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Stages & intention of Crime

4 Q1. 20

What is meant by Mens Rea? Explain the dictum "Actus non facit reum nisi mens sit rea".

Mens rea is a legal term which means guilty mind, and lack of which negates the crime. As per H.L. Hart- 'Mens rea is a blameworthy condition of mind'

After the period of Renaissance when the first time the concept of "Reason" came for the first time. In the famous case of Fowler V Padget (17 98), first time mens rea was taken into consideration. Court held that actus reus and Mens rea both are essential for commission of crime.

The latin maxim - "Actus Non Facit Reum Nisi Mens Sit rea" means that act without guilty mind is not punishable. When there is only both of mens rea, person is not guilty.

However, in India, if an act is done and there is no mens rea, person can be punished. As per John D Mayne in Criminal Laws of India 1896, he said that Under the Indian Penal Code, 1860 (hereinafter IPC) the maxim Actus Non Facit Reum Nisi Mens Sit Rea is a maxim which has no place. Every offence und IPC is well defined, it does not only state the essential of act, along with it states the requisite State of mind.

Section 14 IEI reflects the essence of the maxim

To establish guilt of the accused, it must be demonstrated that the unlawful act was carried out with the accused intention to commit act.

Treatment of Mens rea under IPC is divided under 3 way:-

① When the person is not able to form the requisite mens rea it come under the general Exception Ch. IV.

of IPC, or when he is able to form mens rea but IPC excludes him from getting punished. Eg: S. 82, 86,

② Where ever offence is defined with requisite mens rea, then that specific mens rea is required to constitute an offence. Eg: theft, rape

③ Where no mens rea is given. Eg: Sec 121, Waging war against India.

In the Landmark case of Rajib D Vidhi V State of Maharashtra (1965), Supreme Court held that, under Sec 292, mens rea is not given anywhere. So this is a matter of strict liability.
→ All section which does not have any mens rea are cases of strict liability.
In fact, Ignorance of law is no excuse, in these cases, the maxim has no effect. In the case of M.H. George V State of Maharashtra (1965) Supreme Court held that, this maxim has no effect and foreigners are also liable under IPC.

In case where IPC is not clearly laid down the mens rea, in that cases judges has to see that man because that he would have to see whether there is guilty intention or not.
In IPC, there is no role of good intention. Mens rea is governed with the concept of desired effect. Even if there is no desire, that doesn't mean it can be taken as defence. Good intention has no value in IPC.

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Not clear

Relevancy of Maxim in IPC

definition of offence

general exception

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That is why, IPC was written by Lord Macaulay in such a way that mens rea is diluted with all the sections. And where mens rea is excluded, a separate chapter is made i.e. general exception and other are strict liability cases.

3rd Are there any exceptions to the dictum of Mens Rea?

The criminal jurisprudence that is each person ought to know the effect of his act, if he does not, then he ought to know. This is the exception of Mens Rea. As per Fowler V Padget, mens rea and actus reus both are essential component of commission of crime. However, in cases of strict liability, Public nuisance, Taft's rule, Queen Criminal case, White collar crime, are cases, where mens rea is irrelevant, it comes under the principle principle of person is aware of effect of his act, if not, then he ought to know. "If you do, you have to suffer".

Strict liability cases are exception to principle of a person without guilty intention is not liable for his actions. Because these offences bring serious danger to the whole society which is not possible to compensate.

In case where person is watching obscene material, if comes under Section 292 of India Penal Code, 1860, And Court held that there is no need to dwell upon 'mens rea', it is a strict liability case and the person was held liable for his act as held under Ranjit D. Udeshi V State of Maharashtra (1965).

* Regina V/s Faikar
* Leave Proper Space
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→ For the cases of Oblique Intention, where the effect of act is unforeseen.
For example: 'A' shoots at 'B' with intention to kill him. The Bullet hits 'C' and 'B' both. Even 'A' had no intention to kill 'C' but due to his act, 'C' died. Here, mens rea is Relevant.

→ If the mens rea is of person is not guilty. The Good intention does not make any difference in Criminal law. The person attempted the act with good intention shall be held liable for the offence.

→ In cases of Transfer of Malice, Mens rea transfer. Even the person does not decide the said result, he will shall be liable. For Eg: A wanted to kill 'B' and poisoned 'B's food. However, it was eaten by any bikers.
Even the desired act was not intended, there was no mens rea but he was still liable.

when it is difficult to prove mens rea

#public nuisance

Ignorance of law no excuse

Defamation

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Discuss 'attempt to commit an offence'. D/B the stage of attempt and preparation in criminal law.

As Granville Williams states that - "An offence is a legal wrong that can be followed by criminal proceeding which may result in punishment'.
Offence is not defined under Indian Penal Code, 1860 (hereinafter IPC), It has been defined under Section 2(n) of Code of Criminal Procedure, 1973. It is an act prohibited by law & punishable by law.
For an act offence to be committed, there are 4 stages which lead to an offence.

1) Intention to commit
2) Preparation to commit
3) Attempt
4) Commission of the crime.

Intention is the mens rea of a person. Under IPC, mere mens rea is not punishable, however, mere actus reus without mens rea is punishable.
It is the first stage of a crime. and the last stage which is commission of crime is always punishable under IPC.
Preparation to commit an offence, as a general rule is not punishable because it is very difficult to interconnect preparation and evil intention.
Attempt to commit a crime, which is third stage of Crime is. As Hon'ble Supreme Court has defined Attempt in the landmark case of K. Venkat Rao, as The word attempt is not defined under IPC, and must therefore be taken in its ordinary dictionary

* The Proximity test
* Locus Penitentiae test
* Abrogunder v/s State of west Bengal

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It may be defined as that which if not prevented would have resulted in the full completion of the act attempted.

Abhayanand Mishra vs State of Bihar

Attempt in IPC has been dealt with 4 different ways:
~~(1) Act Punishment~~
(1) Punishment for the Act and Attempt under same section.
(2) Where punishment for the attempt is given in separate section. For eg: - S. 307, 309, 393.
(3) Where only attempt is punishable and not the act. For eg: - S. 309
(4) Residuary. That is section 511.
Attempt is always punishable, as it poses no less danger to the legally protected interest than a completed crime.
Attempt to commit is an inchoate offence.
As a general rule, attempt is the least punishable act under IPC, as attempt is failed ~~act~~ because of good luck of victim and benefit of which cannot be given to the accused.
The test to see, whether the act is an attempt is Equivocality Test. When a person conducts himself in such a manner which clearly indicates his desire & has taken his intention into the act then that is not preparation, it is an attempt.

too many mistakes

There is a thin line difference between preparation to commit an offence and attempt to commit.

(1) As a general rule, preparation is not punishable. But attempt is always punishable.

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Because preparation is too remote from the completion of the intended crime. As there is hine to change of mind. However, there are cases which are punishable at preparation stages because the impact it carries on society is very high. And considered to be dangerous. For example: Section 122, 126, 243, 233-235, 292, 399.

② Preparation is devising a strategy the means to commit an offence whereas attempt is the direct movement towards the commission of the offence after preparation have been made.

③ Doctrine of locus Paenitentiae → hine for repentance. If there is hine for repentance the act fall under preparation and if not, it falls under attempt. In the landmark case of Malkit Singh V Punjab (1970) SC the accused was acquitted on the ground that there was hine for repentance.

In the case of Maharashtra V Mohd. Yakub (1980) Supreme court, court held that, the accused brought silver nuts in the truck, there was nearness and proximity of intention that is why it is an attempt and not preparation.

④ Impossibility Test, When the act is impossible then attempt is not punishable. For example: Black magic, it is impossible, so attempt is not punishable because it is too remote to murder someone.

It depends on proximity of time, place, intention which differentiate an attempt from preparation to commit an crime.

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Mains Evaluation By Edzorb Law

N Nishtha Singh

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Garvit Dave

★★★★★ 25/08/2021

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