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AN ANALYSIS OF THE CONCEPT OF MENS REA UNDER CRIMINAL LAW

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CHAPTER 1 - INTRODUCTION

1.1 Introduction

Today, the interpretation of different laws have become the main function of the judges and court but in ancient time there were no pupils who were trained enough in law to interpret it, so it went into the hands of priests, but in due course of time the law found its guardian, these guardians were mainly known as jurists, these jurists were high-class people who took it as their responsibility to practice law and apply it for the well being of the social life. Although there were now jurists to interpret laws, the laws had developed a need for a specific factor to prove that the crime was committed; that factor was termed as Mens Rea or the guilty mind; there should have been an intent to commit crime. However, the understanding of Mens rea was still very hazy, and one thing was common to every act, malice aforethought. For there to be blame and fault, mens rea must be present; without it, there can be no guilt, and as a result, the individual is assumed to be innocent.

In most cases a criminal offense is said to be not committed if the act lacks a mental element, Mens rea can be legally termed as "Guilty mind", without this, no person can be convicted, before holding any person liable, it must be proved that the person had a guilty mind. For example – A kills B, in an act of private defense, he won't be held liable because there was no intention to harm the other person, the intention that was there was to protect himself from the damage. But if A kills B to take revenge, here it can be proved that A had that guilty intention to harm the other person".

The maxim of Actus reus non facit reum nisi mens sit rea, which translates to "there can be no crime without a guilty mind," was a Latin expression that led to the inspiration of the concept of Mens Rea in the 17th century. The limitation that an offense can only be referred to as an action taken with the intent to commit a crime was solved by this maxim. In the British rule mens rea was placed under the Indian law after being adopted from the British law. The Indian

Penal Code was introduced by Lord Macaulay in 1860 and ratified on October 6. Mens Rea was originally a component of English law, but it wasn't until it had been meticulously modified to suit the needs of British India that it was implemented.

Mens Rea has evolved from time to time, it has its own general requirements, defenses, and exceptions, it can be said that mens rea is the first step toward the commission of a crime, without it a crime cannot exist, it has evolved through the hands of jurists in early centuries and has found its place in the codified laws of different countries

1.2 Research Objectives

The main objective of this study is to analyse mens rea and its concept under criminal law, The present paper will analyze the concept of mens rea its subjective liability and objective liability, defense, and its relevance in a crime. Its Main objectives can be considered as to analyse the subjective and objective liability of mens rea, to give a brief about the evolution of mens rea, critically examine the strict liability and its relationship with mens rea with relevant case laws.

1.3 Research Methodology

Research Methodology involves a systematic procedure of collecting data through different sources and then interpreting it analyzing them and coming to a conclusion, research methodology involves doctrinal and non-doctrinal methods.

The Doctrinal Method involves going deep into the legal sources, which means analyzing and interpreting different case laws, existing statutes, precedents, and research papers and reaching a conclusion. The doctrinal method uses observation, interpretation, surveys, etc. to reach its conclusion.

This research paper is based on the Doctrinal method as it will analyze case laws, statutes, and research papers to conclude. Secondary research was conducted on the subject of "A Detailed Study of Mens Rea with Special Reference to Criminal Law." The following are the legal websites and applications that were used as research sources: 1. "SCC (Supreme Court Cases)": This application assisted me in locating particular case laws that were pertinent to my study themes and greatly influenced the development of this secondary research. 2. "J Stor": The literary application "J Stor" is the second application that was crucial in the development of the study paper. The Introduction and Literature Review benefited the most from the application.

1.4 Hypothesis

This research paper will try to analyze the concept of Mens Rea and will deal with certain questions:

1. Subsequent development of a general mens rea as necessary for crime.
2. The subjective and objective liability under Mens rea
3. The instances where Mens rea is not considered

1.5 Literature Review

- 1) **The notion of criminal intent: the evolution of mens rea in criminal law** By Daryna Byelikova – The current paper examines the development of mens rea in criminal law, analyses the idea thoroughly, and presents opinions on key elements of a guilty mind. It also draws distinctions between mens rea in civil and criminal cases and sheds light on the complexities of mens rea. The Canadian law paper covers nearly all of the major mens rea issues.
- 2) **Francis Bowes Sayre's Mens Rea**¹ This essay was published in the Harvard Law Review in 1932. The primary subjects covered in this article are mens rea and the dichotomy among mens rea and actus reus. The piece of writing claims that "any crime, no matter how minor, cannot exist absent any bad thought."
- 3) The authors Winnie Chan and Simester's **"Four Functions of Mens Rea"**²: The publication was published in 2011 by the Cambridge Law Journal. The first line of the journal states, "everyone believes that Mens rea occurs to be relevant to an existing fault." which claims that in order for an existing crime or error to occur, an evil motive must also exist.

CHAPTER 2 ANALYSIS

2.1 Analysis

1. The assertion of the penitential literature that punishment should be based on moral guilt provided powerful fuel to this evolution under the pervasive influence of the Church, as moral guilt itself has a mental component. The criminal law of England starts to insist on a mens rea as a necessary component of criminality from this point forward as it moves in the overall

¹ Francis Bowes SayreIn , Mens Rea, Harvard Law Review, Vol. 45, Issue 6 (April 1932), pp. 974-1026, <https://heinonline.org>.

² Winnie Chan, Mens Rea, Cambridge law journal, Vol. 70, issue 32 (May 2011), pp. 853-955, <https://www.cambridge.org>.

direction of moral blameworthiness. Newly motivated by Roman texts and maxims, scholars re-searched the books to organize and formulate these emerging concepts. The phrase "rum non facit nisi men's rea," contained in the Leges of Henry I, was appropriated and employed as a convenient term for the emerging concepts.

Mens rea started seeing a transition in the coming ages, so clearly suggested widespread moral culpability. Because most offenses in the thirteenth century already had a deliberate component by their mere nature, as has been stated, the move from the more archaic concept of culpability was made easier. Robbery and rape require planning; they cannot possibly be carried out accidentally. Breaking into a house was by itself an act requiring a plan, but burglary had not yet evolved the requisite of an accompanying felonious intent. Unless it was done on purpose, arson was not illegal. Homicide encompassed careless, unintentional, and intentional deaths; however, by the thirteenth century, While strictly a felon and liable to property confiscation, the murderer who killed in self-defense or by accident was excluded from the death penalty as an ordinary felon.

The fact that offenses committed in the thirteenth century included an intentional component is maybe just another example of how fundamental ethical and psychological principles have always been at the root of crime in general. A felony required an evil intent, according to law that was widely established by the second part of the seventeenth century. like the deed itself. In his discussion of death by "casualty and misfortune," writes that "as to criminal proceedings, if the act that is committed be simply casual and per infortunes, regularly that act, which, were it done ex animi intention, were punishable with death, is not by the laws of England to undergo that punishment; for it is the will and intention, that regularly is required, as well as the act and event, to make the offense capital"³, hale describes that every act needs intention and to judge that intention the circumstances of that act needs to be seen"

2. The subjective liability of Mens rea means the awareness of the person while committing any crime, it simply means that the accused knew the nature of his act and what harm it would cause but still didn't stop himself from doing that act and continued to do the act. Because men's rea is currently thought of as a unitary concept and is completely subordinated to subjectivism, according to Amirthalingam (2004 he suggested that mens rea should be divided into two completely different words. A crucial element of this dual paradigm is mens, the

³HALE, PLEAS OF THE CROWN 38.

subjective mental element that attributes responsibility for the action and its results to the accused. Furthermore, what is "real" is the normative evaluation of that mental element, such as the accuser's moral guilt. This would imply that we now need to consider whether the "mens" was "rea" rather than just focusing on the existence of "mens rea" in its whole.

The Subject liability is based on four different levels of state of Mind which are

1. Intention
2. Knowledge
3. Negligence
4. Recklessness

Intention:

Defining intention can be a rigorous task as the Indian penal code does not have a rigorous definition for it. Though it is an easy term to define it can be said that intention refers to a variety of things that the action is intended to achieve. Intention is the conscious use of one's mental faculties to take action in order to accomplish or meet a goal. There are two categories of intent: direct intent and general intent. Direct intent is when someone intends to do something bad, For example – A throws water on the floor, for B to slip and fall. This is direct intent where the act has been intentionally committed, General intent is when A throws water on the floor, not to make B slip and fall but to know that there is a high chance that it is inevitable for B to slip and fall because of the water.

In the case of **The Queen v. George [1960]**⁴, the defendant was found guilty of robbery before being exonerated due of his extreme intoxication, and the court determined that the defendant lacked sufficient mental intent to be charged with robbery. Justice Fauteux ruled that when determining mens rea, there should be "a distinction between Intended actions are those that are regarded in relation to their purpose, and intended actions are those that are not considered in relation to their purpose. According to the court's decision, evidence must demonstrate that a defendant had a specific intention to commit a crime before they can be found guilty.

Although Intention is not defined in IPC other expressions help us understand what intention can mean these are –

Sec. 39 defines the term voluntarily: "When someone "voluntarily" causes an effect, they do

⁴ The Queen v. George, [1960] SCR 871.

so by employing ways they intend to use, or by utilising means they knew or had reason to think at the time they were likely to cause it.

Sec. 285,286 and 287 – deal with failing to properly handle any hazardous chemical that could endanger human life, whether intentionally or negligently.

Through these expressions we can get an idea of the intention factor in crime and how important it is, as Men's rea is the first step of crime, intention can be the first step of Mens rea

In **Niranjan Singh v Jitendra Bhimraj (1990)**⁵, in this case the accused wanted to kill two people so that he has the full control of the underworld, The honorary Supreme Court held that their intention was very clear when we look deeper into the facts, though it cannot be held that their objective was to cause problems to people, hence it acquitted the terrorist because of lack of intention to cause terror to the general public even though the result of their act would cause that, hence it can be seen that the specific intent to cause a particular act is very important if that intent is missing, no one can be convicted

Knowledge:

Knowing something entails having cognitive thinking about it. Knowing the effects of one's actions is known as knowledge. Although he may not have intended to cause them, a man might have been aware of the effects of his actions. The accused is therefore said to know if they are conscious of the circumstances of the crime and its likely repercussions.

Reasonableness and knowledge are solely mental processes that are frequently challenging to demonstrate. Therefore, it can be deduced from the environment and the person's actions. Knowledge is fundamentally a subjective concept. However, in many situations, knowledge and intention are interchangeable and indicate the same thing, and knowledge can be used to infer intention. Although there is some overlap between knowledge and intention, it is obvious that they refer to different concepts. Intention, on the other hand, denotes a state of mind that is required to commit the offense, Knowledge, contrary to intention, is a state where the accused knows certain facts or certain outcomes of his act

The Supreme Court ruled in **Beaver v. The Queen (1957)**⁶ that even if someone has a substance in their physical possession, he cannot be said to own it until he knows what kind of the substance that is, to ascertain that the person knows the nature of the substance, the factor of “belief” was needed. If the substance the person is holding is Heroin, he cannot be held liable

⁵ Niranjan Singh vs Jitender Bhimraj(1990), AIR 1962.

⁶ Beaver v. The Queen 1957 CanLII 14 (SCC).

if he believes that he is holding baking powder and lacks the knowledge of that substance, hence lacks mens rea to commit the crime. In contrast to the knowledge of a reasonable person, the knowledge degree of mens rea places a greater emphasis on the knowledge of the individual in question.

Negligence:

When someone fails to exercise the care and attention that he should have, that person is said to be neglectful. Negligent wrongdoing is misconduct that happens unintentionally but is nonetheless wrong since it was done with carelessness or disregard. The wrong doer's mentality is not one of wanting to cause harm, but rather of not wanting it enough to stop. The law requires a positive orientation of the Will toward avoiding harm rather than being satisfied with the absence of even the slightest intention to cause harm.

A is accountable if he injures a person nearby while arguing with his wife, and throws a stick towards the side where the victim was standing, By this A had neither foreseen nor considered that anyone would get hurt, yet he is nonetheless responsible because he did not do so.

In McCrone v. Riding (1938)⁷, the defendant did not drive with due care and did not even pay attention, hence Despite the fact that the court acknowledged he was acting with the skill and attention that could be expected of a person with his little experience, he was found guilty. This was due to the fact that he had not met the necessary standard.

The difference between intention and negligence is that the man intended to do an act that may harm another person, in negligence the person has no desire to avoid causing harm to the other person, in intention, there is a desire to cause harm but in negligence, the wrongdoer is careless

Recklessness:

Recklessness is a state of mind, where a person knows all the possible consequences and outcomes of his act but does nothing to stop them. In other words, being reckless means having a disdain for the risk that is immediately apparent. It is risky to travel at a high pace down a narrow, busy street. the man is aware that the action he is undertaking may hurt someone, but

⁷McCrone v. Riding [1938] 1 All ER 157.

he doesn't care. Similarly, A is guilty of recklessly inflicting injury if A throws a ball toward a group of people and that ball hits someone from the audience.

The difference between knowledge and recklessness is that in knowledge the certainty of the facts is very high in recklessness, is very low.

There are two major tests for Recklessness -

The R v. Cunningham⁸ case established the subjective test. In this case, the defendant knowingly took the risk, which means that the risk was present in the mind of the defendant while doing the act but he did nothing to stop that.

The second test is the Caldwell test, in this test, this test looks at the act through the point of view of a reasonable person, it states that the risk being undertaken must be so obvious that a reasonable person would have foreseen it.

Objective liability –

Objective liability states that the liability should be extended to those who caused harm to others and it is irrelevant if they could foresee the harm being caused, if a reasonable person could foresee the harm being caused then the liability should be extended to the accused person

3. Under civil law it is not necessary to prove that a Mental element is required, in criminal cases it is necessary to go beyond the scope of civil law and dive deeper into the person's mental conduct to make him liable for the offense. The absence of mens rea has historically been associated with a few crimes, such as statutory rape, where responsibility can be established without establishing that the victim is under the legal age of consent, and bigamy, where both parties genuinely believe they are free to marry. Many offences under strict liability would be regarded crimes even if they were committed without the mens rea element, and these offences can be categorised into various others that do not require the demonstration of mens rea.–

1. Criminal libel
2. Public nuisance (Hicklin Test)
3. Contempt of court
4. Abduction/Kidnapping

⁸ R v Cunningham [1957] 3 WLR 76.

5. Bigamy
6. Waging war
7. Sexual harassment
8. Rape
9. Selling of obscene books

State Of Maharastra Vs MH George⁹

In the present case, The RBI issued a notification and banned bringing any gold items into India, even though the item was in transit, if anyone wants to bring any item they should disclose such item in the manifest, MH George was traveling from Zurich to manila and had a stop in Mumbai. He did not disembark the plane, The customs officers saw that no gold was mentioned in the manifest hence they entered the plane to check and recovered the gold from the passenger and accused him of breaking the Foreign Exchange Regulation Act of 1947's Sections 8(1) and 23(1-A), as well as a Reserve Bank of India directive from November 8, 1962, that was published in the Indian Gazette on November 24.

The respondent contended that the notice published in the official gazette was not made known to him and that mens rea is a crucial ingredient of the offense. He also claimed that the notice can only be regarded to be enforceable when it comes to the knowledge of the individuals for whom it is published. The accused further contended that he was unaware of the Indian regulations and had no desire to enter Indian territory with gold.

The court held that even though Mens rea is a very important condition of crime regardless of the statutory provision can exclude Mens rea if the statute has made it a violation to bring gold into Indian territory then it would be considered an offense if anyone violates the condition even though he had no intention to do it

Ranjit D. Udeshi vs. State of Maharastra¹⁰

Ranjit D. Udeshi, the proprietor of a bookstore, was accused of possessing and selling explicit content under section 292 of the IPC in the form of a book titled Lady Chatterley's Lover by DH Lawrence. After being found guilty by lower courts, the case was taken to the Supreme Court on a variety of grounds, including a violation of fundamental rights. The book had

⁹ State of Maharashtra v. Mayer Hans George, (1965) 1 SCR 123.

¹⁰ Ranjit D. Udeshi vs. State of Maharastra 1965 AIR 881.

language describing several accounts depicting sexual intimacies, which became the reprovved text to be ruled for under obscenity.

The Supreme Court noted that section 292 doesn't make the book-seller's knowledge of obscene a component of the offense, and the prosecution is not required to prove it. The court reacted to the appellant's claims by stating that it was the responsibility of Parliament, not the courts, to adopt legislation making knowledge an inherent part of section 292, IPC. As a result, the court considers obscenity to be a strict liability offense.

Absence of knowledge may be considered for mitigation purposes, but it does not exempt the case from the provision. However, the prosecution must prove ordinary mens rea in the second element of the actus reus, as well as that he sold or retained for sale the offending object. Circumstantial evidence can be used to establish mens rea.

In the light of the above cases, it can be seen that if any statutory provision makes it a criminal offence to do a particular act then the relevance of mens rea in that act is not considered, hence in the case of strict liability, mens rea can be not considered

Subhash Shamrao Pachunde v. State of Maharashtra (2005)¹¹-In *Subhash Shamrao Pachunde v. State of Maharashtra (2005)*, the Supreme Court determined that the distinction between culpable homicide and murder depends on top of the specific Mens rea, which is made up of four mental dispositions; whenever any of these four are present, the lesser offence becomes an existing greater one.

4. certain defenses come with Mens rea, these defenses can disapprove of a particular intent. Drug and alcohol intoxication can be used as a defense, and mistake of fact can also be considered a defense as the accused is mistaken of the basic facts of an act and hence cannot be said to have possessed the required mental ability for that crime." Since the middle of the 20th century, initially in California and then in many other states, mental illness has also been used to disprove specific intent. A defendant's ability to possess the precise intent necessary for a crime was the focus of the defense known as reduced capacity.

¹¹ *Subhash Shamrao Pachunde v. State of Maharashtra (2005)*, Appeal (crl.) 541 of 1999.

1. Insanity as a defense

M'Naghten's Case (1843)¹²- Daniel M'Naghten's Case shot the secretary of the prime minister thinking him to be the prime minister and believing that he was involved in a conspiracy against him, the court in this case through its decision gave rise to the M'Naghtens rule which says that a person is incapable of committing the crime if at the time of commission he was unable to understand the nature of the act

Durham vs. The United States¹³ – This case broadened the scope of insanity as the defense of Mens rea, said that a person is not liable for his act if he suffered from a mental disorder, defect, or disease

2. Intoxication as a defense

R Vs Lipman¹⁴ – The accused, who had taken LSD, under its effect killed his girlfriend, the court acquitted him stating that the accused was involuntarily intoxicated as he didn't know the effects of LSD, hence it can be seen that involuntary intoxication can be a defense to men's rea but if the accused has voluntarily intoxicated themselves then the defense cannot be taken

R vs Majewski¹⁵– The accused voluntarily intoxicated himself and subsequently engaged in violent behavior, the court held that voluntary intoxication cannot be taken as a defense, it is not a defense to crimes of basic intent but can be one to that of specific intent if it negates the required Men's rea

3. Mistake of Fact

R vs Prince¹⁶ – the accused took a 14-year-old girl away from her father's custody thinking her to be 18 years old, the court acquitted him saying that he was genuinely mistaken about the age of the girl and hence cannot be said to have possessed the required mens rea

4. Necessity

There arises a situation where a person has to break a law for his self-benefit or the benefit of others brings necessity under Mens rea defen

¹² M'Naghten's Case (1843) 8 E.R. 718.

¹³ Durham vs. The United States 214 F.2d 862.

¹⁴ R v Lipman [1970] 1 QB 152.

¹⁵ R v Majewski [1977] AC 443.

¹⁶ R vs. Prince [1875] LR 2 CCR 154.

ses. The court gave some guidelines for the Necessity to be used as a defense, known as parka findings, 1) there must be an immediate danger to life 2) the act must be inevitable and unavoidable 3) The damage must be smaller than the damage that should have been prevented.

R. v. Morgentaler [1993]¹⁷ – In this case, a doctor was accused of executing an illegal abortion; the defence of necessity was pleaded and the court stated that there was no imminent danger to the woman's life because of the child she was carrying, the court applied the parka findings and decided that necessity cannot be pleaded as a defense.

CHAPTER 3 CONCLUSION

3.1 Conclusion

The word "Men's rea" in criminal law is extremely complex and can be interpreted in several ways depending on the offence, making it challenging to determine its true meaning.. For ages, the law and the church have tried to define it but with time and discoveries, it just added to its complexities, nothing can be defined in criminal law, the offences and their method can change so can the rules applied. among these numerous concepts lies the foundation of every criminal act and crime, Mens rea, defined as a guilty intention the accused possesses during the commission of a crime, Mens rea has evolved into being the most important aspect of crime, without it, the crime is said to have been not committed. Mens rea is one of the primary parts of crime, but it merely expresses how a criminal case should be viewed; the court has invented new forms of mens rea with each new case; there is no such law that deals with such many intricacies and complexity.

¹⁷ R v Morgentaler, [1988] 1 SCR 30.