



CONCURRENCE OF ACTUS REUS AND MENS REA: A DESCRIPTIVE ANALYSIS

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ABSTRACT

This paper provides a comprehensive analysis of the concurrence of *Actus Reus* and *Mens Rea*, two fundamental components in the establishment of criminal liability. These Latin terms, translating to "guilty act" and "guilty mind" respectively, form the cornerstone of criminal law, ensuring that a person is only held criminally responsible when both the wrongful act and the culpable mental state are present. The principle of concurrence, which requires that *Actus Reus* and *Mens Rea* coincide, is essential for a fair and just legal system, preventing convictions based merely on actions without the necessary criminal intent. The paper delves into the nature of *Actus Reus*, exploring how it constitutes the physical element of a crime, whether through a positive action or a failure to act when legally required. It emphasizes the necessity for voluntariness in these acts, noting that involuntary actions do not meet the threshold for *Actus Reus* and therefore cannot attract criminal liability. On the other hand, *Mens Rea* is examined in the context of the mental state that accompanies the wrongful act, including various levels of culpability such as intention, knowledge, recklessness, and negligence. The paper highlights how the degree of *Mens Rea* directly impacts the severity of the punishment, with intentional acts typically incurring more severe penalties compared to those committed recklessly or negligently. Additionally, the paper addresses the defences of mistake of fact and mistake of law, elucidating how these defences interact with the concept of *Mens Rea*. While a mistake of fact can sometimes absolve a defendant from liability under certain circumstances, a mistake of law generally does not provide such a defence. Overall, this paper emphasizes the critical interplay between *Actus Reus* and *Mens Rea* in the legal determination of criminal liability. By ensuring that both a guilty act and a guilty mind are present, the concurrence principle upholds the fairness and moral integrity of the criminal justice system, reserving punishment for those who engage in wrongful acts with criminal intent.

Introduction

Actus Reus and Mens Rea are the foundational principles of criminal liability on which every other aspect rests. From Latin, "Actus Reus" means the guilty act and "Mens Rea," on the other hand, represents a guilty mind. These two elements are not just some legal jargons but they are the pillars on which the laws of crime revolve. They form the platform responsible for confirming an individual guilty or innocent, in which both action along with intent to be taken into account before assessing criminal liability. These are the pillars on which justice has been administered in Indian legal system through

statutory provisions and judicial pronouncements. They protect against false convictions by ensuring that a person is not held accountable for committing an act without also being judged guilty of the attitudinal element at hand with that conduct. This is perhaps best expressed by the Latin maxim "Actus non facit reum nisi mens sit rea", that means "an act does not make a person guilty of an offense unless it was accompanied with evil intent. The point is that both Actus Reus and Mens Rea must concur for an act to be a crime. For Example – X in a fit of rage fired on Y intending to kill, due to which his dies. In this

case, the act of X that is shooting in murder represents the Actus Reus and mens rea here would be his attempt to kill Y. From the fact that X is aware of committing an act causing death to Y, it can be concluded without a shadow of doubt the concurrence between guilty act and conscience in him; ergo he could be held criminally responsible for murder. So, this concurrence is critical to ensure that only people who do something wrong with some guilty mind set are available for punishment. The actus reus is generally referred to as the physical element of a crime – what action or, in some instances failure to take an action by means which had led to committing that offense. Conversely, in Mens Rea it has to do with the state of mind behind committing crime i.e., intent, knowledge, recklessness or mere negligence. This creates the foundation for almost all determinations of criminal accountability. That said, there are different situations when Mens Rea is not needed to prove responsibility. These are often referred to as strict liability offenses, a concept we outlined in our discussion of Actus Reus prosecutions wherein the criminal State can convict you simply for doing something wrong even though it might not have been "intent". These could include charges related to selling alcohol minors; drug offences such as statutory rape or any kind of offence involving a prohibited substance, and certain environmental offenses. In these cases, it is not the intent of the accused which matters to law; what does matter in this paradigm are public safety and welfare as a whole (the general will) more than any individual culpability. Therefore an action done by a person causing harm is said to be crime if and only the following: committed Actus Reus Mens rea (except strict liability) The interaction of these factors means that the legal system will achieve justice by balancing between deterring crime and ensuring individual rights are not violated through wrongful conviction.

Actus Reus

Actus Reus is a Latin term meaning "guilty act". It represents the physical aspect of a crime. It is

the action, be it an exercise or a failure to act, that causes the commission of an offense. Actus Reus is wide in its reach. It includes both positive acts and omissions like failure to do a task that one is legally bound to do that results in any action which is prohibited by law.¹³⁷⁸ A positive act being akin to a volitional act that produces a criminal consequence. An example: in a case of assault, hitting another person is Acts Reus. An omission is when one simply does not act when there is a legal duty to perform it. For instance, a child does not receive the care he is deprived of by a parent and thus, gets injured. For an act to be considered Actus Reus, it must be voluntary. Involuntary actions, such as those performed during a seizure or reflexive actions, do not come under the Actus Reus. Voluntariness of act is a very crucial criterion because it subsequently ensures that only those individuals who intentionally desire to commit wrongful conduct are punishable. The requirement of voluntariness implies both in positive acts as well as in acts of omissions, by way of which criminal liability arises if they fulfil the elements.

Mens Rea

Mens Rea, or the "guilty mind," deals with the state of mind of the accused at the time he committed the offense.¹³⁷⁹ It refers to the intention, knowledge, recklessness, or negligence with which the act is done. Mens Rea is one of the critical elements of criminal liability, as it provides the culpable mental state required to be proven for the conviction of an offender.

Levels of Mens Rea

- 1) Intention: Being the pinnacle of Mens Rea, intention refers to a willing desire to obtain certain results. Such is an evident case in murdering when the intention to kill must be proved.

¹³⁷⁸ Actus Reus | Wex | US Law | LII / Legal Information Institute, https://www.law.cornell.edu/wex/actus_reus.

¹³⁷⁹ Mens Rea - A Defendant's Mental State - FindLaw, <https://www.findlaw.com/criminal/criminal-lawbasics/mens-rea-a-defendant-s-mental-state.html>.

- 2) Knowledge: awareness of certain facts or the apparent consequences involved in this level. Such is, for example the mens Rea where is one is in level possession of illegal drugs.
- 3) Recklessness: Recklessness is a conscious disregard for gross risk. The person is reckless if he knows the risk involved and proceeds to action, anyway.
- 4) Negligence: The lowest level of Mens Rea. Negligence relates to an omission of reasonable care. It usually pertains to inaction or carelessness.¹³⁸⁰

The definition of a crime constitutes the principle of concurrence, that is, the coexistence of Actus Reus and Mens Rea. This principle is based on the very fact that the guilty act and the guilty mind must coincide then criminal liability is established. The requirement to establish both elements beyond a reasonable doubt safeguard against convicting and punishing a person who may not otherwise be guilty of committing a particular crime.

MISTAKE OF FACT

Mistake of fact is a General Defence by the virtue of The Indian Penal Code, 1860 i.e., Sections 76 and 79. Mistake of fact is one of the defences available to get an exemption from Criminal Liability. "Section 76 of IPC" states the act that is done by a person who is bound or by the virtue of a Mistake of fact, believes himself to be bound by law.¹³⁸¹ This section clearly states that any person who has done an act or offence who is or who by reason of a Mistake of Fact and not by reason of Mistake of law had done an act or offence by the virtue of good faith, believes himself to be bound or commanded by law to do that act or offence.

In Case "**R v. Prince (1875) LR 2 CCR 154.**"

"Henry Prince was found guilty of removing an unmarried girl under the age of 16 from her

father's custody without the father's permission "under Section 55 of the Offences against Person Act, 1861." Although Annie Phillips, the girl, was actually 14 years old, Henry Prince had a good basis to assume that she was 18 because Annie Phillips had stated it to him"¹³⁸² Since the offense comes under strict liability, it was not necessary to prove that the defendant had Mens rea or knowledge about the actual age of the girl in order to prove the offense. Because Henry Prince's reasonable belief was inadmissible, the conviction was upheld.¹³⁸³

"Section 79 of IPC" states the act done by a person justified or believes that his act is justified by law. An element of the crime will end if the defendant can prove to the court that he committed the act because of some misinterpretation or factual error.¹³⁸⁴ For Example, A sees Z commit what appears to be a murder. A in exercise of the best of his judgement and in good faith uses the power under law to prevent offences prevents z and seizes him. A has committed no offence even if Z was acting in Self-defence.

The key difference between Section 76 and Section 79 is that Section 76 deals with actions done under the belief of being legally bound to act based on mistake of fact. Whereas Section 79 deals with actions done under the belief of being legally justified by law also due to mistake of fact.

In Case "Chirangi v. State (1952)53 Cr LJ 1212 (M.P.)"

Chirangi with his kid traveled to a hilltop. His nephew discovered that the boy was missing and that the man had an axe that was covered in blood when he got home and went to bed. When questioned, he claimed that he had gone mad and had killed his kid under the false presumption that a tiger was approaching. His

¹³⁸⁰ Levels of Mens Rea- BMS general law blog, <https://www.ericjburch.com/blog/2021/2/what-is-mens-rea-and-what-are-the-types.html>

¹³⁸¹ Section 76 of IPC <https://indiankanoon.org/doc/202169/>

¹³⁸² Regina v. Prince Case Brief for Law Students | Case Brief for Law Students, <https://www.casebriefs.com/blog/law/criminal-law/criminal-law-keyed-to-kadish/defining-criminal-conduct-the-elements-of-just-punishment/regina-v-prince/>

¹³⁸³ R v Prince - 1875, <https://www.lawteacher.net/cases/r-v-prince-1875.php>

¹³⁸⁴ Explained: Section 79 of IPC - Manupatra, <https://manupatra.com/roundup/343/Articles/Differences.php>

psychiatrist provided evidence to support his claim of insanity. Furthermore, there was a tremendously strong bond between father and kid, which supports the claim that Chirangi had no justification for killing his own son¹³⁸⁵. "The defence of mistake of fact was applied and therefore the accused Chirangi Lohar was not held responsible for the offence of killing his own son as he was into a belief that there was a tiger that was approaching towards him."¹³⁸⁶

MISTAKE OF LAW

There is no defence that is considered when there is a mistake of law by someone. When a person commits a crime and asks for a defence for the mistake of Law, the Court does not allow or consider it as a defence¹³⁸⁷

In case (State of Maharashtra v. M. H. George AIR 1965 S.C. 722)

a German sailor, was found carrying thirty-four kilos of gold in a specially designed jacket when he arrived at Santa Cruz Airport from Zurich. Customs officers discovered the gold after he denied having any. Charged under the Foreign Exchange Regulation Act, 1947, and the Sea Customs Act, 1878, he was convicted and sentenced to one year of rigorous imprisonment by the Presidency Magistrate. The Bombay High Court overturned this conviction, arguing that the gold was continued his person, not in cargo, and that there was no mens rea. The Supreme Court, however, reinstated the conviction stating that the mistake of law is not an excuse under Indian laws, noting that despite his prior imprisonment, the sentence would be served with time already spent in custody deducted.¹³⁸⁸ In this case the supreme court upheld the legal maxim "Ignorant Juris Non Excusat" which basically means that a

person cannot claim ignorance of the law as a defence for not complying with it.

DIFFERENCE BETWEEN MEN'S REA AND ACTUS REUS

Since both are necessary components of what makes a crime, there is little distinction between Mens Rea and Actus Reus. These two are the only prerequisites needed to prove a crime. The only difference is Mens Rea justifies a "Mental element" and Actus Reum justifies a "Physical Element." Because the criminal must have the purpose to commit the act or have knowledge of the offense, the mental element, or "Mens Rea," often occurs before the Actus Reus in many criminal acts.

RELATIONSHIP BETWEEN THE DEGREE OF THE CRIME AND THE PUNISHMENT DESIGNATED FOR THE CRIME INFLICTED

The legal term for a "guilty state of mind" that encompasses both intention or purpose and awareness of the consequences is "mens rea". Mens Rea, a term used to describe the level of mental involvement in the crime, clearly indicates the level of accountability. The severity of the penalty increases with the severity of "Mens Rea" in the offense.¹³⁸⁹ For instance, intentionally killing a person, which would be considered murder, would carry the harshest penalty under the law due to the high degree of "Mens Rea" involved, but if someone is accidentally hit and dies, the person would not be held responsible for any crime since there was no "Mens Rea." Thirdly if a person being negligent does an act which causes death of another person, he will be not liable to the extent where he had full intention to murder the person. Therefore, the punishment of any crime changes with the degree of crims and level of Mens Rea involved when performing the criminal act.

Some crimes such as attempts, must be proven of their specific intent. For example, In State of

¹³⁸⁵ CHIRANGI Vs STATE - Law Insider India, <https://www.lawinsider.in/judgment/chirangi-vs-state>

¹³⁸⁶ Chirangi v. State (1952) Cri LJ 1212 Archives - The Fact Factor, <https://thefactfactor.com/tag/chirangi-vstate-1952-cri-lj-1212/>.

¹³⁸⁷ Mistake of Fact and Mistake of Law, <https://blog.ipladers.in/mistake-fact-mistake-law-defence/>.

¹³⁸⁸ State of Maharashtra v. M. H. George AIR 1965 S.C. 722 <https://blog.ipladers.in/state-of-maharashtra-v-mayer-hans-george-1965-case-analysis/>

¹³⁸⁹ Mens Rea: The Criminal State of Mind, <https://lawshelf.com/shortvideoscontentview/mens-rea-the-criminalstate-of-mind>.

Maharashtra v. Mohd. Yakub¹³⁹⁰, the Supreme Court held it that, to obtain a conviction for an attempt to commit offense, the prosecution must prove that the accused intended to commit the offense and that he manifested his intention to commit the specific offense by doing some act or series of acts, which culminated into substantial step or overt acts in the direction of offending. The Supreme Court ruled that the accused's intention to export the silver by sea from India was evident from the circumstances, and that the evidence clearly indicated that the accused had attempted to export the silver illegally by sea from India.¹³⁹¹

Mens rea alone in itself is not Punishable. For example: - A cannot be taken before the court on the grounds that he wanted to murder B. Instead, A must do some act, like if he is discovered with a loaded gun in B's compound, for which A may be found guilty. Certain exceptions to the general rule that an intention by itself does not constitute a crime include the desire to commit treason which is a crime against the state, or conspiracies to commit crimes.

Origin of Mens Rea

Roman law mandated that "culpa" and "dolus" be strictly adhered to in the case of any crime. The accused's mens rea was established with the use of these principles. The actor's mental state and his illegal behaviour—as well as his perspective on the criminal act—were linked by the Doctrine of Dolus. Conversely, the concept of culpa focused on the kind of reasonable foresight that one would expect from a reasonable person and without which an actor would not be able to escape responsibility for their acts. Other instances of this type of behaviour include accepting hazardous tasks without the required training or neglecting to take appropriate action in the given situation. Canon law also started to gain prominence throughout time. The canonists emphasized the

importance of the mental component in determining guilt as well as the necessity of subjective blameworthiness in determining the legal wrong that was committed. Moral responsibility theories, according to canonists, are contradicted by penalizing someone for a small accident. Because the focus of Christ's teachings was on the condition of mind in determining the degree of penance for an illicit conduct, canon law was consistent with church theology.¹³⁹²

Actus non facit reum nisi mens sit rea

Mens rea is the source of the Latin maxim *actus non facit reum nisi mens sit rea* which means that a person is only guilty of committing a crime if the conduct is done with the purpose to commit a crime or he has a guilty mind of doing the offence. This Latin Maxim is used to decide whether a specific behaviour is illegal. Crimes with premeditated intent carry harsher penalties than those that are accidental or unplanned. However, breaching the law can never go unpunished.¹³⁹³

Case Law: - In the Case of C.K. Jaffer Sharief vs State (Thr C.B.I.) 2012 AIR SCW 6166

The supreme court in its judgment stated that breaking the law will attach criminal responsibility to an individual. The Latin maxim *actus non facit reum nisi mens sit rea* states that the norm is not absolute and is susceptible to some limitations. It implies that a criminal mind is necessary for there to be a crime. It is necessary to demonstrate that an individual's activities led to an illegal act and that their acts were accompanied by a legally blameworthy mental attitude in order to convict them of a crime. Because of this, every crime consists of two parts: the *actus reus* (physical element) and the *mens rea* (mental aspect), respectively.¹³⁹⁴

¹³⁹⁰ 1980 AIR 1111

¹³⁹¹ State of Maharashtra v. Mohd. Yakub, Judgement <https://www.casemine.com/judgement/in/5609abcae4b014971140da1f#:~:ext=Ruling%3A,sea%2C%20in%20contravention%20of%20law>.

¹³⁹² Tracing the Development of Mens Rea,

<https://www.nuissaj.com/post/tracing-the-development-of-mens-rea>

¹³⁹³ Actus non facit reum nisi mens sit rea <https://blog.iplleaders.in/actus-non-facit-reum-nisi-mens-sit-rea/>

¹³⁹⁴ C.K. Jaffer Sharief vs State (Thr C.B.I.) 2012 AIR SCW 6166 <https://indiankanoon.org/doc/172901687/>

Exceptions

In certain situations, proving the Mens rea or guilty mind (state of mind) is not necessary and the punishment may be given only on the basis of the physical act. The cases involving acts under strict liability are considered as one of the exceptions to the legal maxim *actus non facit reum nisi mens sit rea*.

Case Law:- Ranjit D. Udeshi vs State Of Maharashtra 1965 AIR 881

The Supreme Court of India Stated that *"We do not accept the notion that the prosecution must establish that the person who sells or holds for sale any obscene object knows that it is obscene before he can be declared guilty"*.¹³⁹⁵

Mens Rea in such cases is of less significance than the act itself committed. It was declared that if any obscene material is found in possession of any individual he will be liable and punished under the relevant provisions and it is not mandatory to prove the Mens rea or the intent or purpose of the obscene material.

Public nuisances

An act or action that impairs, interferes with, or disturbs the rights of the broad public is considered a public nuisance. It can also be defined as behavior that endangers the comfort or interests of the general public. Since the public's interest is at risk in these situations, strict responsibility is enforced. Therefore, whether or not there is a mental purpose, these offenses are punished.

Insanity

A criminal Liability cannot be imposed on a person who while committing the act was unable to differentiate between good and evil. Therefore, the defence of insanity is an exception to the rule of *actus non facit reum nisi mens sit rea*. The burden of proof of insanity is on the defendant rather than the prosecution

Case Law: - Hari Singh Gond v. the State of M.P. AIR 2009 SCC 31¹³⁹⁶

The Indian Supreme Court held that Section 84 of the Indian Penal Code, 1860 sets the legal basis for evaluating responsibility in cases involving suspected insanity. "Unsoundness of mind" is not defined in the previously cited Code. This phrase has been predominantly associated with insanity by the courts. Nevertheless, the definition of "insanity" is ambiguous. This expression is used to describe different degrees of mental disease. Therefore, a person with mental illness is not always exempt from criminal responsibility. It's critical to understand the differences between medical and legal insanity. Medical insanity is not relevant to a court of law; only legal insanity is.

In another case Ram Bahadur Thapa vs State of M.P.¹³⁹⁷

The High Court of M.P. stated that a person is only protected from criminal liability if at the time of the commission of the act was incapable of understanding either the nature of the act or that the act is illegal. Only on these 2 grounds can a person be saved from criminal liability under section 84 of the Indian Penal Code.

Conclusion

In a criminal liability, the union of Actus Reus and Mens Rea act as an important principle has to be met otherwise defendant cannot be punished for his wrongful conduct. As such, the occurrence of these two elements – guilty act and guilty mind respectively ensures that an accused person was not put under criminal liability or found liable for acts if they occurred without requirements intentionality element or mens rea (state of Mind). Therefore, this idea ensconces the value of law as well ensures defendant rights point to how both physical and psychological factor important concerning crime. Through his paper I have elaborated the

¹³⁹⁵ Ranjit D. Udeshi vs State Of Maharashtra 1965 AIR 881
<https://indiankanoon.org/doc/1623275/>

¹³⁹⁶ Hari Singh Gond v. the State of M.P. AIR 2009 SCC 31
<https://indiankanoon.org/doc/1395565/>

¹³⁹⁷ Ram Bahadur Thapa vs State Of M.P.
<https://indiankanoon.org/doc/26456432/>

components of Actus Reus, Mens Rea and how both take action that is themselves a crime with levels of mens rea or being so culpable actuates aggravates the manner in commission. Intending or knowing Recklessness and negligence The higher the defendant's state of mind, It is a greater degree of fault. So, the punishment differs as per gravity of Mens Rea. This idea is crucial framework that allows free and fair trial along with consider both the action as well as intention behind commission of a crime. This principle is aptly supported by the legal maxim "Actus non facit reum Nisi mens sit rea", which means, "The act is not guilty of any offence done it or unless in tandem to that if its mind becomes poisoned". In simple terms, actus Reus must be accompanied with Mens Rea then only punishment for a criminal act is given. It is this phrase that prevents the human to be solely punished for a deed he attempted. But this maxim is intended only for cases where Mens Rea cannot be proved. In this regard, the Indian legal system adopts various statutes and laws to establish Actus Reus & Mens Rea concomitantly. Both expressions associate with its determination of legal consequences trained in the India Penal code and other such privileged enactments. Moreover, the paper also analysed defence and specifically mistake of fact as well as a mistake of law exception otherwise it is legitimate except knowledge must be there. Therefore, analysed the judgements passed by the court on these principles for its importance. The principles of these cases and how they courts have used them in practice are perfectly illustrated by the case law provided for R v prince, and Chirangi vs State. The paper also discussed the exception to Mens Rea especially in strict liability cases and how rule vary under these categories. The protection of society comes first in such an understanding, not individuals rights. Hence, Actus Reas and Mens Rea remains same in this case as well. In sum, the intersection of these components is essential to criminal law. So, this bill will act like maintaining a good balance that the individual is punished/ alleged

for his offence and on the same time not becoming victim by also taking care of other duties. This balance is needed to keep the court maintaining its primacy in order not to break rule of law, and how we judge/evidence reprimand a person subject with this knowledge/process under every different circumstances. So that, as the law becomes more intricate; both Actus Res and Mens Rea become indispensable for its corroboration.

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