie*.

C. The desire to establish a legal link might take many different shapes. When two parties agree on conditions prior to making any agreement or contract, for instance, is a typical example. A legal link could be intended, for instance, if two persons decide to live together and both parties are aware of the rules before agreeing to the arrangement.

CASE LAWS:

- The famous English case of *Balfour v. Balfour*²⁶⁰ concerns contract law. It was decided that where an agreement is domestic in character, there is a rebuttable presumption against an intention to make a legally enforceable agreement.
- *Merritt VS Merritt*²⁶¹ deals with the issue of establishing legal connections.

V. INTENTIONAL VS UNINTENTIONAL

²⁵⁸Essential Elements in Criminal Law, OJP Library, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/element-intent-criminal-law>, Last Accessed on 5th July 2023- 12:30 PM.

²⁵⁹Arvind Lakhawat, Intention an Integral Part of Crime, Legal Services India, <https://www.legalservicesindia.com/article/2032/Intention-an-Integral-Part-of-Crime.html>, Last Accessed on 6th July 2023-11:15 AM.

²⁶⁰ [1919] 2 KB 571

²⁶¹ (1970) EWCA Civ 6

Deliberate wrongs are criminal; however an act carried out without a good faith intention or accidentally will not subject the person to liability for the consequences. In other words, if a person acted in good faith to defend himself or to stop damage from coming to another person, they will not be held legally responsible. For this reason, the accused person must demonstrate that the action was taken to prevent certain unfavourable outcomes that would result in irreparable harm. It is also crucial to demonstrate that the crime committed by the accused person was not excessive compared to the harm prevented.²⁶²

For instance, a man could sense the bush moving and decided to go hunting for a rabbit. He shot a bullet in good faith, thinking it was a rabbit, but he killed an innocent guy in the process. In this case, the person who fired the shot will not be charged with murder because he had no intention of killing the man. However, if the person had fired the shot even though he knew there was a man hiding behind the bush, he would be guilty of the crime and subject to punishment because he had the wrong intention to harm the man.

But there are some exceptions to this, which are explained under the heading below.

VI. SITUATIONS WHERE INTENTION IS NOT ESSENTIAL

A. Strict liability charges are sometimes referred to as public welfare violations. *Mens rea* is completely excluded from crimes committed under the rule of strict liability, meaning that even if the offender didn't intend to perform the same act or had a guilty mind, they will still be held accountable.²⁶³

B. In most cases, a person is held accountable for the actions that they themselves take, but in the case of vicarious responsibility, they are also held accountable for the actions of another person. Typically, the master-servant or employer-employee relationship is where the

²⁶² *Supra* Note 3.

²⁶³ *Supra* note 3.

vicarious responsibility concept is most prevalent.²⁶⁴

C. In cases of Unintentional Torts.²⁶⁵

CASE LAWS:

- The Supreme Court ruled in *Harish Chandra v. State of M.P.* that the master's culpability for the servant's crime rests largely on his or her awareness of the events leading up to that crime.²⁶⁶ (Intention is not essential in the case of vicarious liability.)
- In the case of *Garratt VS Dailey*, Ruth Garratt went to sit and a youngster by the name of Brian grabbed a chair from beneath her. Brian pulled on the chair, causing Ruth to trip and break her hip. Ruth claimed in her complaint that Brian's family was responsible for her bodily damage because they acted maliciously. The court determined that Ruth's hip was shattered despite Brian not intending to hurt her and awarded her \$11,000 in damages. The appeal filed by Brian's family argued that children under the age of 5 could not be held accountable for an intentional tort. The court decided that minors can be held accountable and that the act's perpetrator must have had knowledge of the potential risks before acting.²⁶⁷

VII. REASONABLE FORESIGHT AND INTENTION

The court has ruled that purpose is not the same as foreseeing a consequence. The foreknowledge of a result, however, may be used as proof of purpose, for example. Even if you don't intend for a cricket ball to strike somebody, you could anticipate it doing so if you throw it over a crowd of people. Depending on the degree of possibility, a jury may

conclude that a defendant wanted a certain outcome.²⁶⁸

According to Lord Scarman, for instance, "the greater the probability of a consequence, the more likely it is that the consequence was foreseen, and if that consequence was foreseen, the greater the probability that the consequence was also intended" (*Hancock and Shankland*, 1986).²⁶⁹

VIII. CONCLUSION

By now, both sides of the coin have been discussed and looked over. Intention is definitely a very important aspect in law although exceptions like vicarious liability and strict liability make it questionable to an extent. Critics are of the opinion that it should turn into a specific essential and not be a general essential in law of torts. The answer to the very first question discussed in this paper has been achieved.

In my opinion, intention should continue to be an essential, unavoidably. The idea of dealing with specific and general essentials can be thought upon by the Indian law makers. Thus it is concluded that, intention is an inevitable part of Indian law and shall continue its reputation as an essential thereof.

²⁶⁴ Supra note 3.

²⁶⁵ Sonali Chauhan, Role of Motive and Intention, IP Leaders, <https://blog.ipleaders.in/role-of-motive-intention-and-malice-in-torts/>, Last Accessed on 6th July 2023- 1:00 PM.

²⁶⁶ Supra note 3.

²⁶⁷ Supra note 9.

²⁶⁸ Criminal Law, Digestible Notes, <https://digestiblenotes.com/law/criminal/intention.php>, Last Accessed on 7th July 2023-10:00 AM.

²⁶⁹ Supra note 12.