CHAPTER – 5

MEANS REA UNDER INDIAN PENAL CODE

Some writers have taken the view that the doctrine of Mens rea under the Indian Penal Code is wholly out of place. Every definition in the Indian Penal Code states not only what the accused must have done, but also the state of mind of such person while doing the act. Such definition is complete in itself.

The word Mens rea have nowhere been used in the Indian Penal Code but they have been applied in two different ways:-

(i) While defining offences some words used in the respective section which indicate the actual criminal intent required for the offence. Such words are fraudulently, dishonestly, voluntarily, intentionally etc. Such words haven’t been used in case of offences which can’t be committed by an innocent person. Such offences are Waging War against Government (Section 121), Sedition (Section 124-A) and Counterfeiting of Coins (Section 232) etc.

(ii) The Code also contains a separate Chapter i.e. Chapter IV on General Exceptions (Section 76 to 106) which indicates the circumstances where the absence of Criminal intent may be presumed. This negative method of applying mens rea has been found to be very useful.

The doctrine of Mens rea has been applied by Courts in India and now it is firmly settled law that mens rea is an essential ingredient of an offence. Besides it, 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 for the offence without the proof of any guilty knowledge or intention, as it also decided by the Hon’ble Supreme Court in the case of Sarjoo Prasad v/s State of U.P.

40 AIR 1961 SC 631
WORDS DENOTING MENSREA IN INDIAN PENAL CODE

As we all know that the word ‘Mens rea’ is not used in Indian Penal Code but there are some words used in the Indian Penal Code which denote the presence of Mens rea in Indian Penal Code, such words are –

(1) **Fraudulently**
(2) **Dishonestly**
(3) **Voluntarily**.

(1) **Fraudulently** :-

Generally, the term ‘Fraud’ means *the willful, misstatement about material fact of a thing*. The term ‘Fraud’ hasn’t been defined under the Indian Penal Code. But it describes the act which are supposed to do fraudulently. According to **Section 25 of the code** –

“A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise”.

The words *With intent to defraud* as mentioned above indicate that there is not only a bare intent to deceive but also an intent to cause a person to do or omit to do any act to his disadvantage, as a result of deception caused upon him.

The expression *defraud* involves two elements viz. deceit and injury to the person deceived. The term *fraud* has been defined under **Section 17 of Indian Contract Act, 1872** which has received a meaning much extensive for the purpose of the code.

**Section 17 of Indian Contract Act** provides that -

‘Fraud’ means and includes any of the following acts committed by the party to a contract, or with the connivance or by his agent, with
intent to deceive another party thereto or his agent, or to induce him to enter into the contract -

(1) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;

(2) The active concealment of a fact by one having knowledge or belief of the fact;

(3) A promise made without any intention of performing it;

(4) Any other act fitted to deceive;

(5) Any such act or omission as the law specially declares to be fraudulent.”

Besides this, **Explanation of Section 17** provides that:

“Mere silence as to facts likely to affect the willingness of a person to enter into contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.”

- **Case – ** **Queen Empress V/s Soshi Bhushan**

In this Case accused applied for admission to LL.B. (Final) class in Benaras University alleging that he had attended LL.B. (Previous) class in Lucknow Canning College. He was admitted and required to produce a certificate in support of proof of having passed LL.B. (Previous) examination. He produced a forged certificate and it was held that he acted fraudulently.

(2) **Dishonestly** :-

Generally, ‘Dishonestly’ means ‘unchaste, shameful, or characterized by lack of truth, honesty’. According to **Section 24 of the Code**.

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41 ILR (1891-93) 15 All 210
‘Dishonestly’ 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”.

The Word “Wrongful Gain” and “Wrongful Loss” which have been mentioned above, have been defined under Section 23 of the Code as “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.

Such gain or loss must be material and not remote. The expressions ‘wrongful gain’ to one person and wrongful loss’ to other person are the essential ingredients of the definition of ‘dishonestly’.

For Example – ‘A’ is entitled to the possession of his house from ‘z’ and sued him for the arrears of rent on the basis of rent note, which was found to be forged. Thus, he is not entitled to get the rent as per that rent note and as ‘A’s intention to cause wrongful gain to himself so he is said to do that thing dishonestly.

Case :- Krishan Kumar v/s. Union of India

In this case the Court has held that Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property. Therefore when a particular thing has gone into the hands of a servant he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it.

42 A.I.R 1959 SC 1390
There are some Sections in Indian Penal Code, where the words ‘fraudulently’ and dishonestly’ have been jointly used. Such sections are Section 209, 246, 247, 415, 421, 422, 423, 424, 464, 471 and 496.

(3) **Voluntarily**: –

Generally, the word ‘voluntarily’ means 'an act done without influence or compulsion'. According to Section 39 of the Code –

“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 ‘voluntarily’ as used in Section 39 takes into account not only intention but also knowledge and reasonable grounds of belief. Voluntarily causing an effect embraces –

(a) with intention to cause the effect,
(b) with the knowledge of likelihoood of causing the effect.
(c) having reason to believe that the effect is likely to be caused.

**Case** :-  **Emperor V/s Raghu Nath Rai**

In this case, a Hindu took away a calf from a Mohammedon’s house without his knowledge and consent in order to save it from slaughter. The accused was held guilty of theft and rioting although he acted with the best of motive to save the life of the sacred cow.

**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 –
(1) **Corruptly** :–

The word ‘**Corruptly**’ means ‘guilty of dishonest practices, as bribery or lack of integrity’. It denotes impropriety brought about by bribery, about by bribery, undue influences resulting in acts which are inconsistent with the proper discharge of official duty or the right of others. It usually imply that an act is done dishonestly without integrity for the sake of unlawful gain or advantage. The word 'Corruptly’ has been used in **Section 196, 198, 200, 219 and 220 of the code.**

(2) **Malignantly** :–

The word ‘**Malignantly**’ is synonymous with the word ‘**maliciously**’, which means ‘a desire to harm the others’. The word 'malicious’ has been derived from the latin word ‘**malus**’ which means ‘for bad’. ‘Acts done maliciously’ means that ‘the accused had formed design of doing the mischief’. ‘A person is said to do a thing maliciously’ if he does wrongful act intentionally without just excuse or cause. The word 'Malignantly’ occurs in **Section 153 and Section 270 of the Code** and the word ‘Maliciously’ occurs in **Section 219, 220 and 270 of the Code.**

(3) **Wantonly** :–

Generally, ‘**Wantonly**’ means ‘an act done maliciously or unjustifiably’. In other words, it means doing a thing recklessly,
thoughtlessly and without any reason. It is a state of mind which is heedless, without excuse, regardless of the rights of others.

**For Example:** To kill a cow in an open place would be reckless or thoughtless act, therefore a wanton act, whether it is punishable or not, it is another thing but it is an wanton act. The word wantonly has been used only in Section 153 of the Code.

(4) **Rashly and Negligently:**

‘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. These words are used in the code not to denote a positive evil intent but to denote the want of care which a person of ordinary prudence are expected to act and the want of which is culpable. The words ‘rashly and negligently’ have been used in Section 279, 280, 283 to 289, 304A and 336 to 338 of Indian Penal Code.

**MENS REA AND STATUTORY OFFENCES**

The doctrine of Mensrea has not been expressly mentioned in the crime defined in the statute, as an ingredient of the crime but its concept was introduced into the statutory offences by the Judges by means of construction without any parliamentary sanction. There are two schools of thought –

(1) First is embodied in the **Judgment of Wright J. in the case of Sherras V/s De Rutzen** that “in every statute mens rea is to be implied unless the contrary is shown.”

44 (1895) 1 Q.B. 918
Second is that of Kennedy, L.J. in Hobbs V/s Winchester corporation\(^4^5\) that you ought to construe the statute literally unless there is something to show that mens rea is required.

It means the mens rea is implied in certain statutes and not in others and there are no words in the statute itself to show the recognition of mens rea but the Judges provide for it on their own authority.

The doctrine of mens rea has been applied to all common law crimes in England without any reservations. Application of this doctrine to statutory crimes is fully discussed in two leading English cases Viz. R. V/s Prince and R. V/s Tolson.

- **Case :-** R. V/s. Prince\(^4^6\)

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 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.

**Bravell, 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

\(^4^5\) Ref - (1875) 2 CCR 154

\(^4^6\) Ref - (1910) 2 K.B. 471
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.

The decision is very controversial and has been the subject of criticism by many writers.

Russel, regarded this decision as unsatisfactory, as it is in conflict with the established principles of criminal law.

- **Case:** R. V/s. Tolson

  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 enquiries 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

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47 (1889) 23 QBD 168
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.