



MENS REA: OBJECTIVE AND SUBJECTIVE TEST

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Introduction

Dr. Glanville Williams states¹, “*Mens rea* refers to the mental element required for many crimes. It must not be read in its literal senses requiring moral wrong or dishonest intent or conscious guilt. It means an intent to do the forbidden act (whether you know it is forbidden or not), or (generally) recklessness as to it, intention includes knowledge”.

Mens rea or criminal intent is an essential element of every crime. To constitute any criminal act there must be a faulty mind. It is the combination of an act and an evil intent that differentiates criminal and civil liability. Mens rea is an essential element or ingredient of crime, though a universally accepted principle is not without its limitations. The definition of mens rea differs from case to case.

Concept Analysis

Mens rea means a state of guilty mind or a mental state, in which a person deliberately violates a law. Thus in simple way it is the intention to do any prohibited act. It is the motive force behind the criminal act. Mens rea is the culpable guilty mind. An act itself is no crime, unless it is coupled with an evil

/ criminal intent. Intent and act, both must concur to constitute a crime. In other words we can say that no one can be convicted of a crime unless their criminal conduct (*actus reus*) was accompanied by a criminal mental element known as mens rea.

The essence of criminal law has been said to lie in the Latin maxim- “**Actus non facit reum nisi mens sit rea**”, which means the act does not make one guilty unless the mind is also guilty. There can be no crime large or small, without an evil mind. It is not an artificial principle grafted on any particular system of laws, but is a doctrine of universal application based on man’s moral sense. Mens rea is further subdivided into three categories – intent, recklessness, or wilful blindness.

Case laws

To facilitate further understanding and detailed knowledge a combination of foreign and Indian cases are being referred.

➤ **Nathulal vs State Of Madhya Pradesh**²

In this case the appellant was a dealer in food grains at Dhar in Madhya Pradesh. He was prosecuted in the Court of the Additional District Magistrate, Dhar, for having in stock 2 1/4 seers of wheat and 885 maunds for the purpose of sale without a licence. Thus the appellant committed an offence under S. 7 of the Essential Commodities Act, 1955. In his defence the appellant pleaded that he stored the said grains only after applying for a licence and was in the belief that it would be issued soon and intentionally he didn’t infringe the provisions of the said

¹Glanville Williams, Text Book of Criminal Law p.49.

²AIR 1966 SC 43, 1966 CriLJ 71



section. Although he made continuous effort to get the licence for 2 months. The court of Additional District Magistrate, Dhar, acquitted him on the basis of the evidence that there was an absence of guilty mind. The order of acquittal was set aside on appeal by a division bench of the Madhya Pradesh High Court. The appellant was sentenced to rigorous imprisonment for one year and a fine of Rs. 2, 000 .Later Nathulal appealed to the Supreme Court. Mr. Pathak, learned counsel for the appellant, mainly contended that mens rea was a necessary ingredient of the offence under Section 7 of the Act. The bona-fide intention of the accused can be well established from the facts of the case. Hence, the appellant was acquitted of the offence.

➤ **State of Maharashtra v Mayor Hans George**³

This case is a major exception to the Nathulal vs State Of Madhya Pradesh⁴ case, where the same principle was reiterated.

Here, it was questioned whether mens rea is necessary for an offence under the Foreign Exchange Regulation Act. As according to a notification which was given out by the Reserve bank of India on 24th November 1962, it was mandatory to disclose all the information about valuables that were carried by passengers on the flights in the territory of India. This was particularly a measure to try and control the illegal smuggling of valuables across borders through air travel. On 27th

November 1962 George was on a flight from Zurich to Manila. The flight landed in Mumbai, it being one of the in-transit destinations. The customs officials in India had certain information about the attempt to smuggle gold by the respondent. Since it was noted that he didn't get off to the airport lounge, customs inspector entered the plane and saw him seated in the flight itself. On his inspection, they found that from 19 compartments, out of the 28 compartments in total, 34 blocks of gold. For the violation of sections 8, 24 and 23(1A) of the Foreign Exchange Regulation Act, the respondent was prosecuted. It was contended by the respondent, before the magistrate that he was not aware about the change in policies with the notification published by the Reserve bank on 24th November and his means illegal under the same. Indirectly, he tried to convince the court that mens rea was a necessary element for the particular offence that he was charged with. The magistrate, however, rejected the defence put forth by the respondent and he was sentenced for imprisonment of one year. It was discussed by the Supreme court that the actions of the respondent were conscious acts itself, need no more proof for the presence of guilty mind.

➤ **The Queen v. Tolson**⁵

Decided in 1889, it dealt with the disappearance of the husband, in the year 1881, a year after getting married. Till 1885, wife had no information about her husband, except for the fact that he was last seen on a ship, which was later believed to have met with an accident. It

³AIR 1965 SC 722

⁴AIR 1966 SC 43, 1966 CriLJ 71

⁵(1889) 23 Q.B.D. 168



took a lot of efforts for the wife to find even this little piece of information, and since she could find nothing else, she gave up and considered that her husband was dead. She gets remarried in 1885, while in 1886, her husband returns. The person, to whom the wife had remarried, knew well about everything that had happened, an indicative that she did not have any malicious intention in mind.

The court held the wife liable for bigamy, not giving due importance to all the efforts she put in to find out about the husband before actually marrying anyone else.

➤ **R v Moloney**⁶

In this case the defendant and his stepfather in a dinner party drank a large quantity of alcohol. Later on they had a discussion about fireman, and decided to have a shooting contest to see who can load and fire a shotgun faster. The defendant won, and was challenged by his stepfather to fire a live bullet. In the drunken state the defendant was not aware of the fact that the gun aimed at the stepfather and instantly killed his stepfather. The defendant was charged with murder and convicted. The trial judge directed the jury that the defendant had the necessary mens rea for murder if he foresaw death or real serious injury as a probable consequence of his actions, even if he did not desire it; and he was convicted. On appeal the House of Lords substituted a verdict of manslaughter and quashed the murder conviction, as there was no intentionally killing sufficient mens rea for murder.

⁶[1985] 1 AC 905

➤ **Kartar Singh v State of Punjab**⁷

In this case, the appellant along with two others were charged under ss. 302⁸ and 307⁹ read with s. 149¹⁰ of the Indian Penal Code. The prosecution case against them was that they along with ten others had taken part in a free fight resulting in the

⁷1994 (3) SCC 569

⁸Punishment for murder. —Whoever commits murder shall be punished with death, or 1[imprisonment for life], and shall also be liable to fine.

⁹307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.

¹⁰149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.



death of one belonging to the other side. The Sessions judge held that the accused was present at the time of incident along with nine or ten people but couldn't recognise who they were. Therefore, given the benefit of the doubt and hence acquitted them. The High Court on appeal affirmed that decision. On the behalf of the appellant it was urged in the Court that there was no offence of unlawful assembly. The appellant present at the time of the incident had no malicious intention and in a free fight each participant was liable for his own act. The conviction of the appellant, who had caused no injury to the deceased, was untenable under ss. 302 and 307 of the Indian Penal Code. Held that the contentions must fail.

necessary ingredient of crime unless it is either expressly or by necessary implication, ruled out. It is implied from the statute that the element of guilty mind can be excluded where it is absolutely clear that the act is done for public welfare. The doctrine of mens rea would be applied with great vigour in those cases which carry corporal punishment of severe nature¹³. A person would commit an offence under Section 7¹⁴ of the Act if he intentionally contravenes any order made under Section 3¹⁵ of the Act. So construed the object of the

Critical analysis

➤ Nathulal vs State Of Madhya Pradesh¹¹.

The issues which were raised in this case were that will it amount to an offence even if there was no mens rea on the appellant part but only factual non-compliance of Section 7¹². A person can be convicted of a crime if there's a presence of both criminal mental intent (mens rea) and criminal conduct (actus reus). On the basis of the present facts, mens rea, which is an integral part of the definition of crime, is absent. Hence, he cannot be held liable. The second issue was that can we eliminate the element of guilty mind from an offence just to fulfil the main objective of statute i.e. to promote trade welfare activities. The Supreme Court invariably ruled that mens rea would be a

¹³ Pandey, Kumar Askand Dr., Principles of Criminal Law : Cases & Materials, Allahabad : Central Law Publications, 2014

¹⁴ (1) If any person contravenes any order made under section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and
(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

¹⁵ The Madhya Pradesh food grains dealers licensing order, 1958

Section 3: (1) No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in the behalf by the licensing authority.

¹¹ AIR 1966 SC 43, 1966 CriLJ 71

¹² The Essential Commodities Act, 1955



Act will be best served and innocent persons will also be protected from harassment.¹⁶

For any criminal offence mens rea can be considered as an essential element. We cannot eliminate the element of mens rea from any offence by the mere fact that the statute is to eradicate grave social evil and for general public interest. In **Srinivas Mall Bairoliya & Another v Emperor**¹⁷ the Privy Council observed that the element of mens rea cannot be excluded from any offence just for the sake of public welfare. If in any case mental element of any conduct alleged to be a crime is absent in that case it can be said that the crime so defined is not committed. Hence it can be presumed from the above facts that guilty mind is a vital ingredient of any statutory offence unless it is expressly or by necessary implications excluded.

Secondly, according to the subjective test of mens rea, the court must be satisfied at the time of commission of any act the accused actually had the requisite mental element present in his or her mind at the relevant time. In the present case the act of the appellant doesn't follow the subjective test of mens rea as it was proved that he did the trade activity with the bonafide intention.

➤ **State of Maharashtra v. M. Hans George**¹⁸

¹⁶ https://www.academia.edu/29747036/CASE_COMMENT_on_NATHULAL_v_STATE_OF_MADHYA_PRADESH_1966_Cri_LJ_71

¹⁷ AIR 1966 SC44

¹⁸ 1965 AIR 722

On the basis of the facts, the appellant can be said blameworthy as had the actual knowledge that he possesses illegal drugs still he carried out the proscribed conduct. The evil intent which was present by smuggling the drugs through unauthorized and informal ways expressly contributes towards the commission of the crime. Although he wasn't aware of the laws prevalent in India still he will be held liable because ignorance of the law is not an excuse (*Ignorantia legis neminem excusat*). A person cannot escape from any liability for infringing any law merely because he or she was unaware of a law.

Also as per the levels of mens rea (intention, knowledge, recklessness and negligence) it can be proved that he had a wrongful intention and full knowledge that he is carrying illegal drug and can be held liable for his wrongful act. As per the objective test of mens rea, it can be said that the requisite *mens rea* element was imputed to the accused, on the basis that a reasonable person would have had the same mental element in doing the wrongful act of smuggling.

➤ **Queen v. Tolson**¹⁹

In this case the wife had an honest belief that her husband is dead. The decision which was taken by her to get married again was done with a bonafide intention. She didn't have any guilty mind. Hence, negates the element of mens rea. Also it can be considered as a good defence to the charge of bigamy. Considering another case, **R v Wheat and Stocks**²⁰, where a man with

¹⁹ 23 Q.B.D. 168, 172 (1889)

²⁰ 1921 2 King's Bench 119



low, relatively negligible educational foundation filed a divorce case. Since he wanted to marry another woman. He went to the solicitor and clarified his case. After a couple of days when he visited his legal advisor's place, there he was asked to sign certain papers, which he considered were the legal documents, however they truly weren't. In the belief that divorce has been granted, he got married to another woman. He was held liable for committing the offence of bigamy. Although he believed in good faith that documents he signed were divorce documents and he had no bad intention or guilty mind.

The two cases, i.e. Tolson's case and Wheat & Stocks case are quite distinct from each other. In former it was mistake of fact and in later was mistake of law. The mistake of fact can be taken as a defence in any offence but mistake of law cannot be taken as a defence. Hence, Wheat was held guilty because of the mistake of law.

Talking about the Indian Law, no such defence on reasonable grounds and in good belief is available. For example in the case of **Siraj Mian v. A. Majid**²¹ case where an accused married with another woman in the belief that his first marriage has been dissolved by divorce deed. Though he did the second marriage in the bonafide belief, he was held liable for bigamy.

Later on, the relation between mens rea and bigamy was defined in the case, **Sankaran Sukumaran v Krishnan Saraswati**²², where Kerala High Court came

to the conclusion that mens rea i.e. guilty mind is an essential element of the offence under section 494²³ of the Indian Penal Code.

➤ **R v Moloney**²⁴

The foundation of Mens rea, is based on the assumption that a person has the capacity to control his conduct. In the present case the accused committed the crime in a drunken state i.e. he was not in his senses. He didn't have any control on his mind during the commission of the crime. The Particular form of subjective mens rea includes intention, knowledge and recklessness. In the present case the appellant didn't have any bad intention

It is the intent to cause death, in the absence of intention no act can be committed.

Since the appellant had no intention to kill his stepfather, so we can say that he didn't commit the offence of murder.

If seen from the subjective test of mens rea, the accused never had the requisite mental element present in his or her mind at the relevant time for purposely, knowingly killing his stepfather. Hence, he was not charged for the offence of murder.

➤ **Kartar Singh v State of Punjab**²⁵

²³ S 494 of IPC- Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

²⁴[1985] 1 AC 905

²⁵1994 (3) SCC 569

²¹1953 CrLR 1504.

²²1984 CriLJ 317



In the present case, the individuals who were involved in the fight never had any common intention. Kartar Singh and his two other friends didn't have any malicious intention. Hence, it can be said that there was no mens rea on their part. For the commission of any crime the two requisites i.e. criminal act (actus reus) and criminal mind (mens rea) should be present. The element of mens rea was absent in this case.

Secondly, they were charged on the grounds of unlawful assembly. Under the Indian Penal Code, unlawful assembly can be defined as an assembly of five or more individuals having a common intention for the commission of any crime or doing any lawful act through unlawful means so as to hamper the tranquillity and peace of the surrounding. In the present case the persons involved in the incident were less than five. Hence cannot be said that there was unlawful assembly.

Conclusion

To define any particular crime, under common law or in statute, the elements of actus reus and mens rea are necessary for the offence. From the perspective of Indian law, all people are presumed innocent until proven guilty.

There are certain presumptions which a Court takes into account while interpreting the statutes. One of the relevant presumptions is that generally a criminal act requires the presence of some blameworthy state of mind i.e. mens rea. Most of the crimes independent of any statute require a blameworthy state of mind on the part of the actor. In other words, we can say that no crime can be committed unless there is mens rea.

Today, the kinds of offences are multiplied by various regulations and orders to such an extent that that it is difficult for most of the law abiding subjects to avoid offending against the law at all times. Some law, out of many, could be violated by chance without a guilty intention at some point of time. In these circumstances, it seems to be more important than ever to adhere to this principle. But, there is more to it. In the past, it also seemed that the importance of this presumption of mens rea was declining in importance. Cases of **Ranjit D Udeshi v State of Maharashtra**²⁶ and **State of Maharashtra vs M H George**²⁷ are some important examples where the exception to the presumption requiring mens rea has been applied. In these cases without the element of mens rea on the part of the accused, punishment was given for statutory offences. The element of mens Rea was eliminated because the matter was linked with public welfare and national interest

To conclude it can be said that rules in court regarding how and where to use the presumption requiring mens Rea have been developing since quite a long time. Various Courts have framed various rules regarding the application of presumption in statutory offences and in normal cases. Although the conflicts of thoughts do appear whether to apply it or not. As in the case of **Nathu Lal vs State of Madhya Pradesh**²⁸ the court said that "Mens rea is an essential ingredient of a criminal offence unless the statute by

²⁶ 1965 AIR 881, 1965 SCR (1) 65

²⁸ AIR 1966 SC 43, 1966 CriLJ 71



necessary implications or by expressed statutes excludes it”.

Every offence defined in Indian Penal laws and in any others, includes evil intent, so mens rea can be considered as an essence of any offence. It is the state of mind which gives the meaning to any act. The law needs to be changed and the mental **intention element needs** to be explicitly mentioned in the laws so as the court to not get confused and commit as it had committed in the past

Hence, through the means of analysis of various pronouncements, we come to a conclusion that *mens Rea* is one of the most important element for the commission of a crime.

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