CHAPTER- 4
MENS REA, ITS ORIGIN AND DEVELOPMENT

As we have already discussed earlier in this thesis that there are four Fundamental Elements of Crime viz. **Human being, Mens rea, Actus reus (Act or Omission) and Injury.** In which the Mens rea is the 2\textsuperscript{nd} and important essential of the crime. “**Mens rea**” is a latin word which means “**a guilty mind, a guilty or wrongful purpose, a criminal intent, guilty knowledge and willfulness.**” Every crime requires a mental element, there can be no crime of any nature without an evil mind. Even in strict or absolute liability some mental element is required. That’s why Mens rea is considered a fundamental principle of penal liability.

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 of the accused for the offence 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. Thus, a fundamental principle of criminal law is that a crime consists of both a mental and a physical element. Mens rea is a person’s awareness of the fact that his conduct is criminal, is the mental element, and actus reus is the act itself, is the Physical element.

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. Thus, the crime is the combination of both act and intent. An act by itself is not wrong but a prohibited act done with a particular intent makes it criminal. There can be no crime large or small without any evil intent.

In crimes, the responsibility of a person must depend on the doing of voluntary act and a particular intent behind it. It means to make a person liable for the crime, the act must be a voluntary act, if the act is not voluntary, he is not liable for that act. This proposition is derived from the maxim 'actus me invito facts non est mens actus’ which means an act done by me against my will is not my act. Thus, this maxim supports the doctrine of mens rea as no person can be held liable for an act done under fear or compulsion.

Therefore, the basic requirement of the doctrine of mensrea is that accused must be aware of all those elements in his act which make it the crime with which he is charged. A person is criminally liable for the consequences of his act as he actually foresaw.

**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. But this was before the period in which the tort law and Criminal law was divided and Punishment in those days mainly consisted of money compensation to the persons wronged and the mental attitude of person was an irrelevant consideration for the trial and punishment of person concerned. As the distinction between tort and crime was appeared, the requirement of mens rea took an increasing importance and the bodily punishment had taken the place of awarding the money compensation.
'Coke’ traces the origin of the maxim 'actus non facit recum nisi mens sit rea’ to the ‘Sermons of Augustin’ as 'ream linguam non facit nisi mens rea’. The author of ‘Leges Henrici’ Picked it up from some intermediate work in which Linguam may possibly have disappeared. After ‘Coke’, many English decision had taken the help of this maxim. As the ‘Lord Kenyon’ in the case of Fowler V/s Padget,35 had accepted this maxim to be principle of Natural Justice and English law. In the case of R. V/s All day36 the ‘Lord Arbinger’ had observed that the maxim is older than the law of England that no man is guilty unless his mind is guilty.

The modern notion of mens rea was almost non-existent until 12th century. Even then it wasn’t completely disregarded and it 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 understand it today was fully established during 14th and 15th centuries but by the end of the 17th century, it was universally settled law that mens rea i.e. guilty intention is an essential element of crime. The act of the person was not punishable unless the same is done with evil intent.

**OBJECTIVE OF MENS REA**

The object of law is always to punish a person with a guilty mind. It does not want to put behind bars an innocent person who may have had the misfortune of being involved in a incident and event, which he did not have the intention of participating in. The existence of the mental element or guilty mind of mens rea at the time of commission of the actus reus or the act alone,

35 (1798) 7 T.R. 504 at 541
36 (1837) 8 C and P, 136 at 139.
will make the act an offence. Every overt or outward act or the actus reus has also an essential ingredient of a crime. The element of mens rea as an essential ingredient of a crime is also approved by the growing modern philosophy. The object is that punishment should fit the offender and not merely the offence.

The intention i.e. Mens rea is an abstract idea, but it is so difficult to establish it and to establish the mens rea one can take the help of the following surrounding facts or factors -

(i) Previous relation between the accused and the victim, any object of hostility between them.
(ii) Existence of instigation, i.e. Whether accused was hired and what prompted him to commit crime; and
(iii) Whether the accused had something to gain out of the whole affair.

Thus, guilty intention is always preceded by a motive or real causal factors.

**LEVELS OF MENSREA**

Under the traditional common law, the guilt or innocence of an accused is based upon the fact that whether he had committed the crime or he intended to commit the crime. However, many modern penal codes have created levels of mens rea called Modes of Culpability, which depend on 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 colourful language of mens rea. The traditional common law definitions and the modern definitions approach the crime from different angles.

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There are four kinds of mens rea. In most of the criminal cases any of the following kinds of mens rea is involved-

1) **Intent** :-

   This is the explicit and conscious desire to commit an illegal act. It means a person has a clear foresight of the results of his acts and desires those results to occur. It is his aim to achieve that consequence.

   **For Example** - If a person assaults someone with the aim of inflicting harm on the victim, he is displaying criminal intent.

2) **knowledge** :-

   It applies that if a person is aware that his actions will have certain results, but doesn't seem to care about it. It means a person knows or should know that the results of his conduct are reasonably certain to occur.

3) **Recklessness** :-

   It is the decision to commit a certain act despite knowing about the associated risks. It means, a person foresees that particular consequences may occur and proceeds with the given conduct without caring whether these consequences actually occur or not.

4) **Negligence** :-

   This is the mildest form of criminal culpability. A person commits negligence when he fails to meet a reasonable standard of behavior for his circumstances. In it, a person didn’t actually foresee that the particular consequences would flow from his actions, but a person of ordinary prudence in the same circumstances would have foreseen those consequences.
In R V/s Wheals & Stock, Mr. Wheals a person of very little education, want divorce from her wife. He asked solicitor for the purpose. One day when he was enjoying holiday, received some papers as required to be signed by him in order to file the divorce case. He signed them and sent back to solicitor, believing that he got divorced. He entered into marriage with Ms. Stock. His first wife filed a case of Bigamy against him. He pleaded before the court that he was not aware of the facts as he is a person of very little education and he had no mens rea. Held by the court that Bigamy is an offence under the rule of 'Mala in Se' and can not be tolerated by the state and he was held liable.

**STRICT LIABILITY AND MENSREA**

Strict liability crimes are those in which the accused is held liable for the criminal offence he committed, even if mens rea is absent. Though the accused didn’t intend any harm by his actions and was completely unaware that he was committing an illegal act, the doctrine of strict liability holds him liable for the criminal offences committed.

These strict liabilities statute creates criminal liability for the commission or omission of a particular act without designating a mens rea. The person who commits the crime may be guilty for such act even though he had no knowledge that his act was criminal or has no knowledge of committing a crime. Under such statutes, it is necessary that the act itself should be voluntary, since involuntary acts are not criminal.

These strict liability laws 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.

**MENS REA WHEN NOT ESSENTIAL IN CRIMINAL LAW**

Although mens rea is a sacrosanct principle of criminal law, it can be waived in certain circumstances. The following are the exceptional cases in which mens rea is not required in criminal law:

1. **Language of the Statute and subject matter of Legislation**-
   - Language of the Statute and the intention of the Legislation as gathered from statute shows whether the act imposes the strict liability or there is a requirement of mens rea in order to prosecute an accused person. This could be established by the following two modes:
     
     (a) **Express Words**:
         - Whether language of the statute expressly gives indication regarding the requirement of the mens rea or not.
     
     (b) **Fair Implication**:
         - If it is not clearly expressed in the statute then the language of the statute should be observed that what kind of liability it intend to impose.

2. **Nature of the act**:
   - Involving acts that are in real sense not criminal in nature, they are quasi-criminal in nature. They are prohibited in public interest. It includes public welfare offence. They are called as white collar crimes,
committed by persons at high position e.g. Crime relating foods and drugs, weights and packages etc.

(3) Certain offences of the Indian Penal Code :-

Mens rea is not essential in respect of certain offence in Indian Penal Code where the nature of offence is such that in commission bring a very serious damage to the society which can not be compensated e.g. Kidnapping, Counterfeiting Coins, etc.

(4) Violation of traffic rules :-

When it is difficult to prove mens rea, where the penalties are petty fines and where a statute has done away with the necessity of mens rea on the basis of expediency, strict liability in criminal law may be imposed, e.g. Violation of Traffic Rules.

(5) Cases of Public Nuisance: -

Under this head comes Libel, Defamation where intention of defamer is not real required.

(6) Infringement of both civil and criminal law :-

Cases in which although the proceedings are of criminal form but civil rights are to be enforced. e.g. Rights of Property is infringed by a trespasser, trespasser will be prosecuted.

(7) Ignorance of law is no excuse :-

Another exception that might be mentioned here is related to the maxim “Ignorance of the law is no excuse”.  

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Jurisdiction of these Exceptions

These are the cases where we regulate certain activities as far as regulation of those activities is concerned it is possible only when we deal with them strictly the approach is not to punish but to ensure that the duty is carried out responsibly such regulations are enacted to protect and preserve social interest of the community. If concession are given we will not be in a position to achieve the objective. In order to determine whether to use doctrine of strict liability or prinicple of mens rea the following points should be considered :-

(1) Language of the Statute.
(2) Policy behind the statute.
(3) By examining as to how far the statute would differ by adherence to the principle of mens rea.39

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