

Analysis of Coalesced Dimension of Attempt and Unnatural Offence on Extortion as Literated Under Indian Penal Code, 1860 (A Cursive Reality)

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Abstract: This paper presents an analysis of coalesced dimension of attempt and unnatural offence on extortion as literated under Indian Penal Code, 1860.

Keywords: attempt, delivery, extortion, injury, interpretation.

1. Introduction

The new era of straddled dynamism coursing through the intent of judiciary and legislature ventures to have established coalesced dimension in interpreting the term Extortion thereby reaming it out of the emerging new judicial trends and societal changes which reminds law as dynamic but projects it with the shade of being primordial in nature. Further, the varied principles adopted in interpreting the term extortion is paddled as a pendulum between literal rule of interpretation and golden rule of interpretation which paves a new enroot to the encumbrance of mischief rule.

The adoption of literal/grammatical rule of interpretation in the defining extortion reflects to be unambiguous to ascertain the intent of the legislature as to the delivery of property as not an essential element of extortion, rather a mere consent to deliver the property would fulfill the requisite ingredients of extortion. The intent of the legislative forefathers was to crave a law that would adopt different phases of social transformation witnessed by the society and to element its ingredients to protect their intention aided with the legal protection sought by the society. The adoption of legal reasoning with the change in the norms of society brought a varied new dimension to the term extortion.

Further, over the rampant increase in the offence of extortion in the modern era, the judiciary and legal experts aims to formalize an existing dilemma that frequents an imminent necessity in distinguishing the act of extortion from its attempt as that plays out a crucial aspect in each distinctive circumstance. Further, with the views adopted by the society for its transformation and evolving judicial activism has brought a change in section 377 of Indian Penal Code, which carcasses

for a new dimension to resurrect the intent of extortion. The rampant increase in the offence of extortion is left unfettered due to the everlasting fear imbibed upon the persons against whom such fear was induced and further the rapidity of the threat cannot be measured in terms, as it is distinctive among various class of persons or group of persons and differs between persons. The new developments of decriminalizing a part of unnatural offences (voluntary) and judicial view on delimiting the definition of extortion from its attempt seem to be surviving with dilatory reasons and are contradictory not based on the circumstances but due to the varied interpretations adopted by the judiciary and legal practitioners. On coursing through varied interpretations, judgments, rationale reasoning, debates, law commissions, articles, books, research papers and commentaries, I was forced to pay much more attention to understand that they have not been interpreted as to the intent adopted at the time of legislation rather featured with feathers to adopt the reasoning.

2. Definition and Meaning of Extortion

It is a conventional truth that, the words imbibed in the definitions may differ but not the meanings that are conveyed through it.

“Extortion is a criminal offence that occurs when a person unlawfully obtains money, property, or services from another person or entity by means of particular types of threats” [1].

Section 383 of The Indian Penal Code, 1860 defines extortion as: *“Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”* [2].

Section 368 of The Indian Penal Code, as originally framed in 1837 defines extortion as: *“Whoever intentionally puts any person in fear of any injury to that person, or to any other, and*

thereby fraudulently induces the person so put in fear to deliver any property to any person, or to consent that any person shall retain any property, or to affix a seal to any substance, or to make, alter or destroy the whole or any part of any document which is or purports to be a valuable security, is said to commit "extortion".

According to section 253 of German Criminal Code, Extortion is defined as Whoever unlawfully, by force or threat of serious harm, coerces a person to do, acquiesce to or refrain from an act, and thereby damages that person's or another's assets for the purpose of wrongful personal enrichment or enrichment of a third party, incurs a penalty of imprisonment for a term not exceeding five years or a fine [3].

In its most basic definition, extortion is the obtaining of property from another, with his/her consent, induced by the wrongful use of actual or threatened force, violence, fear or under colour of official right [4].

Extortion is the practice of obtaining benefit through coercion. In some jurisdictions, actually obtaining the benefit is not required to commit the offence, and making a threat of violence which refers to a requirement of a payment of money or property to halt future violence is sufficient to commit the offence [5].

The Black's Law English Dictionary defines extortion as 'the offence committed by a public official who illegally obtains property under the color of office, especially an official's collection of an unlawful fee. In this sense, it is also termed common-law extortion. It is 'the act or practice of obtaining something or compelling some action by illegal means, as by force or coercion'. Extortion from popular usage is the act of obtaining money or property by threat to a victim's property or loved ones, intimidation, or false claim of a right. It is a felony in all states of the United States of America. It becomes a federal offence if the crime spans across states, except that a direct threat to harm the victim is usually treated as a crime of robbery [6].

Extortion involves moveable or immoveable property to be delivered to the perpetrator. This may be expressed in signed undated documents like cheques, documents, title deeds etc. In some jurisdictions, proof of the threat either spoken or written is sufficient to secure a conviction. The property may not need to pass or move. In some other jurisdictions, the property will have to pass to prove extortion.

3. A Clinical Historical View

Extortion is an age old crime and is commonly termed to be one of the traditional crimes surviving its existence through fear among people. Extortion was presumed to be in existence across globe and its expansion went on to vertical projection through the greed, need, power and fear of people. The intent of the law makers in drawing a provision was subjected to rationality in creating a society of truth and justice with a shade of morality.

The term extortion had a different connotation in common law. It evolved with the concept of extortion as an offence to be committed by a public officer when he receives any money or valuable which is not due to him or not been directed to be

collected by him.

The existence of the act of threat or cause of fear for properties, valuable security or anything which can be converted into valuables either immediately (physically) or constructively, lettered in legal language as extortion and due to its prevalence over various societies, its existence became so imminent in most of the penal laws of various countries.

Extortion is both a tort and a crime and is perhaps far more common than most of us think. The image of the sleazy blackmailer demanding money or threatening to publicize an old scandal is seldom the act that leads to litigation involving extortion. Instead, far more subtle actions can lead to allegations that one has committed extortion [7].

The changes in the law are not due to their dynamic character but it's an outcome of various factors and the society plays a critical role in defining their laws which makes a temporary inheritance to achieve its progresses.

4. Role of Judiciary in Dimensioning the Term Extortion

The elements/ingredients of any offence have a prudence and rationale behind it. The foresightedness or sustainable space for judicial intervention or judicial activism all intertwined to restraint the offence within the intent of legislatures by interpreting the ingredients.

Unlike, in other penal laws, the Indian Penal Code, 1860 doesn't use the term force or recognizes the use of force as an ingredient in the offence of extortion.

The main ingredients of the offence of extortion are:

- i. The accused must put any person in fear of injury to that person or any other person;
- ii. The putting of a person in such fear must be intentional;
- iii. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and
- iv. Such inducement must be done dishonestly [8].

Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion [9].

Intention: The term intention cannot be precisely defined in a stricter and narrower sense as it has a wider perspective and cannot be limited by rigid composition of its meaning. Intention is the conscious exercise of the mental faculties of a person to do an act, for the purpose of accomplishing or satisfying a purpose [10].

"To intend is to have in mind a fixed purpose to reach a desired objective; and the intention is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. It will be noted that there cannot be intention unless triers is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed. Again, a

man cannot intend to do a thing unless he desires to do it." [11]

In accordance to the usage of Indian Penal Code, the idea of intention in law is also expressed by words such as 'voluntarily', willfully, deliberately, deliberate intention, with the purpose of, or knowingly.

Injury: The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property [12].

The threat of causing injury of fear of injury contemplated must be one which the accused himself can inflict or cause to be inflicted and the threat of divine punishment will not come under it [13]. The Parliament's primary concern was to enable only victims who suffered "injury", be it physical or emotional (in its most direct and proximate sense, as opposed to those who were merely inconvenienced or whose injury or loss was remote). The phrase "loss or injury" is limited to "the person whose suffering is the direct and most proximate result of the crime." It further reasoned that the phrase "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged [14].

Further, the term fear is a dynamic variable which cannot be limited in a strict or narrower sense. It is subjected to be determined on consideration of varied factors such as the distinctive character of a person and his circumstances. The fear of injury must have caused reasonable apprehension in the mind of the victim or indicative that injury might be the consequence of such threat. Further, the fear caused must indicate the present ability of the assailant to achieve his purpose or object. The apprehension of threat of injury must be present and immediate, though not required to be direct and proximate. The threat of injury may not necessarily be always expressed, it may also be implied under certain circumstances. The threat of injury must be present at the time of dishonest inducement for the delivery of property. If the threat does not continue or cease by the time of giving consent for the delivery of property, the offence of extortion cease to exist, rather survives an attempt to extort or in order to the commission of extortion. A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception [15].

When a person causes fear of injury to any person and thereby draws consent from him, which is not a free consent, then that can be termed as extortion and when such a threat was been made and consent couldn't be obtained then that falls within the ambit of attempt to extortion

Dishonestly: The word dishonestly is expressed 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" [16]. Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. "Wrongful loss".—"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. Gaining wrongfully, losing wrongfully [17].

According to the 5th Law Commission the word

"dishonestly" itself indicates the intention of causing wrongful gain or wrongful loss which naturally implies the delivery of property or valued security, etc. [18].

If there were only two in a given case and one of them had exerted pressure on the other to secure some information it would not be a case of conspiracy but a case of extortion of some information by one from the other [19].

The views adopted by the 5th law Commission in differentiating extortion from its attempt by inferring the term dishonestly as an implied understanding as to the delivery of property suffers out of ambiguity. The term 'Dishonestly' has been defined under the Indian Penal Code whereas it is not an independent term or distinctive term in relation to the offence of extortion as the term dishonestly is succeeded by the word induces which is a combined word that differentiates extortion from robbery. The term 'induces' in the definition of extortion is the implied understanding of consent obtained by putting the person under fear of injury by the accused.

The term "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right [20].

Attempt: Attempt begins where preparation ends. A person commits the offence of 'attempt to commit a particular offence when i) he intends to commit that particular offence, 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 that offence [21].

There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence [22]. A person intended to commit an offence followed with some/any act towards the commission of such offence and thereby failed in accomplishing or achieving the purpose or object behind such an attempt is said to have attempted to commit an offence or captioned as whoever in order to commit the offence. The offender primarily to achieve his object attempts to commit an offence and, secondly, in such attempt, does any act towards the commission of the offence, and any such act if unable to accomplish, he is liable for an attempt to commit such offence.

Delivery: The offence of extortion is complete upon the demand being made, irrespective of whether any property is transferred [23].

"So one of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security, etc. That is to say, the delivery of the property must be with consent which has been obtained by putting the person in fear of any injury. In contrast to theft, in extortion there is an element of consent, of course, obtained by putting the victim in fear of injury. In extortion the

will of the victim has to be overpowered by putting him in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury [24].

The term extortion as expressed in the Indian Penal code does not require actual delivery of property or valuable security but inducement of the person to put in fear to deliver the property or valuable security [25]. In order to commit an offence of extortion the person who was put in fear must have been induced to deliver a property. In other words, to constitute extortion, it is not enough that the wrong doer had done his part; it must produce the result also. If it fails to produce the requisite effect, the act would remain only at the stage of attempt. The essence of the offence of extortion is in the actual delivery of possession of the property by the person put in fear and the offence is not complete before such a delivery [26].

If any person is confronted by any wrong doer armed with dagger or pistol and thereafter he made some utterances demanding some money, that can be said to be an act of extortion [27]. Therefore, the offence of extortion does not require actual delivery of property.

The primitive factor of fear created among the people by an individual, group or organized members to acquire the property through dishonest inducement and enrich out of the wrongful gain thereby causing wrongful loss to the other. The wrongful gain or loss is the factor concerned with the fear in the mind of the people and need not be the actual delivery of the property into the hands of the person causing such fear to that person or by putting any other person in whom he is interested.

Further, with the advent of judicial activism the courts have adopted the Golden Rule of Interpretation to the term extortion. The golden rule of interpretation has been subjected in interpreting extortion by adopting the literal/grammatical rule of interpretation indistinctly to the term dishonestly. The term dishonestly is succeeded by the word induces in the definition of extortion which if given literal meaning would mirror the true intent of the legislature. The literal or Grammatical principle of interpretation means that the words of an enactment are to be given their ordinary and natural meaning, and if such meaning is clear and unambiguous, effect should be given to a provision of a statute whatever may be consequences [28]. The object of interpretations being to know what the legislature intended, whatever was the intention of the legislature has been expressed by it through words which are to be interpreted according to the rules of Grammar [29].

There exists an ambiguity in the definition of extortion as to the delivery of property whether needs to be physical or constructive, immediate or remote. On close perusal of the definition of extortion, it is transparently clear that the primary elements/ingredients of extortion are intention, fear and dishonest inducement. On viewing through the definition of Extortion, the word intention precedes the term fear, and in order to commit the offence of extortion, a person causing fear of any injury must preliminarily possess intention to cause such a fear and merely causing fear of injury without intention is not an offence. The term intentionally used in the offence of extortion, plays an active role in distinguishing attempt of

extortion from extortion. The intention of a person is his desired purpose or foreseeable consequences of his act for accomplishing or satisfying his object. Therefore, when intentionally a person puts another in fear and dishonestly induces for the delivery of property, whether the person subjected to fear of injury has consented to the delivery of property or not, or has consented to deliver the property at a later point of time, all the elements of extortion are complied with and thereby whether delivery of property is transferred or not, the offence tantamount falls within the ingredients of extortion. Whereas, when a person has failed to obtain the consent for the delivery of property even after instilling the intention to cause fear and succeeds in the mind of the victim that he has the ability to cause fear of injury/harm and dishonestly induces for the delivery of property, is said to have cause attempt to extortion or is also termed by the legislatures as "in order to commit extortion".

Further, the other ambiguity that is indiscernible in the provision of extortion is that of rationality in the penalization. The 5th Law Commission made few recommendations of which they sought for a substitution of the words "may be punished with imprisonment for life" occurring in Sections 388 and 389 with imprisonment of lesser periods [30]. A bare perusal of these sections would show that sentences are severe and disproportionate and perhaps violate the doctrine of proportionality. Therefore, the substitution of the words "may be punished with imprisonment for life" with "lesser periods of sentence" is called for [31].

The indiscernible ambiguity that to be probed in the offence of extortion is that the punishment for putting a person or attempting to put a person in fear of accusation of an offence under Section 377 of the Indian Penal Code with the object of committing extortion or attempting to commit extortion "may be punished with imprisonment for life", which is highly disproportionate as for both the attempt to extort and extortion involve the same magnitude of the punishment. An act of extortion in the name of an accusation is seen to be graver in comparison with the same parent section 377 of Indian Penal Code.

5. Conclusion

The definition of extortion has survived its existence for more than 160 years by craving itself a lineage through the wisdom, legislative freedom, judicial activism and intervention. The term Extortion has starved even beyond the contradictory interpretations over its ambiguities beyond the recommendations made by the 5th Law Commission. The intent of the legislatures enunciate that the extortion being one of the predatory crimes and often been done in an organized form by an individual or group and thereby enrich out of the fear of the other. In a civilized society like India marching towards the eradication of crimes with acute rationality behind every legislation has pictured the strength of each enactment. Extortion is often based on the circumstantial complexity, as to the need and greed between two or more persons. The reasoned judgments by the judiciary in cases of extortion were often confronted, as to the adoption of Golden Rule of interpretations

in postulating the concept of delivery which made the delivery a more complicated ingredient in the offence of extortion. In view of literal interpretation and in order to adopt the legislative intent, seems to be courting on two distinctive prospects of extortion, one when intention and fear coupled with attempt to induce has been made but failed to succeed in obtaining the consent for the property can be termed as “in order to commit extortion” and when he has obtained the consent even though the actual delivery of the property is not immediately effectuated it can be termed as “extortion”. The words connote different intent but the object has to be precise and accurate to be achieved and by adopting the meaning of the words prescribed expressly in the definition of extortion seems to be complete as to the delivery either maybe physical or constructive and mere consent to part the property will complete the intent of the legislatures.

“The object lettered through a definition cannot be interpreted by the words enshrined in it”.

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