

A LEGAL ANALYSIS OF THE TRANSFER OF MALICE DOCTRINE

Digvijay Singh*

INTRODUCTION

A fundamental idea in criminal law is the doctrine of transfer of malice, which focuses primarily on the concept of mens rea, or the guilty mind. It deals with situations in which a person intends to commit a crime against one person but accidentally causes harm to another. When it comes to comprehending criminal law's application and the liability of an offender, this legal doctrine is crucial and holds significant importance in understanding the liability of an offender and the application of criminal law. This blog will dig into the complexities of the Tenet of Move of Vindictiveness, dissecting its standards, applications, and suggestions inside the legitimate structure¹.

The doctrine of transferred malice is not defined anywhere in the Indian Penal Code, but the essentials are given under Section 301² of the Indian Penal Code. According to section 301 of the Indian Penal Code, "if a person does any act he knows or intends does any act which he knows or intends that is likely to cause death, he commits culpable homicide, and by causing the death of any person, whose death he neither intends to nor knows by himself that his act will cause the death of that person."

Understanding the doctrine of the transfer of malice doctrine is a legal principle that links a perpetrator's intent or malice to an unintended victim, known as the doctrine of the transfer of malice or the transferred intent doctrine. In more straightforward terms, if an individual expects to commit an improper demonstration against one individual yet, all the while, hurts another, the law moves the culprit's expectation from the planned casualty to the real casualty³.

The following scenario will help you understand how the doctrine of transfer of malice is applied: A intends to shoot B but misses the target and accidentally hits C, injuring C. Even though A aimed to hurt B, the law moves A's plan from B to C. As a result, even though A did not intend to harm C, they can still be held accountable for the harm they caused.

*PANJAB UNIVERSITY REGIONAL CENTRE, HOSHIARPUR.

¹ Smith, J.C. and Hogan, B. Criminal Law (13th edition, Oxford University Press 2018).

² Indian Penal Code 1860, s 301.

³ Allen, M. and Hopkins, N. Criminal Law (12th edition, Oxford University Press 2018).

WHAT IS THE 'DOCTRINE OF TRANSFERRED MALICE'

The 'doctrine of transferred malice' has not been defined expressly in the Indian Penal Code, 1860. Instead, it can be inferred from Section 301 of the Indian Penal Code, 1860. Section 301 states that if a person has the intention to cause the death of any specific person but caused the death of any other person, then he cannot take a defence that he did not have the intention to cause the death of that other person. He will be liable in the same manner if he has the intention to cause the death of that person.

It refers to the bad intention of a person causing injury to another person. Malice can be either expressed or implied. If any deliberate action or conduct is initiated towards the other person with an intention to kill, it is known as expressed malice. When the purpose is clearly visible in the person's behaviour, then that implies malice.

ESSENTIALS OF DOCTRINE OF TRANSFERRED MALICE

- Cause the death of a human being.
- By doing an act with the intention or knowledge of causing the death of a person.
- Causing such bodily injury as is likely to cause death.
- Cause the death of another person instead of the intended person.

For example, A has the intention to kill B but kills C without intending to kill him. In this situation, the 'Doctrine of Transferred Malice' will apply, and it will be deemed that A had the intention to kill C, to whom he killed, and he will be punished accordingly.

MALICE IN LAW

In the legal sense, malice means intentional wrongdoing. Any wrongful act done with intentions is known as malice in law. It doesn't justify any act done with evil or improper motives. Still, it simply explains that "a wrongful act done intentionally without justification or excuse" is a conduct done intentionally with any cause. We can also call it implied malice.

CASE LAW

Melia V. Neate, (1863) 3 F & F At P. 763⁴

Baron Bramwell said that malice in law is a kind of "disinterested malevolence." The idea of giving injury without cause or excuse is malice in law

Shearer V. Shields, 1914 A.C. 808, At 813⁵

Viscount Haldane described the law as "an individual who inflicts an injury to another individual in contravention of the law is not allowed to say that he did it with an innocent mind. He must act within the law, or he must know the law. He will be guilty of the malice of law; although his state of mind is concerned so far, he acts innocently".

MALICE IN FACT

In a wider sense, malice means any wrongful conduct with an evil motive. When a defendant acts wrongfully with the feeling of spite or ill-will, it is said to be done 'maliciously.' Motive is the eventual reason for the conduct. Motive is different from intention, which relates to wrongful conduct itself. For example, a person intends to commit theft, but the motive of the theft is to buy food or to help someone. A wrongful act doesn't become lawful just because the motive for the act was good. Similarly, a legal act doesn't become wrongful because of an evil motive.

CASE LAW

Bromage V. Prosser, 1825 4 B. And C. 247⁶

Bayley, j. called malice, in fact, an ill will against any person, which was later called a vindictive feeling.

Bradford Corporation H. Pickles 1895 Ac C. 587⁷

The defendant excavated his land, resulting in the water flowing in unknown channels from his lands to adjoining lands being discoloured. It was done with the defendant's motive to pressure the plaintiff to purchase the defendant's land at a high price. In this case, the defendant caused

⁴ Melia v. Near (1863) 3 F & F 763.

⁵ Shearer v. Shields [1914] AC 808, 813.

⁶ Bromage v. Prosser (1825) 4 B & C 247.

⁷ Bradford Corporation v Pickles (1895) AC 587.

the damage, and at the same time, he was making lawful use of land. Thus, it was held that the defendant was not liable.

EXCEPTION OF THIS RULE

In some defamation cases, motive becomes relevant when qualified privilege is pleaded as a defence. This defence is available in the publications made in good faith. The presence of an evil motive negatives good faith, and the defendant can't avoid his liability. Malice may result in aggravation of damages. One of the elements that must be demonstrated by the plaintiff in torts of deceit, conspiracy, and malicious prosecution is on the defendant's part. Causing personal discomfort by unlawful motive may turn a lawful act into a nuisance.

LEGAL PRECEDENT

A few lawful points of reference represent the utilization of the Principle of Move of Noxiousness. The famous case of *Regina V. Pembliton (1874)*⁸, in which the defendant threw a stone at a group of people but missed and broke a window instead, was committed in 1874. The defendant was found guilty of maliciously causing damage after the court decided that the act of causing property damage reflected his intention to harm other people. This case represents how the regulation works in circumstances of potentially negative results.

EFFECTS ON CRIMINAL LAW

The establishment of criminal liability is one area in which the Doctrine of Transfer of Malice has a significant impact on criminal law. It makes sure that people are held accountable for the results of their actions, even if those results are different from what they intended. By moving the culprit's aim, the precept maintains the standards of equity and decency in settling criminal offences.

- For example- A shoots at B with the intention of killing B, but the bullet misses and hits C and kills him. Here, transfer of malice operates where the men's rea, i.e. intention to kill B, is transferred to killing C. Therefore, A will be liable for the murder of C.
- Transfer of malice doesn't operate when the crime occurred, which was different from that of intention. The doctrine of transferred malice is the legal doctrine where the

⁸ R v. Pembliton (1874) LR 2 CCR 119.

intention to harm one individual causes harm to a second person because the intention will transfer from harming one individual to the second person.

- The doctrine of transferred malice is also applied in tort law, like battery and assault. However, intention is transferred between the harm of a similar nature, for example. When person A intends to kill B and shoots but hits the glass vessels, here, the intention to kill B isn't transferred because the destruction of the glass vessel is not of the same nature as the killing. Here, he would have both the intention to kill and the intention to destroy the property.
- An accused or an offender, if proven guilty, must be responsible for his offence and convicted with prescribed punishment. To constitute a crime and establish the happening of an offence includes several facets, and intent that is unlawful or evil is an essential element of an offence. Crime is not merely unlawful work. Nonetheless, it additionally comprises a guilty head, guilty intention, and guilty acts. The basic exceptions beneath the Indian penal code are only meant to protect the people where criminal intent is absent and in exceptional conditions, as mentioned above.

CASE LAWS

R v Latimer (1886)⁹

In this case, the defendant was in an argument with another in a pub. The arguments between the two increased rapidly. The defendant took off his belt with the intention to hit the man, but he missed. The person he was trying to hit only got a bit injured. The smash with the belt got diverted in another way, and it hit an innocent woman who was standing by the side of the man. She got hit in her face and was severely injured. It was held by the court that the defendant would be liable for the injuries inflicted upon the woman despite the fact that he did not intend to cause injury to her. Here, the principle of transfer of malice was applied. The Mens Rea he had (the intention to hit the man) towards the man was transferred to the woman.

R v Mitchell 1983¹⁰

In this case, the appellant tried to jump the queue at a post office. An elderly man objects to this behaviour. The appellant, in retaliation, not only pushed the elderly man but hit him as

⁹ R v Latimer (1886) 17 OBD 359.

¹⁰ R v Mitchell (1983) QB 741.

well. The elderly man falls on the people who were standing behind him in the queue. There was one old lady in the queue who also fell down and broke her leg. Later, she died because of that broken leg. It was held that the appellant was guilty of manslaughter. In this case, even though the appellant did not have any intention to hit the old lady, due to his intention to hit the man, he was prosecuted by applying the principle of transferred malice.

EVALUATE AND CONTENTIONS

While the Teaching of Move of Perniciousness maintains legitimate standards, it isn't without its evaluations and contentions. Some argue that the doctrine may result in unfair outcomes, particularly when the unintended harm differs significantly from the intended action. Moreover, there are concerns regarding the abstract translation of the aim and the potential for maltreatment in applying the convention.

CONCLUSION

In conclusion, the fundamental idea of the doctrine of transfer of malice in criminal law deals with situations in which one person's intention to commit a crime causes inadvertent harm to another. The application of the doctrine makes it simpler to attribute intent and establishes criminal responsibility. Its significance in upholding legal principles cannot be overstated, even though it is subject to criticism. The doctrine continues to be an essential component of criminal jurisprudence, even though legal professionals and academics continue to struggle with its complexity.

Journal of Legal Research and Juridical Sciences