JUVENILE: A NEW ERA OF CRIME

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ABSTRACT

As we all know that the children are considered to be the gift of God. They are the assets and future of the nation. So, it is necessary to provide them an opportunity to grow up in healthy environment so that they could become responsible citizens of the country and they could achieve their goals and make their parents, society and country proud. But sometimes, certain children do not follow the settled legal and social dictum and they get involved in some criminal activities, which is known as Juvenile Crime. It is a harsh reality of our country. In recent times, Juveniles were found to be involved in most heinous offences such as murder and gang rape etc, which affects our nation badly.

WHO IS A JUVENILE?

Generally, Juvenile means a person who is young, teenager or adolescent. In other words, Juvenile means a person who hasn’t reached the age of adults as they are still immature. In legal parlance, a juvenile means a child who hasn’t attained a certain age at which he can be held liable for his criminal acts as an adult person. It means a juvenile means a person who has not completed the age of 18.

The age of Juvenile varies from law to law, which are as follows:-

According to sec 2(ii) of Child Labour (Prohibition and Regulation) Act, 1986 a ‘Child’ means a person who has not completed the age of 14 Years.

According to sec 2(a) of Immoral Traffic (Prevention) Act, 1956 a ‘Child’ means a person who has not completed the age of 16 years.

According to section 2(a) of Child Marriage (Restrained) Act, 1929 a ‘Child’ means a person who, if a male has not completed 21 years of age and if a female has not completed 18 years of age.

The Indian Majority Act, 1875 in Sec. 3 provides the age of majority of a person as 18 years.
Article 326 constitution of India provides that only those people who attained the age of 18 years can be registered as a voter.

According to section 2(d) of Protection of Children from Sexual Offence Act, 2012 provides the age of children as 18 years.

Sec. 4 of the Hindu Minority and Guardianship Act, 1956 provides that a ‘Minor’ means a person who has not completed the age of 18 years.

Article 1 of the United Nation Convention on The Right of Child 1989 provides that for the purpose of present convention, a ‘Child’ means every human being below the age of 18 years, unless the law applicable to child majority is attained earlier.

According to section 2 (a) of the Juvenile Justice Act, 1956 ‘Juvenile’ means a boy who hasn’t attained the age of 16 years and a girl who hasn’t attained the age of 18 years.

According to section 2 (K) of the Juvenile Justice (Care and Protection of Children) Act, 2000 ‘Juvenile’ means a person who has not completed the age of 18 years.

According to section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ‘Child’ means a person who hasn’t completed 18 years of age. Similarly, section 2 (35) of the Act ‘Juvenile’ means a child below the age of 18 years.

After studying all these definitions of Juvenile, we come to know that the definitions of juvenile are given with two aims:-

1. For imposing liability:- For imposing liability on juvenile ,it is necessary that the child should attain the age of 18 years.
2. For the Protection of child:- For the Protection of child, the age of the child should be 14 years.

**JUVENILE, A NEW ERA OF CRIME**

The term ‘Juvenile’ is derived from the latin term ‘juvenis’ which means young. When the children get involved in criminal activities are known as Juvenile Crime. The problem of Juvenile Crime is not new in our country. It is the harsh reality of our country. But in recent times, the children were found to be involved in most heinous offences such as murder, gang rape, robbery, dacoity etc. which is creating hurdle in the growth of our country as because the children are the future of our
nation if they get involved in the criminal activities, it would not only affect them but also our country. In recent times, the juvenile crime is increasing day by day.

Recently, on 16th December 2012, some people in New Delhi had committed a heinous offence, which we have known as a Nirbhaya Kand, in which 5 people committed a gang rape on a girl in a running bus and crossed all the limits of cruelty. In this offence, a minor / juvenile was also involved and he was the main accused of the offence, he put the iron rod in the vagina of that girl and pull out the intestine by which she got dead. These kind of offences show the criminal mentality of the juvenile.

As per 2011 census data, juveniles between the ages of 7 to 18 years constitute about 25% of the total population. According to the National Crime Records Bureau (NCRB), the percentage of juvenile crimes as a proportion of total crimes has increased from 1% to 1.2% from 2003 to 2013, which we could seen through the following table :-

**JUVENILES BETWEEN 16-18 YEARS APPEHENDED UNDER IPC**

<table>
<thead>
<tr>
<th>Crime</th>
<th>2003</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burglary</td>
<td>1,160</td>
<td>2,117</td>
</tr>
<tr>
<td>Rape</td>
<td>293</td>
<td>1,388</td>
</tr>
<tr>
<td>Kidnapping/abduction</td>
<td>156</td>
<td>933</td>
</tr>
<tr>
<td>Robbery</td>
<td>165</td>
<td>880</td>
</tr>
<tr>
<td>Murder</td>
<td>328</td>
<td>845</td>
</tr>
<tr>
<td>Other offences</td>
<td>11,839</td>
<td>19,641</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>13,941</td>
<td>25,804</td>
</tr>
</tbody>
</table>

**Note:** Other offences includes cheating, rioting, etc.

From the above data it is clear that the incidents of rape by juveniles have been increased by more than 4 times, offences like kidnapping and robbery have increased almost 6 times, an offence of murder has been increased by more than 2 times in the past decade or so. All of the above offences are so serious in nature. Such offences can’t be committed by the innocent person, which shows the mentality of the juvenile as these offences requires aggravated form of Mens rea. The above table
shows that the juvenile crime has been increased in huge number from the last decade or so, which affects our nation so badly, which needs to be controlled.

**CAUSES OF CRIME COMMITTED BY JUVENILES**

No one is a born criminal, circumstances make him so. There are so many causes for the commission of crimes by juveniles, in which some are as follows:–

a) Adolescence Instability.

b) Sex experience in their childhood.

c) Irresistible impulse i.e. lack of self control

d) Failures in school life.

e) Economic, Social, and psychological problems in family.

f) Parents behavior towards their children.

g) Associational impact (peer group influence)

h) Uncongenial atmosphere in home.

i) Use of drugs and alcohol etc.

j) Influences from the movie and their characters.

k) Involvement of parents in undesirable activities i.e. drug and alcohol addiction, gambling, use of filthy languages etc.

**JUVENILE JUSTICE IN INDIA**

In India, the first legislation dealing with the Juvenile Committing crime was the Apprentices Act, 1850, which required that the children between the ages of 10 to 18 years convicted in courts to be provided vocational training as a part of their rehabilitation process. This acts was transplanted by the Reformatory Schools Act, 1897 according to which the children up to the age of 15 years sentenced to imprisonment would be sent to reformatory cell and it also transplanted by Indian Jail committee and the Children Act, 1960.

[34]
Thereafter, for the protection of children, our Parliament has enacted the Juvenile Justice Act, 1986, which brought the uniform system throughout the country. Later on, our Parliament had enacted Juvenile Justice (Care and Protection of Children) Act, 2000, which was later on amended in 2006 and 2011 to fill up the gaps therein. Inspite of it, several issues arose such as increasing of crimes by children for the age of 16 to 18 years, high pendency of cases, abuse of children in institution, inadequate facilities, quality of care and rehabilitation measures in homes, inadequate provisions to prevent the offences against children, sale of children for adoption and roles, responsibilities and accountability of institution are not clear etc. That’s why this act has proved as ill equipped to tackles the child offenders and to prevent the offences of the children.

**Juvenile Justice (Care and Protection of Children) Act, 2015**


This Act has come into force on 15th January, 2016 with 112 sections. It extends to whole of India except the state of Jammu and Kashmir. This Act shall apply to all matters concerning children in need of care and protection and in conflict with law, including:

a) Apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law.

b) Procedures and decisions relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection.

The State Government shall constitute one or more Juvenile Justice Board for every District for dealing with the children in conflict with law, which consists of a Judicial Magistrate and two social workers of whom at least one shall be woman.

[35]
Thus, the parliament has enacted this Act to deal with the problems of the Juvenile Crime and to curb this menace and also for the care and protection of the children. I hope this act would achieve its aim and effectively tackles the menace of Juvenile Crime. So that, the juvenile crime could be controlled in some manner.

INTERNATIONAL CONCERN ON JUVENILE

The Second UN Congress on Prevention of Crime and Treatment of Offenders in 1960 stated that juvenile delinquency means the commission of an act, which if committed by an adult would constitute an offence in law. The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Venezuela in 1980 decided that there should be the Standard Minimum Rules for the Administration of Juvenile Justice. Every child has its human rights which should not be denied by anyone and there should be laws to protect the child rights. The nature of youth criminality in urban, semi-urban and rural areas were considered. Further, these areas were discussed at the Beijing meeting in 1985, which examined the Standard Minimum Rules for the Administration of Juvenile Justice.

In the UN Convention on the Rights of the Children, A ‘child’ is defined as a person under the age of 18 which includes infancy, early childhood, middle childhood and adolescents. Such convention ratified by India on 11th December 1992, which required the state parties to undertake all appropriate measures in case of a child alleged as violation any penal law, including :-

a) Treatment of the child in a manner consistent with the promotion of the child’s sense of dignity and worth.

b) Reinforcing the child’s respect for the human rights and fundamental freedoms of others.

c) Taking into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

CONSTITUTIONAL PROVISIONS RELATING TO JUVENILE

Our constitution makers have made several provisions in the constitution for the development of juvenile justice, which are as :-

Article 15 (3) permits the State to make special provisions for children.

Article 23 prohibits the traffic in human beings and forced labour.
Article 24 forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations.

Article 39 (e) directs the State to safeguard the tender age of children and to prevent them from entering into jobs unsuited to their age and strength by economic necessity.

Article 39 (f) directs the State to secure facilities for the healthy development of children and to protect them against exploitation and moral and material abandonment.

Article 45 requires the State to provide early childhood care and education to the children below the age of 6 years.

Article 21 which was added by the constitution (86th amendment) act, 2002, directs the state to provide free and compulsory education to all children of the age of 6 to 14 years.

Article 51 A (k) which was also added by the constitution (86th amendment) act, 2002, directs the parents or guardian to provide opportunities for education to his child or ward between the age of 6 to 14 years.

**CASE LAWS RELATING TO JUVENILE**

There are so many case laws where the Hon’ble Supreme Court has given the benefit of the statutory provisions related to juveniles to the person, who in reality is a juvenile, in which some are as:-

**Raisul Vs State of U.P.**

In this case, the Hon’ble Supreme Court held that the age of an accused cannot be determined by the estimation of the courts nor by the accused’s statement of section 313 Cr.P.C., it shall be determined after making necessary inquiries.

**Pradeep Kumar Vs State of U.P.**

In this case, All the appellants viz., Pradeep Kumar, Krishan Kant and Jagdish claimed themselves as a child on the incident date as per U.P. Children’s Act,1951 and in support they filed a medical examination report, a horoscope and a School Leaving Certificate by which they found to be a child as per law. The supreme court sustained their conviction under the charges framed against them but quash the sentences awarded to them and direct their release forthwith, as the appellants have ceased
to be a child then there is no question of sending them to an approved school for detention under the U.P. Children’s Act, 1951.

**Umesh Singh & Anr. Vs State of Bihar**

In this case the contention of juvenility was for the first time raised before the supreme court. The Apex Court on the basis of a “report of experts” which indicated that the appellant Arvind Singh was hardly 13 years old on the date of the incident, which was also supported by the school certificate as well as the matriculation certificate, declared the appellant juvenile. The Supreme Court although confirmed the conviction, but set-aside the sentence imposed upon him and released him forthwith.

**Upendra Kumar Vs State of Bihar**

In this case the Hon’ble Supreme Court found the appellant as Juvenile and upheld the conviction and quashed the sentence passed on him and the appellant is directed to be released forthwith, if not required in any other case.

Besides it, the judiciary has passed many significant Judgments in favour of child rights and for the care and protection of children, in which some are as:-

**Sheela Barse Vs Union of India.**

The Supreme Court issued directions to the state government to set up necessary observation homes where children accused of an offence could lodged, pending investigation and trial will be expedited by juvenile courts.

**Sheela Barse Vs Secretary, Children Aid Society**

The Supreme Court commented upon setting up dedicated juvenile courts and special juvenile court officials and the proper provision of care and protection of children in observation Homes.

**Vishal Jeet Vs Union of India**

The Supreme Court issued appropriate directions on a PIL to the state Governments and all Union Territories for eradicating the evil of child prostitution and for evolving programmes for the care, protection, treatment, development and rehabilitation of the young fallen victims.

**M.C. Mehta Vs State of Tamil Nadu**
The Supreme Court pronounced upon the constitutional perspective of abolition of Child labor and issued appropriate guidelines to the Government of India with respect to compulsory education, health, nutrition, etc. of the child laborers.

CONCLUSION

As the children are the assets of the country and they are considered to be the future of the nation, So, it is the duty of every parent to provide a healthy environment to their children so that they could achieve their goals and serve for the betterment of the country. But, sometimes some children are get involved in the criminal activities which affects them and the nation. This is a worldwide problem which needs to be tackled with safety as the children require the special treatment because of their very nature.

That’s why our law makers have made several provisions for the benefits of the children as Sec. 82 of I.P.C. exempted the child upto 7 years of age from the criminal responsibility absolutely i.e. Doli Incapax and Sec. 83 of I.P.C. exempted the child from the age of 7 to 12 years from the criminal responsibility only if he is immature of understanding the nature of his acts. Sec. 360 of Cr.p.c. and Sec. 6 of the Probation of Offenders Act provide for the release of the person (accused) under 21 years of age on probation of good conduct.

In India, the Juveniles are tackled on the basis of two fundamental assumptions:

1) Young offenders should not be tried, they should rather be corrected.

2) They should not be punished but be reformed.

These provisions show the intention of legislature is to reform the juvenile not to punish them. Recently, the juvenile crime has been increased in huge number which needs to be controlled in strict manner. It is a disturbing trend and society as a whole is anguished by such criminal acts by children, which could be controlled only by the effective implementation of Juvenile Justice Act with the full public awareness and proper orientation and training to professionals and law enforcement agencies.

REFERENCES

- Criminology and Penology by Dr. N.V. Paranjape
- Juvenile Justice (Care and Protection of Children) Act, 2015
- Constitutional law of India by Dr. J.N. Pandey

[39]
Indian Penal Code by Prof. S.N. Mishra
National Crime Records Bureau (NCRB), Ministry of Home affairs
A research paper by N.K. Shrivastava on Juvenile Crimes in India
An article by Nawaz Haque on Juvenile Justice System and Its Delinquency in India.
Upendra Kumar Vs State of Bihar (2005) 3 SCC 592; 2005 SCC (Cri) 778
Sheela Barse Vs Union of India, AIR1986SC1733.
Sheela Barse v. Secretary, Children Aid Society, AIR1987 SC656.
M.C. Mehta v State of Tamil Nadu, (1999) 6 SCC 591
www.wikipedia.com
www.legalservicesindia.com
Mens Rea; A Fundamental Principal of Penal Liability

*Gaurav Garg

Abstract

In the field of law, it is very important to understand each and every cause of every and every act. Only then a sound judgment can be given in a case. If the judge doesn't consider all possible aspects and possibilities, then he will draw the correct legal conclusion most of the times but not always. One of the most important things to consider with regard to any offence is 'Mens rea'. 'Mens rea' means 'evil intent' or 'guilty mind'. There can be no crime of any nature without an evil mind. Every crime requires a mental element. Even in Strict or Absolute Liability some mental element is required. It means a person is not liable for his act unless and until it has been done with evil intent. That's why Mens rea is considered as fundamental principle of penal liability.

Mens rea

As all we know, there are four fundamental elements of crime viz. Human Being, Mens rea, Actus Reus (act / omission) and Injury. In which Mens rea is second and important essential of crime. Mens rea is a latin word which means a guilty mind, a guilty or wrongful purpose, a criminal intent, guilty knowledge and willfulness. One of the main characteristics of our legal system to make a person
liable for the punishment depends on certain mental conditions besides of the other things. The absence of these conditions, wherever they are required, negatives the liabilities. The liability to conviction of an accused depends not only on his acts which the law forbids, but also on his having done them with a certain will. These are known as “mental elements” in criminal responsibility.

The standard common law test of criminal liability is usually expressed in the Latin phrase, “actus non facit reum nisi mens sit rea” which means “act is not culpable unless the mind is guilty”. In other words it means intent and act must both concur to constitute a crime. It is well known principle of natural justice, that no person could be punished in a criminal proceeding unless it has been shown that he had a guilty mind.

**Origin and Development**

The Doctrine of Mens rea in early primitive societies was not in existent and the liability was absolute and the accused was responsible whether he acted innocently or negligently.

Before the 13th century, the doctrine of mens rea was almost non-existent. Even then it wasn't completely disregarded and was kept in view in awarding punishment. In the 13th century Roman Law, specially its conception of Dolus and Culpa influenced English criminal law. The English courts were also influenced with the common law which emphasized moral guilt. In case a felony was committed the guilt was determined according to the intention of the accused.

The notion of mens rea, as we known it today was fully established during the 14th and 15th centuries. But by the end of the 17th century it was universally settled law that mens rea (guilty intention) is an essential ingredient of crime. The act of the person was not punishable unless the same is done with evil intent.

**Mens rea and statutory crimes**

The maxim has been applied to all common law crimes in England without any reservations. The application of this doctrine to statutory crimes is fully discussed in the following cases viz. R. v/s. Prince and R. v/s. Tolson.

**Case:**

In this case Prince Henry was tried for having unlawfully taken away an unmarried girl, below the age of 16 years, out of the lawful possession and against the will of her father, under the belief that she was eighteen. The jury found upon evidence that before the defendant took her away the girl had told him that she was 18. It was held that the prisoner's belief about the age of the girl was no defence. It was said that the girl was not a lawful plaintiff.
was argued that the statute did not insist on this knowledge of the accused that the girl was under 16 as necessary for conviction, the doctrine of mens rea, should, nevertheless, be applied and conviction be set aside in the absence of criminal intention. Sixteen judges tried the case and all but one unanimously held the prince guilty.

Bramwell, J. said that in offences which are legal wrongs (malum prohibitum) it is the duty of the prosecution to establish mens rea, but in offences which are malum in se both moral as well as legal harm, mens rea is presumed and it need not be proved specifically. He held the prince liable as he had committed an act which was both a legal as well as a moral wrong. Denmon, J. convicted the prince on the ground that he knowingly committed a civil wrong by taking the girl from the lawful custody of her parents. Blackburn, J. said that the intention of the statute sufficiently appeared to have been to punish abduction irrespective of any knowledge on the part of the accused about the girl's age. The real ground of conviction was that the accused had committed an act which was forbidden by the statute and it was not only a legal wrong but also a moral wrong.

Case :-

In this case the accused was tried under Section 57 of the Offences Against the Person Act, 1861 for having committed the offence of bigamy. In this case Mrs. Tolson was married to Mr. Tolson in 1880 and after one year in 1881 she was deserted by her husband. She made all possible inquiries about him and ultimately came to know that her husband had been destroyed in a ship bound for America. Therefore, supposing herself to be a widow she married another man in 1887. The whole story was known to the second husband and the marriage was not a secrecy. In the meantime Mr. Tolson suddenly reappeared and Mrs. Tolson was charged accordingly. In the trial court she was convicted for one day's imprisonment on the ground that a belief in good faith and on reasonable facts about her husband's death is no defence to the charge of bigamy. The accused went to the higher court by way of appeal.

The question before the appellate court was whether Mrs. Tolson had guilty intention in committing the offence of bigamy. The appellate court by majority set aside the conviction on the ground that a bona fide belief about the death of the first husband at the time of second marriage is a good defence in an offence of bigamy. The court also laid down that the doctrine of mens rea would be applied in statutory offences also unless it is ruled out by the statute.

Mens rea Under Indian Penal Code

The word 'mens rea' have not been used in the Indian Penal Code but they have been applied in two different ways:-
(i) While defining offences the following expressions used which indicate actual criminal intent required for the offence i.e. fraudulently, dishonestly, voluntarily, intentionally etc. But such words have not been used in case of offence which can not be committed by innocent persons. Such offences are Waging War against Government (Section 121), Sedition (Section 124-A) and counterfeiting of coins (Section 232) etc.

(ii) The Indian Penal Code contains a separate chapter on General Exceptions i.e. Chapter-IV (Sec. 76-106) which indicates the circumstances where absence of criminal intent may be presumed. This negative method of applying Mens rea in the I.P.C. has been found to be very useful.

Levels of Mens rea

Under the traditional common law, the guilt or innocence of a person relied upon whether he had committed the crime, and whether he intended to commit the crime. However, many modern penal codes have created levels of mens rea called modes of culpability, which depend on the surrounding elements of the crime i.e. the conduct, the circumstances, and the result. The definition of a crime is, thus, constructed using only these elements rather than the colorful language of mens rea.

Strict Liability- No Mens rea Required

There are some criminal laws, called strict liability laws, that don’t require any mens rea at all. These laws are justified by claiming that no matter what you intended, the act itself deserves criminal punishment. Many strict liability laws involve minors, such as laws prohibiting “statutory rape” and the sale of alcohol to minors, it doesn’t matter that you may have honestly thought that the minor was over 18 in the case of statutory rape, or over 21 in the case of selling alcohol. These laws often seem harsh, but the underlying theory behind it is the protection of the minor over the possible innocence of the defendant.

The offences created by the Prevention of Food Adulteration Act, Drugs Act, Weights and Measures Act are in terms of absolute prohibition and the offender is liable without proof of guilty knowledge or intent.

Words denoting Mens rea in Indian Penal Code

The Following are the words which denote mens rea in Indian Penal Code are as follows –

(i) Fraudulently:

Generally the word ‘fraud’ means ‘willful misstatement about material fact of a thing’. The word ‘fraud’ hasn’t been defined under the I.P.C. But according to
Section 25, “A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise”.

Fraud is a term which is defined in the Sec 17 of Indian Contract Act and it has there received a meaning much extensive for the purpose of the Code. The expression “defraud” involves two elements viz. deceit and injury to the person deceived.

(ii) Dishonestly:-

“Dishonestly” according to Section 24 means, “Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another, is said to do that thing “dishonestly”.

- And wrongful gain and wrongful loss have been defined under Section 23 and according to which, “Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled and wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.”

A person is said to gain wrongfully when he either retains or acquires wrongfully. Similarly losing wrongfully means that the person is either wrongfully kept out of any property or is deprived of property. The gain or loss must be material and not remote.

The words ‘fraudulently’ and ‘dishonestly’ have been jointly used in section 209, 246, 247, 415, 421, 422, 423, 424, 464, 471, and 496 of I.P.C.

(iii) Voluntarily :-

Generally, the word ‘voluntarily’ means an act done without influence or compulsion. According to Section 39, “A person is said to cause an effect voluntarily when he causes it by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.”

The word as used in Section 39 takes into account not only intention but also knowledge and reasonable grounds of belief.

Some other words denoting Mens rea

There are a few more words denoting mens rea but these have not been defined under the Indian Penal Code but have simply been used in different sections. These words are, corruptly, maliciously, wantonly, rashly and negligently.

According to Burdick, the word ‘corruptly’ usually imply that an act is done dishonestly, without integrity, for the sake of unlawful gain or advantage. It implies moral turpitude and intentional fraud and is synonymous with the intentional wrong ‘doing. The word ‘corruptly’ has been used in Sections 196, 198, 200, 219 and 220 of I.P.C.
The word 'malignantly' is synonymous with 'maliciously'. Acts done 'maliciously' mean that the accused had formed design of doing the mischief. 'Malignantly' occurs in Section 153 and 270 of I.P.C.

The word 'wantonly' covers the acts done thoughtlessly, recklessly and without any reason. The word 'wantonly' has been used only in Section 153 of I.P.C.

The words 'rashly and negligently' have been used in Section 279, 280, 283 to 289, 304A and 336 to 338 of I.P.C. Rashly means doing of an overhasty act without due deliberation and caution. In case of negligence, the party fails to comply with legal obligations and breaks a positive duty and does not do the act which is his duty to do.

**General Defences in the Absence of Mens rea under Indian Penal Code**

The Absence of mens rea means an act which is done in good faith. Good faith means an act which is done with due care & caution. If the person committed any act which is prohibited and punished by the law, shall be liable to be punished, but there are some cases, such person is excused from criminal liability. It means such person shall not be liable for the punishment. Such circumstances have been given under Chapter-IV under the head of General Exceptions. It deals with various defences which the accused of offences under I.P.C or any special or local law, can plead.

The analysis of the section combined in Chapter-IV reveals that they deal with two broad classes of exceptions/defences namely –

1. **Excusable Defences.**
2. **Justifiable Defences.**

1) **Excusable Defences:**

Excusable Defences are those where the act is committed is excused for the absence of mens rea. In such cases, the act is not criminal because the intention was not criminal. The Excusable Defences has been given under Section 76–95 of the I.P.C. which are defined under the following heads:-

(A) Mistake (Section 76 and 79)
(B) Judicial and Executive Acts (Section 77 and 78)
(C) Accident (Section 80)
(D) Necessity (Section 81)
(E) Infancy (Section 82 and 83)
(F) Insanity (Section 84)
(G) Drunkenness (Sections 85 and 86)
(H) Consent (Section 87 to 91)
(I) Good faith (Implied Consent) (Section 92 and 93)
(J) Compulsion or duress (Section 94)
(K) Triviality (Section 95)

2) Justifiable Defences :-

Justifiable Defences means the act committed is not excused but is Justified on account of some considerations neutralizing the liability otherwise incurred. The act though criminal is not punishable because it otherwise meritorious. These exceptions have been explained under the head of Right of Private Defence.

The Justifiable Defences has been given under Section 96-106 of I.P.C. under the following heads:-

(A) Things done in Private Defence (Section 96)
(B) Right of Private Defence of the Body and of Property (Section 97)
(C) Right of Private Defence against the act of a person of unsound mind, etc (Section 98)
(D) Limitations on Private Defence (Section 99)
(E) When death may be caused (Section 100)
(F) When any harm other than death may be caused (Section 101)
(G) Commencement and Continuance of the Right of Private Defence of the Body (Section 102)
(H) When the right of Private Defence of Property extends to causing death (Section 103)
(I) When such right extends to causing any harm other than death (Section 104)
(J) Commencement and Continuance of the Right of Private Defence of Property (Section 105)
(K) Harm to Innocent Person (Section 106)

Burden of Proving that Case of Accused comes within Exceptions
Section 105 of Indian Evidence Act, 1872 Provides that-
"when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code or with in any special exception or proviso contained in any
other part of the same code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

It means if the accused wants to take a benefit of any of the General Defences mentioned under the Indian Penal Code, he must prove the existence of such circumstances & the Court in such cases shall presume the absence of such circumstances.

For Examples:

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder, alleges that by grave and sudden provocation, he was deprived of the power of self-control

Conclusion

As, it is well known that the Mens rea is one of the fundamental principle of penal liability, it is the second essential element of crime. It is a necessary ingredient for imposing a criminal liability on the person for the offence. If a person does any act without evil intent, he can’t be held liable for that act except in the cases of strict liability, where the proof of criminal intent or knowledge is not necessary. In cases of strict or absolute liability, the offender is liable for his act absolutely irrespective of the proof of Mens rea. The court must consider the doctrine of Mens rea before deciding the criminal liability of the offender because for the sound judgment, all the possible aspects and possibilities must be considered. If the court failed to apply the doctrine of Mens rea in a cases, wherever it is applicable, it may caused injustice to that offender.

Besides it, the legislature has given some protection to the person who has committed an act under the circumstances contained under chapter IV of the I.P.C. by the name of General Exceptions, because it is well settled law that "let hundred of culprits may be escaped, but one innocent person should not be convicted". These General Exceptions have been incorporated for the sake of bare needs of society. A person can take benefit of these General Exceptions only if he proves that he committed an act without any guilty intention. But the court before giving the benefit of these General Exceptions to the accused, must satisfy itself that the case of the accused comes within the ambit of General Exceptions.
Mens Rea; A Fundamental Principal of Penal Liability

References

- Principles of criminal Law
- Indian Penal Code
- Indian Penal Code
- Principles of the law of Evidence
- Indian Penal Code, 1860
- R. v/s. Prince (1875) 2 CCR, 154
- R. v/s. Tolson (1889) 23 QBD, 168
- www.wikipedia.com
- www.findlaw.com

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- Ratan Lal Dhiraj Lal
- Dr. Avtar Singh