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‘ACTUS NON FACIT REUM NISI MENS SIT REA’ RECONCEPTUALISING MENS REA IN INDIAN CRIMINAL JURISPRUDENCE: A DOCTRINAL AND CONTEMPORARY ANALYSIS

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ABSTRACT

The Platonic foundational maxim of criminal law maintains that an act can be wrongful only if committed with a guilty mind. Following an investigation into the Roman, English, and Indian legal traditions, the article evaluates the degree to which Indian jurisprudence adheres to the principle. Further emphasis is on statutory construction, judicial reasoning, and the birth of offences under strict liability. The paper furthermore interrogates the application of mens rea under the Bharatiya Nyaya Sanhita, 2023, while also reflecting on changing doctrinal and policy debates challenging traditional expressions. The study recommends a more nuanced approach to mental culpability in these expansive legislative and disruptive technological settings.

Keywords: Mens Rea, Actus Reus, Criminal Liability, Indian Criminal Jurisprudence, Bharatiya Nyaya Sanhita

1. INTRODUCTION

‘Actus Non-Facit Nisi Mens Sit Rea’ translates to ‘an act that is not guilty unless the mind is guilty’. It holds a central place in criminal law. It generally establishes that in order for someone to be held criminally liable, there needs to be a wrongful act, known as an actus reus, together with a guilty mind, or mens rea. This guarantees that individuals are not convicted for offences they have committed that lack criminal intent, as provided for and emphasised by the general concerns of justice and equity in any legal jurisdiction across the globe.

The doctrine identifies two constituent elements of the crime: the **‘physical act** and the **mental intent’**. For a crime to be legally recognized, both of these should co-occur. It finds a place in the

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very significant case of *R. Balakrishna Pillai v. State of Kerala*² from India, where it was emphasised that criminal liability concerns not only an act but also the state of mind when such an act is committed. This thinking was pursued further by the Indian Supreme Court in *Kartar Singh v. State of Punjab*³, and the court considered circumstances where the legislature might deliberately avoid making mens rea a requirement under a given statute so as to make the protection afforded by that statute more effective.

The vast majority of conduct described as action falls within Austin's discussion of acts that are 'properly so-called' and their attendant consequences. Thus, killing a person with a revolver makes muscles move, grasp the revolver, and squeeze the finger on the trigger with attendant consequences. (Austin, 1990)⁴

2. THE HISTORICAL NARRATIVE AND THEORETICAL FRAMEWORK

2.1 EVOLUTION OF THE DOCTRINE

The doctrine of 'actus reus' and 'mens rea' argues her antecedent in the ancient legal world, beginning with Roman law, which considered not only the act but also the intent behind it. The doctrine saw its development during medieval English common law, marking a landmark evolution in moving from a system of strict liability offences, whereby mere commission of an act was punishable, to a more sophisticated system that embraced the intent of a defendant.

In earlier times, the 'Theory of Retribution' was followed, and it ultimately led to the punishment of non-human objects and even animals for vengeance as an intrinsic easement to calm our mind. Retribution is also defined as 'a punishment that is equal to the crime. It seeks to cause suffering to the wrongdoer that is equal to the suffering they caused with their actions'⁵.

2.2 PHILOSOPHICAL PERSPECTIVES

Punishment in the theory of H.L.A. Hart states that the moral basis of criminal law is that punishment is only warranted when a person has voluntarily broken the law⁶. Hence, a restatement of the primacy of mens rea within criminal law, with Jeremy Bentham's utilitarian theory

² 1996 SCC (1) 478

³ 1994 SCC (3) 569

⁴ Austin, J. (1885). Lectures on jurisprudence (5th ed., pp. 411-412).

⁵ "Retributive criminal justice | definition, law & examples." Available at: <https://study.com/learn/lesson/retributive-justice-theory-law-examples> (Accessed: 07 August 2024)

⁶ Hart, H.L.A. (1968). Punishment and Responsibility: Essays in the Philosophy of Law. Oxford University Press, pp. 28-53.

supporting intent on its utility of causing punishment to be appropriately applied in terms of likelihood of recidivism and degree of deterrence⁷.

3. ANALYSIS OF ESSENTIAL COMPONENTS

3.1 ACTUS REUS

Actus reus essentially means the criminal aspect of the act. It is defined as a voluntary act, omission, or state of affairs which the law forbids. If an act is to be called 'actus reus', then that act must originate from the accused's own free will. This principle was laid down in the case of *Hill v Baxter* 1958, wherein it was held that the attribute of voluntariness must be taken into consideration while deciding on criminal liability⁸. This may not always correlate with the actus reus in cases where one is acting under duress or coercion.

While deciding questions arising under 'Section 84 of the IPC', now Section 22 of BNS, which deals with the defence of insanity, the Indian Supreme Court in '*Siddhapal Kamala Yadav v. State of Maharashtra*'⁹ held that the *actus non facit reum nisi mens sit rea* is a fundamental maxim, emphasising the requirement of both act and intent.

The Bharatiya Nyaya Sanhita, 2023, reflects the requirement of a voluntary act as a prerequisite for criminal responsibility under Section 2(1)(a), which defines an “act” to mean an act or omission punishable by law. It presumes that the prohibited conduct (*actus reus*) must be a conscious and voluntary action or omission in violation of a statutory provision.

3.2 MENS REA (GUILTY MIND)

'Mens rea' is the mindset at the time of the commission of the crime. It means intent, knowledge, recklessness, and negligence, and these very often vary from one offence to another. The degree of mens rea also varies from one offence to another. A murder requires intent to kill, whereas misdemeanours may require only reckless conduct. The fact that recklessness is so described was, in essence, laid down by *R v Cunningham* (1957), which said that it is sufficient for this element of mens rea if foresight of risk, with continuation regardless, was present.

In the case of the '*State of Rajasthan v. Smera Ram*'¹⁰, the Indian Supreme Court held that 'a crime comprises two constituent elements: **intention and act**'. The court further held that, according to

⁷ Bentham, J. (1789). *An Introduction to the Principles of Morals and Legislation*. T. Payne and Son.

⁸ *Hill v. Baxter* [1958] 1 QB 277.

⁹ *Siddhapal Kamala Yadav v. State of Maharashtra*, AIR 2009 SUPREME COURT 97.

¹⁰ AIR 2012 SUPREME COURT 1

the maxim, sane people ought to possess the use of reason and be responsible for such; however, people with disordered minds lack this basic element of human conduct.

Under Section 2(7),(9),(34) of the Bharatiya Nyaya Sanhita, 2023, “criminal intent” is implicitly recognised as a central component of an offence, particularly where the statute refers to conduct done “intentionally,” “knowingly,” “dishonestly,” or “fraudulently.” These terms encapsulate the doctrine of *mens rea*, affirming that liability under BNS is contingent upon the presence of a blameworthy state of mind unless expressly excluded by the statute.

3.3 THE CONVERGENCE: ACT + GUILTY MIND

Wherein there is 'Actus reus' coupled with 'Mens rea', both of the elements coupled with each other are the harmful acts done, with the criminal or malicious intent of the act. In other words, the two factors should go together to constitute a crime, and the doing of an act alone without a guilty mind is often not sufficient to attract criminal liability. Section 14 of the 'Indian Evidence Act, 1872' insists that a wrongful act, when accompanied by intent, is the proper subject for the administration of criminal law¹¹.

4. INDIAN CASE LAW EVOLUTION

'Actus non facit reum nisi mens sit rea' literally means- "An act does not make a person guilty unless there is a guilty mind." According to John D Mayne, the maxim 'Actus non facit reum nisi mens sit rea' is "wholly out of place." He greatly emphasised 'the state of mind with regard to what the accused must have done while he was doing it'¹².

Subsequently, the AG of India, Adv. MC Setalvad, as the Chairperson of 'The First Law Commission of Independent India', asserted that 'guilty mind rather not to be asserted through common law, but the statute itself.' Henceforth, the maxim found its way into the code through the incorporation of its meaning into each definition, but not cited as an independent phrase or in the name of 'Mens rea'¹³.

Ratanlal & Dhirajlal also observed a similar tone to the maxim and had observed the following: "The maxim has Actus non facit reum nisi mens sit rea has no application in a technical sense, but as the definition of various offences contains express propositions as the state of mind of the accused."¹⁴.

¹¹ The Indian Evidence Act, 1872, Section 14.

¹² John D Mayne, The Criminal Law of India, 4th Edn, Higinbotham, Madras, 1896, p. 9.

¹³ Law Commission of India, 42nd Report on the Indian Penal Code, 1971, pp. 14-16.

¹⁴ Ratanlal & Dhirajlal, The Indian Penal Code, Anjana Prakash (ed), 35th Edn, vol 1, LexisNexis, 2021, p. 281.

5. CONTEMPORARY JURISPRUDENTIAL DEBATES

5.1 STRICT LIABILITY AND REGULATORY OFFENCES UNDER INDIAN LAW

The traditional theory of mens rea has increasingly come under severe questioning by the modern legal systems, especially with the spread of regulatory offences. The Supreme Court in the *State of Maharashtra v. Mayer Hans George*¹⁵ recognized that the legislature, while defining offences for which mens rea is not a requirement, may well set up offences of strict liability, particularly in the realm of regulatory statutes relating to public welfare, environmental protection or economic offences. This doctrinal shift brings with it deep concerns as to the place that efficiency can take with principles of fairness.

5.2 CORPORATE CRIMINAL LIABILITY AND MENS REA

Mens rea, however, becomes particularly vexed in the corporate domain. In *Standard Chartered Bank v. Directorate of Enforcement*,¹⁶ The Supreme Court took on the legal fiction of imputing mental states to corporations. The Court declared that even though it would not be possible for them to have an actual "mind," entities which are corporations may be held criminally liable, thereby a significant departure from the classical requirement of mens rea has come forth by way of the principle of attribution and aggregation.

5.3 DIGITAL AND ALGORITHMIC CRIMES

The upcoming technology of artificial intelligence and algorithmic decision-making presents new age challenges to the *mens rea* doctrine. When harmful outcomes result from automated systems, questions arise regarding **where to locate criminal intent** with the developer, the deployer, or the algorithm itself¹⁷. Indian law has yet to develop a comprehensive framework for addressing these issues, highlighting the need for doctrinal evolution to accommodate technological advancements.

6. CONCLUSION

The principle of *Actus Non Facit Reum Nisi Mens Sit Rea* continues to act as the moral-legal compass of criminal jurisprudence. Yet, in these days, with trends towards strict liability and recognition of corporate offences or digital crimes, its value is being undermined. Indian courts have also upheld

¹⁵ State of Maharashtra v. Mayer Hans George, AIR 1965 SC 722.

¹⁶ Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530.

¹⁶ Halley, G. (2018). "Dangerous Robots—Artificial Intelligence vs. Human Intelligence." 2018 International Conference on Research in Intelligent and Computing in Engineering (RICE), pp. 1-5

the primacy of mental culpability, but certain statutory developments, such as the Bharatiya Nyaya Sanhita, 2023, raise troubling questions.

The present study maintains that challenges faced by the doctrine must be met by effecting changes in the existing interpretation, without adversely affecting its fundamental spirit of equity and individual culpability. A doctrinal recalibration under Indian criminal law, where *mens rea* stands in its full normative significance but yet responds pragmatically to the present-day realities of crimes, is the only means to achieve substantive justice.

Conversely, if it does not fall in our law, then this may invite the seemingly unfair consequence of punishing persons for mere accidents or doing something without full appreciation of it. This is the principle that has served, over the ages, to alter the courts' approach to criminal liability. It has been guiding the courts since ancient Roman times, through all legal systems, and even in recent times, to do justice in an equitable manner.

The entire criminal law of a country stands on the doctrine of *Actus Reus Non Facit Nisi Mens Rea*. It is not some relic of an ancient order, but instead lives to bring a balancing force to justice."

A principle like "*Actus Reus Non Facit Nisi Mens Sit Rea*" reinforces criminal law. It does not appear as an ancient relic but lives to make a balance on the scales of justice in the consideration of both '*actus reus*' and '*mens rea*' in every case.