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Mens Rea and Criminal Liability under the Bharatiya Nyaya Sanhita, 2023: A Doctrinal Analysis

SHYAM T[1]
[1]Student, SRM SCHOOL OF LAW

***Abstract*—Criminal liability in modern penal systems rests on the conjunction of a prohibited act (actus reus) and a blameworthy mental state (mens rea). This paper examines how that principle operates in Indian criminal law after the Indian Penal Code, 1860 was replaced by the Bharatiya Nyaya Sanhita, 2023, which came into force on 1 July 2024. Using a doctrinal method, it traces the origin of the maxim, the vocabulary of fault used in the Sanhita, the judicial treatment of intention and knowledge in homicide, the limited field of strict liability, and the role of general exceptions in negating culpability. It argues that the Sanhita preserves the fault-based structure of the earlier Code while adding new offences, such as organised crime and mob lynching, that test the limits of that structure. It concludes that precise legislative drafting of mental elements is essential to protecting the accused.**

***Index Terms*—Actus reus, Bharatiya Nyaya Sanhita, Criminal liability, Culpable homicide, Mens rea, Strict liability.**

I. INTRODUCTION

The Bharatiya Nyaya Sanhita, 2023 (BNS) [1] replaced the Indian Penal Code, 1860 (IPC) [3] on 1 July 2024, together with the Bharatiya Nagarik Suraksha Sanhita, 2023 [2] and the Bharatiya Sakshya Adhiniyam, 2023. The change was presented as a decolonising reform, yet most of the substantive general principles of the older Code were carried forward with renumbering and selective additions. For a student of criminal law the practical question is therefore not whether the foundations have changed, but how well the inherited doctrines fit the new text.

Among those foundations, none is more central than the requirement of a guilty mind. A person is not punished merely because harm has occurred; the law asks whether the harm was caused with the intention, knowledge or fault that justifies the stigma and sanction of a criminal conviction. This paper examines that requirement in several steps: the origin and meaning of mens rea, its expression in the vocabulary of the BNS, its application to homicide, the exceptional category of strict liability, the general exceptions and private defence, inchoate and joint liability, negligence, proof of the mental element, and comparative models. Table I lists key provisions with their IPC counterparts.

II. THE DOCTRINE OF MENS REA

A. Origin and Place in the Criminal Process

The principle is usually expressed through the maxim actus non facit reum nisi mens sit rea, meaning that an act does not make a person guilty unless the mind is also guilty, a formulation associated with Sir Edward Coke. A crime ordinarily has a physical element (actus reus), consisting of conduct, its circumstances and, for result crimes, a consequence, and a mental element (mens rea). Both must coincide in time, and the prosecution carries the burden of establishing both beyond reasonable doubt, a rule the House of Lords described as the golden thread of English criminal law in *Woolmington v. DPP* [4]. Glanville Williams treated the mental element as the principal safeguard that separates punishment from mere misfortune [5].

The drafters of the IPC did not use the phrase mens rea. They instead built fault into the definition of each offence through qualifying words such as voluntarily, knowingly, dishonestly, fraudulently, intentionally and rashly. The BNS follows the same technique and keeps these terms defined in its definitions clause (Section 2) and in the explanations to Section 3. The result is a code in which the mental element is usually found in the wording of the offence rather than in a single general rule.

B. Degrees of Fault

Indian criminal law recognises a descending scale of culpability. At the top is intention, where the accused aims at the result or is aware that it is the certain consequence of the act. Next is knowledge, where the accused is aware that the result is likely or probable. Below this are recklessness and negligence, which the Sanhita expresses through the expression rash or negligent act, as in the offence of causing death by negligence under Section 106. Accidents and innocent mistakes fall outside the scale altogether.

English law supplies a useful comparison. In *R. v. Cunningham* the court adopted a subjective test of recklessness, asking whether the accused actually foresaw the risk [6]. For intention, *R. v. Woollin* held that a jury may infer intention where death or serious harm was a virtual certainty and the accused appreciated that fact [7]. Indian courts have not adopted these formulations wholesale, but they reach similar results through the statutory distinction between intention and knowledge.

III. MENS REA IN HOMICIDE OFFENCES

A. Culpable Homicide and Murder

Homicide is the clearest illustration of graded fault. Under Section 100 BNS, culpable homicide is committed by causing death with the intention of causing death, the intention of causing bodily injury likely to cause death, or the knowledge that the act is likely to cause death. Section 101 identifies the cases in which culpable homicide amounts to murder, namely where the intention is to cause death, where the injury intended is known to be likely to cause death of the particular victim, where the injury intended is sufficient in the ordinary course of nature to cause death, or where the act is so imminently dangerous that it must in all probability cause death. Murder is punishable under Section 103(1) with death or imprisonment for life and a fine, while culpable homicide not amounting to murder is punished under Section 105.

The difference between the two offences lies in the degree of the mental element, and the Supreme Court has explained this in detail. In *Virsa Singh v. State of Punjab* the Court held that the prosecution must prove that a bodily injury was present, that its nature was established, that it was intentionally inflicted, and that it was sufficient in the ordinary course of nature to cause death [8]. The intention that must be proved relates to the injury and not to the fatal consequence, so an accused who deliberately inflicts such an injury cannot escape by claiming that death was not desired. This reasoning continues to guide the application of Section 101 because the BNS preserves the substance of the earlier definition.

B. Provocation and the Reduction of Liability

Mens rea may also be diminished by circumstances. Culpable homicide is not murder where the offender, deprived of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, and this exception is retained in the BNS. In *K.M. Nanavati v. State of Maharashtra* the Supreme Court applied an objective test, asking whether a reasonable person in the same class of society as the accused would have been deprived of self-control, and found that the accused had time to cool down and had acted with deliberation [9]. The decision shows that the law will not treat a lasting grievance, or a revenge carried out after reflection, as sudden provocation.

C. Sentencing and Culpability

Fault also shapes the penalty. In *Bachan Singh v. State of Punjab* the Court upheld the death penalty but confined it to the rarest of rare cases, requiring courts to weigh the circumstances of the crime and of the offender [10]. Earlier, in *Mithu v. State of Punjab*, the mandatory death sentence for a life convict who commits murder was struck down because it left no room for the court to consider culpability [11]. The corresponding Section 104 BNS prescribes death or imprisonment for life, which keeps judicial discretion and is consistent with that reasoning.

TABLE I — SELECTED PROVISIONS: IPC AND BNS

Offence / Provision	IPC	BNS
Common intention	34	3(5)
Culpable homicide	299	100
Murder	300	101
Punishment for murder	302	103
Culpable homicide not amounting to murder (punishment)	304	105
Death by negligence	304A	106(1)
Criminal conspiracy	120B	61(2)
Attempt	511	62
Sedition / acts endangering sovereignty	124A	152
Organised crime	—	111 (new)

IV. STRICT AND ABSOLUTE LIABILITY

Although mens rea is the general rule, legislatures sometimes dispense with it, particularly in regulatory offences concerned with public health, food safety, revenue and the environment. The justification is that the harm is serious, proof of a mental state would be difficult, and the accused is in a position to avoid the harm by care. In *State of Maharashtra v. M.H. George* the Supreme Court held that the offence under the Foreign Exchange Regulation Act could be committed without proof of knowledge of the notification breached, relying on the object and scheme of the statute [12]. By contrast, in *Nathulal v. State of M.P.* the Court accepted that the offence of possessing foodgrains in contravention of a control order required proof of a guilty mind and that the accused who acted in good faith and without knowledge of wrongdoing was not liable [13].

These decisions show that the presumption in favour of mens rea is strong but rebuttable. Following the approach in *Gammon (Hong Kong) Ltd. v. Attorney-General of Hong Kong*, the presumption is displaced only where the statute clearly or by necessary implication requires it, and where imposing liability without fault promotes the purpose of the law by encouraging greater vigilance [14]. Within the BNS, true strict liability is rare, since most serious offences contain express words of intention or knowledge. The principal risks arise in special statutes outside the Sanhita.

A related question concerns artificial persons. The BNS defines a person to include a company, and the Supreme Court has held that a company may be prosecuted for offences requiring mens rea because the intention of those who control its affairs, the directing mind and will, is attributed to the company [15]. This identification approach allows corporate crime to be addressed without abandoning the requirement of fault.

V. GENERAL EXCEPTIONS AND NEGATION OF MENS REA

Chapter III of the BNS lists the general exceptions, many of which operate because the accused lacked the capacity or the state of mind that criminal liability presupposes. A child below the age of seven is conclusively presumed incapable of crime, and a child between seven and twelve is protected where maturity of understanding is lacking. Section 22 protects a person who, because of unsoundness of mind, is incapable of knowing the nature of the act or that it is wrong or contrary to law. The test is legal rather than medical insanity, and the burden of proving the exception rests on the accused under the law of evidence, who need only establish it on a balance of probabilities.

Mistake of fact in good faith, accident in the course of a lawful act done with proper care, and acts done without criminal intent to prevent greater harm similarly remove culpability by showing the absence of the required mental state. Involuntary intoxication is also an exception, whereas voluntary intoxication is not, though it may be considered where a specific intention is an element of the offence. The common thread is that the law excuses conduct that does not reflect a choice for which the actor can fairly be blamed.

VI. RIGHT OF PRIVATE DEFENCE

Private defence is the principal justification that removes liability even where the accused intended the harmful result. Sections 34 to 44 BNS provide that nothing is an offence which is done in the exercise of the right of private defence of the body or of property. The right is not unlimited. It arises only against a present or imminent danger, it ends when the apprehension of danger ends, and it permits no more harm than is necessary for defence. Causing death is justified only in the circumstances listed in Section 38, such as a reasonable apprehension of death or grievous hurt, rape, kidnapping, or robbery.

The Supreme Court has stated the governing principles in *Darshan Singh v. State of Punjab*, emphasising that the right is a defensive one and not a licence for retaliation, that a person facing sudden danger cannot be expected to weigh the force used with nicety, and that the accused need not prove the plea beyond reasonable doubt but may rely on a reasonable probability shown by the prosecution evidence [16]. The test thus asks what a reasonable person in the position of the accused would have believed, which links the defence closely to the mental element: an honest and reasonable belief in danger negates the blameworthiness on which liability depends.

VII. INCHOATE OFFENCES AND JOINT LIABILITY

A. Attempt

Criminal law punishes not only completed wrongs but also steps towards them, because an intention to commit an

offence, coupled with an act towards it, shows a dangerous disposition. Section 62 BNS punishes an attempt to commit an offence punishable with imprisonment, and the Sanhita, like the earlier Code, does not define attempt. The courts have therefore distinguished mere preparation from attempt. In *Abhayanand Mishra v. State of Bihar* the Supreme Court held that a person commits an attempt when he intends to commit an offence and, with that intention, does an act which is a step towards the commission of the offence, and that the act need not be the penultimate one [17]. Intention is the decisive element, since the same outward conduct may be innocent or criminal depending on the purpose behind it.

B. Conspiracy and Abetment

Conspiracy is complete on agreement, so the mental element is the common design itself. Section 61(2) BNS requires an agreement to do an illegal act or a legal act by illegal means, and, for agreements to commit offences, no overt act is needed. The Supreme Court observed in *Kehar Singh v. State (Delhi Administration)* that the offence is established when there is a meeting of minds, that direct evidence of agreement is rarely available, and that the inference is drawn from the circumstances and from the conduct of the parties [18]. Abetment in Chapter V likewise depends on intentional aiding, instigating or engaging in a conspiracy, so a person who unwittingly assists another does not incur liability.

C. Common Intention and Common Object

Where several persons act together, the Sanhita attributes the act of one to all in two ways. Section 3(5) provides that when a criminal act is done by several persons in furtherance of the common intention of all, each is liable as if he alone had done it. The Privy Council explained in *Barendra Kumar Ghosh v. King-Emperor* that the provision rests on participation, so that even a person who merely stands and waits may be liable if he shares the intention [19]. In *Mahboob Shah v. Emperor* the Privy Council added that the common intention must exist before the act, though it may be formed on the spot, and that it implies a pre-arranged plan [20].

Section 190 BNS, corresponding to the former Section 149, creates a wider form of liability for members of an unlawful assembly, based on a common object and not on a shared intention. Every member is liable for offences committed in prosecution of the common object or which members knew to be likely to be committed. The difference matters because the latter provision requires only membership of the assembly with knowledge, which makes it harder to reconcile with individual fault and calls for close scrutiny of the evidence against each accused.

VIII. NEGLIGENCE AND PROFESSIONAL LIABILITY

Negligence stands at the lowest level of fault, and criminal law treats it with caution because most negligent conduct is adequately addressed by compensation in tort. Section 106(1) BNS punishes the causing of death by a rash or negligent act not amounting to culpable homicide. The Sanhita contains a proviso that reduces the maximum punishment to two years when the act is done by a registered medical practitioner in the course of treatment, and it also creates a more serious offence under Section 106(2) for a driver who causes death by rash and negligent driving and escapes without reporting the incident.

The leading authority on professional negligence is *Jacob Mathew v. State of Punjab*, in which the Supreme Court held that, to attract criminal liability, the negligence must be gross or of a very high degree, and that a mere lack of care or an error of judgment is insufficient [21]. The Court also directed that a private complaint against a doctor should not proceed without credible medical opinion supporting a prima facie case of rashness or negligence. This follows the reasoning in *Dr. Suresh Gupta v. Govt. of NCT of Delhi*, where the Court quashed proceedings because the failure alleged was not so gross as to deserve punishment as a crime [22]. These decisions illustrate how courts interpret the standard of fault in a way that protects professionals who act in good faith.

The reasoning has wider relevance. Because negligence involves no consciousness of risk, it is the form of fault that is most difficult to justify as a basis of imprisonment. The law therefore sets the threshold high, and reserves punishment for conduct that falls so far below the standard of a reasonable person that it shows disregard for the safety of others. Whether the new road-accident offence in Section 106(2) maintains this balance is a question that the courts are likely to consider.

IX. PROOF OF THE MENTAL ELEMENT

A. Intention, Motive and Inference

A state of mind cannot be observed directly, so courts infer it from conduct and surrounding circumstances. The weapon used, the part of the body targeted, the number and force of the blows, the relationship between the parties and the conduct of the accused after the act are all relevant to whether intention or knowledge existed. Motive, by contrast, is the reason that prompts an act and is distinct from intention. The absence of motive does not prevent conviction where the evidence of the act and the intention is clear, while a proved motive cannot by itself establish guilt. The distinction was drawn sharply in *R. v. Dudley and Stephens*, where sailors who killed a cabin boy to survive were convicted of murder because their desperate motive did not alter the intention to kill [23].

Where the case rests on circumstantial evidence, Indian courts apply strict standards. In *Sharad Birdhichand Sarda v. State of Maharashtra* the Supreme Court held that the circumstances relied upon must be fully established, must be consistent only with the guilt of the accused, and must form a chain so complete that no reasonable ground remains for a conclusion consistent with innocence [24]. These requirements are especially important for the mental element, because a finding of intention drawn from ambiguous conduct is more likely to be mistaken than a finding of a physical fact.

B. Burden and Standard of Proof

The general rule is that the prosecution must prove every ingredient of the offence, including the mental element, beyond reasonable doubt. The law of evidence recognises exceptions where the accused who claims a general exception must bring the case within it, but even then the burden is lighter, and the accused may succeed by showing that the version offered is probable. Statutory presumptions of a culpable mental state, found in special laws dealing with narcotics, corruption and terrorism, shift the burden to the accused and are justified only by the gravity of the offence and the difficulty of proof. Their constitutional validity has depended on whether the presumption is triggered by foundational facts that the prosecution must itself prove, which keeps the principle of fault in operation even in exceptional statutes.

C. Ignorance of Law and Mistake

A mistake of fact made in good faith may negate the mental element, but a mistake of law ordinarily does not, in

accordance with the maxim ignorantia juris non excusat. The justification is that the law must be capable of uniform application, and that an excuse based on ignorance would reward carelessness about legal duties. The exception arises where the definition of an offence itself requires knowledge of a legal fact, such as dishonest intention in relation to property, and the accused honestly but wrongly believed in a legal right. Section 14 BNS, which protects acts done by a person who by reason of a mistake of fact believes himself bound by law, reflects the same distinction.

X. COMPARATIVE PERSPECTIVES

A comparison with other systems shows how the law can express fault more systematically. The American Law Institute's Model Penal Code, adopted as a model for many states, rejects the undefined phrase mens rea and replaces it with four defined levels of culpability: purposely, knowingly, recklessly and negligently [25]. The Code also provides that, unless a contrary purpose appears, the stated level of culpability applies to every material element of the offence. This default rule removes much of the uncertainty found in systems that rely on the case law to interpret words such as wilfully or maliciously.

English law has also moved towards subjective fault. The decision in *R. v. G.* overruled the earlier objective test of recklessness for criminal damage and held that a person acts recklessly only if he is aware of a risk and unreasonably takes it, so that the accused is judged by his own capacities and not by those of a reasonable person [26]. The reasoning rests on the idea that it is unjust to convict a person who, by reason of age or understanding, did not appreciate a risk that others would have seen.

Indian law shares the same starting point but approaches it through the definitions of individual offences. Its strength is that the courts have a long record of interpreting those words in context, and its weakness is the lack of a single account of fault applicable throughout. A short interpretive provision in the Sanhita, modelled on the Model Penal Code default rule, would bring greater clarity and would make the mental element easier to identify, especially in new offences framed in general terms.

The comparison also shows the limits of borrowing. The Model Penal Code was drafted for a system in which juries decide guilt and judges instruct them on defined mental states, whereas Indian trials are conducted by judges who apply precedent. A reform should therefore be modest in scope, preserving the established terminology of the Sanhita while adding a general rule of construction that guides courts when the text is silent on fault.

XI. NEW OFFENCES AND THE LIMITS OF FAULT

The BNS adds provisions that raise fresh questions about the mental element. Organised crime is made an offence under Section 111, and petty organised crime and terrorist acts are separately defined in Sections 112 and 113. These offences rely heavily on participation in a syndicate or on the purpose of the act, so proof frequently depends on inference from association and past conduct. Mob lynching by a group of five or more persons on discriminatory grounds is now a form of murder under Section 103(2), which extends liability to each member of the group, in the manner of the earlier doctrine of common intention now found in Section 3(5).

Section 152, which replaces the offence of sedition, penalises a person who purposely or knowingly excites secession, armed rebellion, subversive activities or separatist feelings, or endangers the sovereignty, unity and integrity of India. The express reference to a purposive or knowing state of mind is welcome, but critics argue that the wording remains broad and may still capture speech that does not incite violence. The adoption of community service as a punishment for petty offences is another reform that links the sanction more closely to the culpability of the offender.

XII. CRITICAL ANALYSIS

Three observations follow. First, the continuity of the BNS with the IPC is a strength for doctrine, because decades of judicial interpretation on intention, knowledge and rashness remain available as guides. Courts will, however, need to resolve transitional questions carefully, since offences committed before 1 July 2024 continue to be governed by the earlier Code.

Second, the new offences show a drift toward liability based on association or status rather than proven individual fault. Where the definition of an offence permits the mental element to be inferred from membership of a group, the principle that each accused must be proved to possess the required state of mind is placed under strain. Judicial insistence on proof of individual participation will be needed to maintain that principle.

Third, the Sanhita does not state a general provision on mens rea or a general presumption in its favour. Such a clause, as found in several modern codes, would give courts a clear starting point when interpreting offences silent on fault, and would reduce reliance on case law to reach that result.

XIII. SUGGESTIONS

Several modest reforms follow from the analysis. First, Parliament should consider a general interpretive provision stating that, unless the contrary appears, an offence requiring a mental element applies that element to each material part of the definition. Second, offences that depend on membership of a group or on a presumed purpose should state expressly that the prosecution must prove the individual participation of each accused. Third, the training of investigators and prosecutors should stress that evidence of the mental element must be collected from the outset, because a charge that omits it is likely to fail at trial.

Fourth, courts should continue to publish reasoned decisions on the transition from the earlier Code, so that the body of precedent on intention, knowledge and negligence remains accessible and consistent. Finally, students and practitioners should treat the renumbering of provisions as a change of form, and look to the judgments that explain the continuing substance of the law.

XIV. CONCLUSION

The requirement of a guilty mind remains the organising principle of Indian criminal liability under the Bharatiya Nyaya Sanhita, 2023. The Sanhita keeps the graded scale of intention, knowledge and negligence, retains the general exceptions that excuse the blameless, and leaves the doctrine of strict liability to the exceptional case. Its new offences, however, test this structure and call for careful drafting and strict judicial scrutiny. If the mental element is read faithfully, the Sanhita can combine effective prevention of serious crime with the protection of the accused that a fair penal system demands.

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