

Interpretation of the Term “Voluntarily” Under Indian Criminal Law: An Analysis with Special Emphasis on Recent Cases

Debanga Bhusan Goswami¹ and Udit Singh²

Available online at: www.xournals.com

Received 28th January 2018 | Revised 1th February 2018 | Accepted 13th March 2018

Abstract:

Law is referred to as organic or living for the right set of reasons. The way a term is defined, interpreted and applied may change depending upon the changing social circumstances. But, when it comes to the interpretation and application of a term related with Criminal Law, the judges should exercise the highest degree of care and caution. They should strive to give effect to the legislative intent and try to make the interpretation and application of the term as uniform as possible in order to not dwindle the faith of the common masses in the justice delivery system. This research work analyses the use of the term ‘voluntarily’, in the Indian Criminal system. In order to achieve its objective, the author studies the seminal works of the scholars on this theme and also looks at the trajectory of recent cases which ponders upon this theme. At the end, the author tries to draw a conclusion as to the legal propriety and relevance of the manner in which the term is used in the present

Key Words: Voluntarily, Intention, Knowledge, Reason To Believe..

Authors:

1. The WB National University of Juridical Sciences (NUJS), Kolkata, West Bengal INDIA
2. National Law University and Judicial Academy, Hajo Road, Amingaon, Guwahati, Assam INDIA

Introduction

The Indian penal code (hereinafter referred to as the Code) is the principal substantive Criminal Law of India. Drafted in 1860, under the recommendations of the first law commission of India, the code is still applied in India and many of her neighbours who were then British colonies; without much alteration. This endurance of the code can be attributed to its cogent, robust, flexible and inclusive nature due to which the new offences such as those related to technology could fit into it very easily. The code contains substantive provisions which describe the offence and penal provisions which lay down punitive measures for committing the same.

The Code offers the definitions of all the key terminologies related to Criminal Law, which are then interpreted by the Court. Since, the way these terms are interpreted and used plays a vital role in providing directions to a criminal trial, it is imperative that the jurisprudence revolving these terms be analysed and understood. This research work aims to analyse the jurisprudence of “Voluntarily”, one key terminologies of criminal law, which is explained by section 39 of the Code. Section 39 of the code says that-

“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.

Illustration

A sets fire, by night, to-an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.”¹

A simple reading of the section can provide the perception that it pertains to the *mens rea*, i.e. mental element of a crime², and talks about three mental stages, i.e. intention, knowledge and reason to believe. The default rule under criminal Law is that a person can be convicted of commission of an offence only when he or she has committed the offence wilfully, and not under any coercion or misconception.³ And this is what the term “Voluntarily” should ideally mean. But this is not so under the said provision. The word is given a particular meaning which is different from the widely understood ordinary meaning of it.⁴ The word is thus to be understood in relation to the causation of effects and not to doing of the Acts from which those affects result.⁵ Thus, the word “Voluntarily”, in the context of the code has been given an artificial meaning which is different from what it is being referred to in the ordinary sense. A careful reading of the section makes it very clear that the section places ‘intention’, ‘knowledge’ and ‘reason to believe’ at the same pedestal. This equation faced criticism from different corners and was also defended in the same manner by providing various justifications. One of the justifications was provided by the Indian Law Commission. Its members said that as the penal consequences in the three cases are the same, blurring the difference can be accepted. They cited the Halsbury’s Law of England which said that if a person does an act after having the knowledge of the probable consequences, it can be inferred that he wanted the consequences to take place, though he may not have the direct intention at the time of commission. Thus, Voluntary offenders should not only include those who directly intend to inflict a particular injury, but also all such as wilfully and knowingly incur the hazard of causing it.⁶

Concepts of Intention, Knowledge and Reason To Believe

Intention

¹ S. 39, Indian Penal Code, 1860.

² GRANVILLE WILLIAMS, TEXTBOOK ON CRIMINAL LAW, 71 (2nd ed., 2009).

³ S. K. SARVARIA, RA NELSON’S INDIAN PENAL CODE, 38 (9th ed., 2003).

⁴ Ibid.

⁵ Ibid, at 39.

⁶ Supra 3, at 40.

Intention, in the most common sense is a state of mind where a person decides to bring about a particular consequence.⁷ There has been a never-ending debate in the legal sphere about the exact interpretation of the word 'intention' in the context of a crime. But, the more important point is that it is unable to prove the exact intention of a person unless he confesses it.⁸ So, in most of the criminal law regimes, intention is derived from the act of the person.⁹ Though, there are allegations that this way can be misleading at times, there is no better way to prove the intention of a person. Intention may be expressed or implied though this difference between implied and express intention is not the same as the interpretation of these words in term of Contract Law.¹⁰ The distinction is far more fine and delicate in case of criminal law. Express intention is the state when a person intends the natural and probable consequences of his acts.¹¹ Implied intention is a creation of the law where a person has the knowledge of the likelihood of the consequence.¹²

Knowledge

According to the well-known philosopher John Locke, Knowledge is the highest degree of speculative faculties and consists in the perception of truth of affirmative or negative propositions.¹³ In order to know a thing, apart from believing it to true, the belief of the person should be backed or substantiated by solid evidence, whether personal or not.¹⁴ But, the degree of certainty to which the experience will replicate itself in the future situations is what makes the difference. Where by personal experience, it can be found out an act invariably leads to a particular consequence; it is a matter of knowledge. There are also cases where an act leads to a particular consequence generally, but not invariably.¹⁵ This is where the question of probability comes in. Degree of probability can be classified into three types in a hierarchical manner, namely probable, likely and possible.¹⁶ The consequence of

an act can be called possible when a situation of its coming into existence can't be denied. A consequence can be called likely when it is highly possible that it may occur. And a consequence can be called probable when there is only a fraction of doubt that it may not occur. Thus, when the consequence of the act is between highly probable and certain, then it the agent is deemed to have knowledge of the same.¹⁷ The test is that of certainty. Anything less than highly probable is reason to believe.

Reason to believe

Section 26 of the Indian Penal Code says that a person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise.¹⁸ Reading between the lines of this section makes it clear that a reason to believe a particular thing doesn't deny the existence of other possibilities. Reason to believe is somewhat weaker than knowledge. When the consequence of a particular Act is likely, then the agent has a reason to believe. Since the degree of certainty is less in this case, there is always the presence of more than one hypothesis. To have reason to believe, it is not necessary for the person to be sure about the consequence. It is enough if the person has a reasonable apprehension that it is likely that such a consequence may happen.¹⁹

Viewing Intention, Knowledge and Reason to Believe From the Eyes of the Indian Courts

***Nankaunoo vs. State of UP*²⁰**

In this case, a person was shot at the left thigh by another person in order to take revenge. The person died on his way to hospital. A case was registered before the person died, under 304. After the person died, the case was transferred to 302, i.e. punishment for murder. The issue before the Court was to decide the section under which the person should be punished. In the process of resolving the issue, the

⁷ Supra 2, at 75.

⁸ Ibid.

⁹ Infra 11, at 196.

¹⁰ Supra 3, at 41.

¹¹ Supra 3, 41.

¹² Supra 3, 41.

¹³ SYED SHAMSUL HUDA, PRINCIPLES OF THE LAW OF CRIMES, 195 (1 ed., 2011).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Supra 3, at 43.

¹⁷ Supra 2, at 73.

¹⁸ S. 26, Indian Penal Code, 1860.

¹⁹ H. S. GOUR, COMMENTARY ON THE INDIAN PENAL CODE, 154 (12th ed., 2005).

²⁰ AIR 2016 SC 447.

Court delved into the issue of difference between intention and knowledge. It said that it is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder.²¹

Referring to the Virsa Singh case²², the Court said that, *"the 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue."*²³

When an act is done by a person, it is presumed that he must have been aware of the consequences that would naturally follow from his Act. But that knowledge is bare awareness and not the same thing as intention which means that the offender wants the consequences to take place. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, which is the desire of the end which is to take place due to the Act.

Parvinder vs. State²⁴

In this case, a young man in order to show his cavalier and money bravado, brought a gun to show to his friends. In front of them, he fired a shot in the air and the next shot to a friend. The Bullet hit the chest and the person died. However, the accused argued that he didn't have the intention to kill the victim. The Court went into a deep discussion on the different parts of section 299 and 300 of IPC and contemplated as to which part would apply to the person.

The Court, in the paragraphs 31 to 37 of the judgement, goes into a long discussion on the difference between intention and knowledge. Stating a scholarly opinion, it said that according to Glanville Williams in Textbook of Criminal Law (1978 Edition), is that 'intention' cannot be satisfactorily

defined and possibly it does not need a definition. However, philosophically it can be defined as: "In ordinary language a consequence is said to be intended when the actor desires that it shall follow from his conduct."

The Court also referred to two Indian cases namely Kesar Singh vs. State of Haryana²⁵ and Jai Prakash vs. State (Delhi Admn.).²⁶ The Court arrived at a conclusion that the knowledge signifies a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, intention is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of intention mental faculties are projected in a set direction. Knowledge can always be determined from the factual circumstances, whereas in case of intention, it is sometimes difficult to do so.

Abdul Kalam Musalman and Ors. Vs. State of Rajasthan²⁷

In this case, the labourers were appointed to do a mining operation. But, unfortunately, the labourers died since the proper precautionary measures were not taken by the employers.. The question before the Court was whether the case would fall under section 304 or section 304 A of the Indian Penal Code. Section 304 of IPC dealt with punishment for culpable homicide not amounting to murder and Section 304 A dealt with causing death by rash or negligent Act. Here, the Court said that the element of knowledge is present in intention, knowledge, as well as rashness; but the ambit and nature of knowledge in all the cases are different. In all the case of intention, knowledge and rashness, there is an element of knowledge. In case of intention, the agent is aware and intends the consequences. In case of knowledge, the agent is aware of the consequences but takes the risk of doing the Act. In case of rashness, the agent is aware of the consequences but sincerely hopes that the consequences don't follow. The Court held that since

²¹ Ibid.

²² AIR 1985 SC 465.

²³ Ibid.

²⁴ 2015 VII AD (Delhi)169.

²⁵ 2008 15 SCC 753.

²⁶ 1991 2 SCC 32.

²⁷ 2011 CrLJ 2507.

the motivating factor behind the act was not to kill a human and the death happened only due to the lack of precaution of the employers, thus, it can be said that the act will fall under section 304 A and not section 300 of the Indian Penal Code.

Md. Isub Ali vs. State of Tripura²⁸

In this case, a fight took place between two neighbouring families regarding a very trifling matter and a woman was hit by a brickbat thrown at her by a member of the other family. She became unconscious and subsequently died of the injury. The issue before the Court was that whether this case would fit into section 325 or section 304 Part II of the Indian Penal Code. The Court was supposed to take a call that whether the accused should be punished for murder or culpable homicide not amounting to murder. The prosecution argued that the accused should be punished for murder while the defence said that the accused had no intention of killing the person and the maximum punishment that he can get was under section 325. Thus, it was imperative for the court to differentiate between intention and knowledge. The Court while differentiating between the same arrived at the conclusion that *“‘Knowledge’ means acquaintance with fact or truth or mental impression or belief; and ‘Intention’ means to do a certain thing, purpose, design; contemplating in result. The expression ‘causing death’ in Section 299, means putting an end to a human life, and all the three intentions mentioned in the section must be directed either deliberately to putting an end to a human life or to some act which, to the knowledge of the accused, is likely to eventuate in the putting an end to a human life. The knowledge must have reference to the particular circumstances in which an accused is placed. The intention of the accused must be judged not in the light of actual circumstances, but in light of what he supposed to be the circumstances. A man is not guilty of culpable homicide if his intention was directed to what he supposed to be a lifeless body.”*

Thus, the Court held that the appellant was not aware about the cause of his act and there might not be any intention to kill the deceased but it was very much within his knowledge that throwing brickbat on the vital part of a person like head is likely to cause death

of a person including the deceased which he did in the instant case. Therefore, according to this Court he committed an offence under Section 304, Part II, IPC.

Basdev v. State of PEPSU²⁹

It is a landmark case where the Supreme Court of India delves deep into the question of difference between intention and knowledge. Though the Court doesn't deal directly with section 39 of the code, the analysis provided by it in this case can be used as an authentic tool to map the relationship between various elements of section 39 of the code. Here, the Court accepts that the difference between intention and knowledge is very fine, but makes an effort to distinguish between the two. Intention is something which is formed by the agent on the basis of the motive and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less. Also, intention can be presumed from knowledge in most of the cases intention is very difficult to find in a direct manner

In this case, a retired military personnel was accused of killing a boy in a marriage party in an inebriated state. The appellant asked Maghar Singh, the young boy to step aside a little so that he may occupy a convenient seat. But Maghar Singh did not move. The appellant whipped out a pistol and shot the boy in the abdomen. The boy succumbed to the injury.

The issue of contention was whether to order him punishment under section 302 or section 304 of the code. The trial Court found out that accused was intoxicated to such an extent that according to one of the one of the witnesses, he was almost in an unconscious condition.

He was framed under section 84 of the code which says that-

“In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge

²⁸ 2008CrLJ 100.

²⁹ 1956 AIR 488.

*as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will*³⁰

The contention which appeared before the Court is that the first part of the section mentions about intention or knowledge but the second part mentions only about knowledge. This leaves a room of confusion for the interpretation of the section.. The Court took the view that an intoxicated person, whatever may be the degree of his intoxication, can possess knowledge of the consequences of his acts. But, the ability to form an intention depends on the level of intoxication and can be deduced from the circumstantial evidences. In an example cited by the Court in this case, it was said that in a case of the accused being in the state of intoxication, circumstances such as nature of weapon used can be used as a means to deduce intention. If in a particular instance, the accused uses a simple stick to beat a person in an inebriated state, it can't be said with clarity that he could from the necessary intention to commit the crime. On the other hand, if the accused uses a weapon which in the ordinary course of nature is capable of inflicting grievous injury, then there remains no doubt that he at that moment, possess the mental capabilities to form the intention.

Inter-Connection between the Concepts of Intention, Knowledge and Reason to Believe: Two Different Perspectives

If we place the concepts of intention, knowledge and reason to believe in a hierarchy, then we find them in the following order-1. Intention, 2. Knowledge, and 3. Reason to believe. There are substantial differences in the sentencing policy, based on the hierarchy. For Crimes that are not serious in nature, the difference is not that huge, and all of them are generally placed on the same footing. But, this is not so for the crimes which are of serious nature. One of the best examples to illustrate this is Section 304 of the Code. This section lays down punishment for culpable Homicide not amounting to murder. Under this section, if the act is done with an intention, then the maximum punishment that can be given is that if

life imprisonment. But, if the Act is done with mere knowledge, the highest form of punishment that can be offered is that of imprisonment of 10 years along with fine.

The inter-connection between all the three concepts can be viewed from two perspectives. The first perspective analyses and differentiates the concepts on the basis of the degree of certainty. Following the hierarchy of concepts, it can be understood that Intention has the highest degree of certainty and reason to believe has the lowest. Intention is the case where the agent is absolutely sure of the consequence and precisely intends it. Smith and Hogan in Criminal Law agrees to this proposition and says that person acts intentionally when he acts either in order to bring it about or being aware that it will occur in the ordinary course of events.³¹ In the Court of Appeals decision in Nedrick [1986] 3 All ER 1, CA; it was stated that foresight of a consequence as 'for all practical purposes inevitable' could give rise to an irresistible inference of intention, which is likely to mean in practice that foresight of inevitability, at least, will be equated with intention in the minds of a jury.³² Williams explains that a consequence should be taken as intended, although it was not desired, if it was foreseen by the actor as the virtually certain accompaniment of what he intended.³³ In the case of knowledge, there is a fraction of doubt in the mind of the agent regarding the consequence and he may or may not want the consequences to happen. And reason to believe is of the lowest degree where the consequence is likely from the Act and in spite of that the person goes on to perform it. Here, there are always more than two possibilities of consequence.

In a particular hypothetical situation, two gangs, A and B had an altercation at a public place. One member of gang A threw a grenade towards the members of the gang B in order to kill them. Due to the explosion of the Grenade, Many common passer bys died. Here the member had the knowledge that due to the explosion, some passer bys would die, though he didn't want to kill them, i.e. had no motive behind killing them. But, he had foreseen it as virtual accompaniment of what he

³⁰ S.84, Indian Penal Code, 1860.

³¹ Parvinder v. State 2015 VII AD (Delhi)169.

³² Ibid.

³³ Supra 2, at 297.

intended. Here, the member of the gang will be deemed to have killed the passer bys intentionally.

Another perspective from which the inter-relationship between them can be analysed is by differentiating between mere awareness of the consequence and intending the consequences. In case of knowledge and reason to believe, the agent is aware of the consequences.³⁴ Though the degree of knowledge varies, the thing which is in common between them is that they do not intend the consequences.³⁵ On the other hand, in case of intention, there is a motive which leads the agent to be sure of the consequences as well as intending the consequences.³⁶ Knowledge' means acquaintance with fact or truth or mental impression or belief; and 'Intention' means to do a certain thing, purpose, design; contemplating in result.³⁷ Reiterating what is mentioned in the *Virsa Singh case*³⁸, as referred to by the Court in *Nankaunoo case*³⁹ is that that knowledge is bare awareness and not the same thing as intention which means that the offender wants the consequences to take place. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, which is the desire of the end which is to take place due to the Act.

Now, we can view the above-mentioned example of gang altercation from this perspective. The offender knew that due to his act, the passer-bys will be affected. In spite of this awareness, he takes the risk of committing the act. But, this doesn't per se mean that he wanted the passers-by to die. Thus, it can be said that he caused hurt to the passer—by voluntarily, i.e. with knowledge but not intentionally.

There is a very thin line of difference between these two perspectives and in most of the cases they overlap with each other. It can be said that the Indian Courts have used the amalgamation of these two perspectives in a manner which best suits them while deciding the cases.

Use of the Word “Voluntarily in the Indian Penal Code

The word “voluntarily” is one of the most frequently used words the Indian Penal Code. If taken a count, it is used for almost more than eighty-five times in the Code, Though, in some cases, the word is used more than once in a single provision and also used in the illustrations. The word is at least used once in the chapters of ‘general exceptions’, ‘abetment’, ‘offences against the State’, ‘offences relating to elections’, ‘contempt of the lawful authority of public servants’, ‘false evidence and offences against public justice’; Offences Affecting The Public Health, Safety, Convenience, Decency And Morals’, ‘offences relating to Religion’, ‘offences affecting the human body’, ‘offences against property’, ‘Criminal Breach of Contract of service’ and ‘Criminal Intimidation, Insult and Annoyance’.

But, it is used for the maximum number of times in the chapters of offences against the human body and offences against property. So, this research work will focus on the use of the word ‘voluntarily’ in the context of these two chapters.

Of Offences Affecting the Human Body

Generally, offences against the human body are recognised as the most serious of all the offences and thus have the highest penalties for their commission. In this chapter, the word voluntarily is used in the case of fifteen substantive provisions. In twelve provisions out of them, the word ‘voluntarily’ is used in the title or marginal note of the provisions. The exceptional cases where it is not mentioned in the title are the provisions relating to ‘wrongful restraint’, ‘unnatural offences’ and ‘causing miscarriage’ In all these three offences, the word used is voluntarily and they have not mentioned any other word to specify *mens rea*. Thus, the meaning will include all the three ingredients, i.e. intention, knowledge and reason to believe.

Among the provisions which mention ‘voluntarily’ in their head notes, only three provisions, i.e.

³⁴ Nankaunoo v. State of UP AIR 2016 SC 447.

³⁵ Parvinder v. State 2015 VII AD (Delhi) 169.

³⁶ Basdev v. Sate of PEPSU 1956 AIR 488.

³⁷ Isub Ali v. State of Tripura 2008CriLJ 100.

³⁸ Supra 25.

³⁹ Supra 23.

‘voluntarily causing hurt’, ‘voluntarily causing grievous hurt’ and ‘voluntarily causing grievous hurt by dangerous weapons or means’, specifically mention ‘intention’ and ‘knowledge’ in their contents. All other provisions which have voluntarily in their marginal note, the meaning shall be construed in the light of the definitions given in the above-mentioned three provisions. Thus, reason to believe is specifically excluded by the framers as the degree of proof required is very loose and it is not proper to use it for serious offences

If a study is done of the more serious offences among the offences to the body such as ‘murder’ and ‘culpable homicide not amounting to murder’, then it can be easily found out that the provisions dealing with these offences do not randomly use the word ‘voluntarily’. Great care has been taken by the framers of the code to mention specific *mens rea* of intention and knowledge in appropriate places. Not to mention, these provisions also don’t have reason to believe as a *mens rea*.

Of Offences against Property

Under this chapter, the word ‘voluntarily’ is used in the provisions of four offences, namely ‘theft turned robbery’, ‘Assisting in concealment of stolen property’, ‘Voluntarily causing hurt in committing robbery’, and ‘All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them’. The difference in the use of the word ‘voluntarily’ in cases of offences against the human body and property is that in cases, the term includes the element of reason to believe. While in case of offences against body, it is specifically excluded in the definitions.

In the cases property where the term ‘voluntarily’ is used, the thing which is in common is that the offences are being done in furtherance of some other offences. Since, the accused are already involved in one offence, so, the law lowers the threshold of convicting them in another offence which is done in the furtherance of the previous one. Thus, in all the above-mentioned cases, any one element among intention, knowledge and reason to believe is sufficient to convict in the crime.

Conclusion

Generally, a crime consists of both the physical and mental element. Comparatively, the precise mental element of the accused is more difficult to find out than the physical element, as the latter one is more subjective and fluid than the former one. In this scenario, it is very crucial to define few comprehensive terms which can serve as thresholds for the requisite mental element for the commission of a crime. ‘Voluntarily’ is one such word, defined and interpreted by the framers of the Indian Penal Code keeping in mind the fluid and subjective nature of the mental element associated with a crime. Though, the meaning assigned to it by the framers of the Code is different from its ordinary meaning, it has by far served two purposes. It is generally used either in the circumstances where differentiating between intention, knowledge and reason to believe is difficult or it is not necessary. The author feels that the reason behind accommodating all the three elements was not to blur the difference between them but to avoid confusion, unnecessary repetition and to save the valuable time of the justice delivery system as a whole. The only caution which the people associated with the judicial system should keep in mind that this interpretation of the word ‘voluntarily’ should be used only in consonance with the intent of the framers and shouldn’t be used in detriment of any innocent party.