**MENS REA**

|  |  |
| --- | --- |
| **Dr. Neeraj Malik\*** Assistant Professor, Regular Faculty, C.R. Law College, Jat Educational Society, G.J.U.S & T., Hisar. Mail id- jobsmalik14@gmail.com. **DOI:** <https://doi.org/10.36676/irt.v10.i3.1437> Accepted: 10/08/2024 Published: 13/08/2024 | **\*** Corresponding author  |

***ABSTRACT***

Humans naturally discern purpose from unexpected outcomes. Small toddlers typically learn "I didn't mean to" as an excuse. Thus, pure supposition suggests that the ancient law held men accountable exclusively for their purposeful wrongdoings. All evidence suggests otherwise. "Law in its earliest days tries to make men answer for all the obvious ills their deeds cause"[[1]](#footnote-1) It is sometimes believed that there is one state of mind common to all crimes, however other crimes need a different mental ingredient. The presumption is: “State-of-mind-X is common to all crimes and is sufficient for many, but some offences require some additional mental element, such as state-of-mind-Y or Z.”[[2]](#footnote-2) Care must be taken to be sure that such a formula does not include too much. A person's mental condition may be too immature for mens rea. State-of-mind-X requires a person who is not too young. Again, for state-of-mind-X the mental faculties must not be too greatly disturbed by mental disease, and under certain circumstances they must not have been misled by reasonable mistake of fact, or have been constrained by compulsion.[[3]](#footnote-3) Without going further into detail it is sufficient to point out the need of excluding every mental pattern which contains any factor sufficient in law to exculpate one who has done particular deed in question. If every such factor is excluded and there is present an intent to do the deed which constitutes the actus reus of a certain offense, the result may be said to be state-of-mind-X. It is necessary to add, however, that for certain crimes it will be possible to substitute some other mental factor for the actual intent to do the actus reus. In brief, while state-of-mind-X has certain factors which remain constant, these have to do with the general outlines of the mental pattern rather than with the minute details. Nevertheless, these general outlines are entitled to attention. In criminal law, "mens rea" refers to the accused's psychological condition during the offense. This is vital to proving criminal culpability. To succeed, a prosecution must establish that the defendant's mental state matched the crime's intent or irresponsibility. The section states that mens rea is absent unless the defendant's mind was absolutely free of explanations or justifications. Whenever the accused acts under pressure, their purpose may be discredited, resulting in exoneration. The individual's mental state must also match their express purpose to do the crime's physical conduct. For someone to commit murder or cause grave harm, the offender must intend to do so. Criminal negligence, in which the defendant's lack of care for their actions meets legal accountability requirements, may also prove mens rea. Thus, mens rea is crucial to determining a defendant's legal liability. This is the so- called general mens rea which is common to all true crime (unless removed by statute) and is sufficient for guilt in many offenses although some additional mental element is required for others.[[4]](#footnote-4)

***KEYWORDS:* MENS REA, ACTUS REUS, CRIMINALITY, ACTUS NON FACIT REUM NISI MENS SIT REA.**

***THE MENTAL REQUISITES FOR CRIMINALITY***

Everyone agrees that blame involves mens rea. The maxim actus non fit reus nisi mens sit rea is centuries old.[[5]](#footnote-5) Criminal law requires more than showing that the defendant committed the actus reus, or bodily act, to prove guilt. Because criminal convictions need a guilty attitude, or mens rea, they are morally relevant. The behaviour may be unpleasant or have bad repercussions without responsibility, but it is not a crime. The mens rea criterion ensures that only those with the necessary purpose, knowledge, recklessness, or negligence are guilty. This approach is crucial because it aligns criminal law with moral responsibility, punishing only purposeful immorality. In Sweet v. Parsley (1970), the House of Lords stressed that mens rea is required in all criminal acts unless otherwise indicated. A defendant was found guilty of accidentally allowing cannabis usage on her property. The ruling recognised that courts should infer mens rea even in circumstances of legal infractions to prohibit criminal liability without guilt. This premise supports the idea that criminal law should target mentally ill people rather than random events.[[6]](#footnote-6) Society has always assumed that Parliament did not aim to criminalise innocent people. This implies that when a section is silent on mens rea, we must read in language that compels it to carry out Parliament's intent.

Determining mens rea is the most basic and perplexing criminal law issue of all time[[7]](#footnote-7) necessary for crime. Actus non facit reum nisi mens sit rea has been repeated in writings for centuries.[[8]](#footnote-8) “There can be no crime, large or small, without an evil mind,” says Bishop. “It is therefore a principle of our legal system, as probably it is of every other, that the essence of an offence is the wrongful intent, without which it cannot exist.”[[9]](#footnote-9) Courts and authors cannot agree on the definition of mens rea. Some define it broadly, while others define it more precisely yet with different connotations. Thus, it is crucial to investigate the mental requirements of crime and the historical history that has shaped the law. Such a study may be divided into the following some- what arbitrary divisions: (1) The mental requirements for crime in early law until the 13th century. (2) First thoughts about mens rea. (3) Later development of generic mens rea for crime. (4) Increasing specificity of this generic mens rea for specific offences. (5) The growing particularization of this general mens rea with respect to specific defenses, such as insanity, infancy, compulsion, covertures, mistake of fact, etc. (6) General conclusions as to the meaning of mens rea in the present law. It is perhaps unnecessary to add that although some such arbitrary divisions are necessary for purposes of exposition, in fact, the gradual growth and development of the mental factors in criminality was and is a continuous evolution, unmarked by any sudden or abrupt transitions.

***HISTORICAL DEVELOPMENT OF THE CONCEPT OF MENS REA AND ITS CONTEXT***

The development of mens rea, the mental condition necessary to establish criminal responsibility, shows a major change in criminal justice concepts. Mens rea has always been linked to revenge and justice, reflecting criminal law's goals. The mental aspect of a crime was vital in the early days of criminal administration, when blood feuds and personal vendettas were widespread. It distinguished provocatively malevolent conduct from others. For instance, setting a home on fire intentionally hurt someone considered more severe than an accidental fire. Mens rea at this stage identified and addressed provocative offences to ensure that those with ill intent were punished. As canon law and penitential literature dominated the criminal judicial system, mens rea became increasingly moralistic rather than provocative. Criminal justice began highlighting moral transgression. Criminal liability punished moral transgressions by linking them to evil. Mens rea was the will to do evil despite the suffering. The morality of injuring was evaluated, not its social or public effects. As criminal justice goals altered, mens rea was modified to be more punitive and moral. Modern criminal justice prioritises social and public interests above moral wrongs. This alteration significantly altered mens rea interpretation. if a crime is moral is less essential than if it harms society. Modern mens rea determines whether a goal harms society. This shifting purpose signals a societal priority on harm prevention and public safety above morality. The criminal responsibility mentality now prioritises society above morality. Some historic ideas and legal formulations persist, but their application has evolved. In cases of malicious house burning, “malice” no longer implies to injure or provoke. This is technicalized. Malice today means wanting to hurt property or people without showing more malice. This complex understanding shows how mens rea has been developed to meet modern legal goals while keeping historical legal foundations. Mens rea gradually changes, reflecting the dynamic character of criminal justice and how legal theories adapt to changing society values and goals.[[10]](#footnote-10) But although courts do not, because of a changed objective in the law, throw over old precedents and former lines of decisions wholesale, something of the altered flavor in the meaning of mens rea can be sensed in certain decisions betraying new trends of thought. In the past, when criminal administration was conceived to award punishment in accordance with moral deserts, English judges believed that a parent who refused to call for medical help for his dying child because he honestly believed that prayer or other treatment was more effective should not be convicted.[[11]](#footnote-11) With the growing sense that the object of criminal administration is to protect social and public interests, however, certain courts confronted for the first time with this situation are beginning to reach a directly opposite conclusion, holding such parents guilty of manslaughter.[[12]](#footnote-12) Social and public interests must be protected against harmful and distinctive peculiarities and evildoers. The tide of law seems to be distinctly setting in this latter direction.[[13]](#footnote-13) The Indian sentinel guarding an encampment who kills an evil spirit a man would not have been convicted a hundred years ago since mens rea was predicated on moral blameworthiness; now he is charged with manslaughter.[[14]](#footnote-14) In fact, present criminal law rulings favour an objective norm that everybody must meet at their cost [[15]](#footnote-15)Another indication of the criminal law's tendency is the replacement of the subjective standard, which punishes offenders merely for failure to perform.[[16]](#footnote-16) Criminal law has redefined mens rea, the mental intent to do immoral acts. Fourteenth-century morals made moral responsibility vital to criminal accountability. This wide and subjective notion of mens rea was replaced with more precise and practical rules to address terrible crimes as legal systems progressed. Criminal justice has evolved from a vague sense of evil intention to a more definite goal. This tendency explores mental processes related to various sorts of criminal activity rather than morality. Criminal law now requires specific intent for each crime instead of fundamental malice. This mindset change from morality to criminal intent is crucial. Legal intent depends on the crime, such as murder premeditation or endangering carelessness. An organised and thorough method to evaluating mens rea matches legal criteria to each crime's particular circumstances. The move from broad motivation to strict intent evaluation illustrates how the criminal justice system has developed to handle a variety of offences more properly and efficiently.[[17]](#footnote-17)

As a result the mental requisites for each felony came to differ widely from those of the others. Law evolves by differentiating apparently similar but essentially distinct situations. The constant effort to discern good from bad to better define each offence's mental aspect proved useful. The judicial system became more predictable and less arbitrary. On the other hand, as law grows to maturity there comes a sound tendency to generalize and group together highly particularized forms of wrongdoing, a trend strongly marked today in the law of torts and rather less so in the law of crimes. Too much specialisation of related offences might hinder criminal administration. Combining common-law theft, embezzlement, and deception into statutory larceny [[18]](#footnote-18) has proved highly advantageous. Thus, the steady advancement of criminal law from motivation to intent has been helpful, but one must avoid over-specialization, which goes against the present trend to generalise and combine offences of the same kind. Since crimes involving a specific intent vary as much in intent as in act, studying one crime's specific intent doesn't help determine another's mental element.[[19]](#footnote-19) Trying to define mens rea for all acts of this nature is pointless. Broad generalisations in this area may be dangerous. Although two crimes use the same legal criteria for a given aim, it is rare for their interpretations to differ.

Moral guilt dominated early criminal law. This allowed legal defences for persons who couldn't meet some offences' intent criteria due to personal circumstances. It was believed that genuine crime needs both a physical act and moral shame. Advanced understanding of psychological aspects that may contribute to crime is needed for this strategy. Moral guilt was unavailable to individuals with severe mental illness, youngsters who could not comprehend their conduct, or those frightened by death. Mentally ill persons without a motivation should not be prosecuted. As law progressed, moral responsibility defences became systematic. Mental and personal conditions including illness, infancy, and duress may exonerate offenders. The defence techniques showed a growing understanding of psychology and crime. Mental illness hinders a person from choosing good over evil, hence insanity defences reduce criminal responsibility. Infancy defence: newborns may not be mentally capable of committing crimes. Clear criteria and standards make these protection measures extremely specialised. These defences struggled to prove hidden cognitive events. As defendants were typically barred from testifying, old courts employed practical methods and external examinations to determine an individual's competency to be held responsible for illicit action. So, essential legal rules were formed to balance justice and mental disease recognition challenges. These rules avoided excessive punishment of mentally ill or environmentally disadvantaged people, however they were often arbitrary and wrong. These defences demonstrate the legal system's continual attempts to increase mental competency and moral culpability, adjusting to new information and social demands while maintaining equity and impartiality. Thus, in cases of infancy, resort was had to arbitrary age lines to assist in the determination of the question of discretion; in cases of married women, resort was had to a rebuttable presumption of law which, if not disproved, allowed an acquittal even where no benefit of clergy could be pleaded; in cases of insanity an arbitrary fixed formula was developed under which the task of determining criminal capacity could in effect be handed over bodily to a jury, who might be expected to apply to the determination rough common sense. The presumptions and arbitrary rules applicable in cases of infancy would clearly not be useful in cases of covertures or insanity, and vice versa.

Consequently there grew up in time very divergent defenses, constituting totally unrelated rules and doctrines of substantive law. Each of these substantive defenses[[20]](#footnote-20) has its own doctrines and principles; it is pointless to try to define mens rea by applying a general concept to all circumstances.Fourth, after subtracting cases involving specific intent as constituent elements of particular crimes and cases involving mental capacity, there is a residuum of cases where criminality is absent due to the general lack of a law-breaking or criminal mind. Two types are clear: circumstances when the defendant has a reasonable error of fact, [[21]](#footnote-21) also circumstances when the perpetrator plans a small act that, without carelessness, causes death or a significant unexpected criminal consequence.[[22]](#footnote-22) These decisions developed a defence for the lack of mens rea after specific intent and general personal incapacity instances, and the law is still evolving. Like the other examples, the law is progressively establishing substantive defences based on error of fact or lack of foreseeability of effects, making it relentlessly to draw mens rea inferences from one defence that applies to the other. From the premise that a mens rea or element of moral guilt is an essential basis of criminal culpability, the law has defined and developed that idea in connection to many crimes to connote many different shades of guilt in different settings. Mens rea has become a technical word with varied technical definitions in different settings, but its natural meaning has never been lost, and its need has formed the basis for numerous negative criminal liability situations. This has led to various technical concepts that govern much of criminal law." [[23]](#footnote-23)

The intricacy and evolution of mens rea make defining this criminal law component challenging. Over time, mens rea has altered to reflect legal and cultural developments, resulting in several criminal interpretations. A single, continuous meaning is impossible due to historical and cultural change. Mens rea includes cognitive processes and intents that differ by offence and legal system. Not all mental states essential for criminal responsibility include moral blame, generating communal condemnation, or intent to conduct a legal violation. Many mens rea interpretations reveal that it has no universal meaning. Instead, it should be tailored to each case's circumstances and law. Mens rea is complicated, although some law scholars and practitioners have simplified it. In order to simplify and universalise guilty mental state, Blackstone defined mens rea as "malicious intent". However, these categories often do not include all mental conditions criminal law must handle. Blackstone's "vicious will" distills moral culpability. The different objectives and mental states identified by current criminal law are ignored. Growing mens rea demonstrates that one aim or mental state is inadequate. Instead, it suggests a flexible, situation-specific view of legal and social standards.[[24]](#footnote-24) Nobody knows what a “vicious will” is. Bishop's ambiguous words suggest that mens rea is the desire to do evil.[[25]](#footnote-25) Bouvier, on the other hand, defines mens rea as the “intention to commit a crime.” [[26]](#footnote-26) May leaves one somewhat uncertain whether mens rea means anything or nothing. Wharton is equally vague.” Even as careful a writer as Kenny, after attempting to analyze the meaning of “ the usual mens rea,” is beguiled into a discussion of degrees of mens rea, saying, “A more complex and special (and therefore more guilty) state of mind than the usual mens rea is required for some particular crimes.” And again, “Some less complex and less guilty state of mind than the usual mens rea is sometimes by statutory enactment . . . made sufficient for the mental element in criminal guilt.”[[27]](#footnote-27) Exactly what is meant by a “more guilty” and a “less guilty” state of mind, Professor Kenny do not make clear. Courts and judges are in even worse quagmires of thought. The two leading cases in England on the subject are Regina v. Prince[[28]](#footnote-28) and Regina v. Tolson.[[29]](#footnote-29)

In Regina v. Prince, Brett, J. (later Lord Esher, M. R.) held that mens rea means an intent to commit some criminal offense; other judges held it to mean an intent to do anything which is wrong legally (including tort); eight judges even went so far as to hold it to mean an intent to do anything that is wrong morally -a view which was strongly supported by at least two of the judges in the important case of Regina v. Tolson. Although this last doctrine has been approved by numerous judges and text- writers, it inescapably leads to fresh confusion and endless uncertainty. Each judge has different morals. Judging crime by morality is to mix conscience, which must always be a matter of personal standards, with law. The case of Regina v. Prince instead of clearing up the difficulties undoubtedly did more to confuse and unsettle the law than any recent case upon the subject. It is obvious that the wide variations in the foregoing definitions are due, in part at least, to varying conceptions of the scope covered by the term mens rea. This is the sole exit. Either reject the word or precisely define its scope. Definitions alone don't help. However, they may greatly clarify thinking. Too many have failed to see that mens rea cannot be determined unless one understands what the phrase encompasses. When contrasted with "specific intent" and restricted to exclude personal infirmity, mens rea [[30]](#footnote-30) offences requiring specific intent and crimes based on carelessness may be reduced to a single element, such as the intent to conduct a crime other than a minor police offence. However, expanding mens rea to cover any mental ingredient required to convict for any crime, including specific purpose and concerns generated by personal incapacities, makes it evident that there is no singular state of mind common to all crimes. Many careful criminal law experts have used the term to define the mental state required to convict; [[31]](#footnote-31) This seems reasonable to prevent the constant confusion caused by narrower, ill-defined concepts. This does not lead to a bad conclusion. It highlights the reality that no one state of mind is required for all crimes. Child criminality varies from mad criminality. These vary from a sane adult misinterpreting facts. All three deviate from the murder conviction state of mind. A thorough study of the substantive law governing each category is needed to comprehend the criminal states of mind. Mens rea must be replaced with mentes reae.

***CONCLUSION:***

Many consider mens rea culpable. We do not want to downplay its role in establishing the defendant's liability.

1. POLLOCK AND MAITLAND, [↑](#footnote-ref-1)
2. A Rationale of Mens Rea Author(s): Rollin M. Perkins Source: Harvard Law Review , [↑](#footnote-ref-2)
3. A Rationale of Mens Rea Author(s): Rollin M. Perkins Source: Harvard Law Review , [↑](#footnote-ref-3)
4. A Rationale of Mens Rea Author(s): [↑](#footnote-ref-4)
5. Coke, Third Institute (1641) [↑](#footnote-ref-5)
6. [1970] A.C. 132, 148 [↑](#footnote-ref-6)
7. The term mens rea is used throughout this paper [↑](#footnote-ref-7)
8. " Williamson v. Norris, [i899] I Q. B. 7, I4, per Lord Russell, C. J. " [↑](#footnote-ref-8)
9. I BISHOP, CRIMINAL LAW (9th ed. I930)P. 287. " [↑](#footnote-ref-9)
10. A Rationale of Mens Rea Author(s): Rollin M. Perkins Source: Harvard Law Review , Apr., 1939, Vol. 52, No. 6 [↑](#footnote-ref-10)
11. Regina v. Wagstaffe, Io Cox C. C. 530 (i868); Regina v. Hines, I3 Cox C. C. II4n. [↑](#footnote-ref-11)
12. Commonwealth v. Breth, 44 Pa. Co. Ct. 56 (19I5);64 N. H. 48, 5 Atl. 828 (i886) [↑](#footnote-ref-12)
13. . See 3I & 32 VICT. c. I37, ? 37 (I869), . [↑](#footnote-ref-13)
14. Regina v. Machekequonabe, 28 Ont. Rep. 309 (I897). [↑](#footnote-ref-14)
15. Commonwealth v. Pierce, I38 Mass. I65 (I884). [↑](#footnote-ref-15)
16. See HOLMES, THE COMMON LAW 5o-5I: " [↑](#footnote-ref-16)
17. For instance, as suggested above, the militia required [↑](#footnote-ref-17)
18. See, e.g., MASS. GEN. LAWS (I92I) C. 266, 30; NEW YORK PENAL LAW I290. [↑](#footnote-ref-18)
19. The “malice” [↑](#footnote-ref-19)
20. The term “substantive defense” [↑](#footnote-ref-20)
21. See Levetts Case, Cro. Car. 538 (I638), discussed p. 1016. [↑](#footnote-ref-21)
22. See, e.g., Potter v. State, I62 Ind. 213, 70 N. E. 129 (1904); Dixon v. State, 104 Miss. 4IO, 6i SO. 423 (1913); State v. Horton, 139 N. C. 588, 5I S. E. 945 (1905) ; State v. Trollinger, I62 N. C. 6I8, 77 S. E. 957 (19I3). [↑](#footnote-ref-22)
23. 8 HOLDSWORTII, op. cit. supra note 6, at 446. [↑](#footnote-ref-23)
24. A Rationale of Mens Rea Author(s): Rollin M. Perkins Source: Harvard Law Review , Apr., 1939, Vol. 52, No. 6 [↑](#footnote-ref-24)
25. A Rationale of Mens Rea Author(s): Rollin M. Perkins Source: Harvard Law Review , Apr., 1939, Vol. 52, No. 6 [↑](#footnote-ref-25)
26. LAW DICTIONARY (ioth ed. i86o) sub Intention, ? 3, 647: [↑](#footnote-ref-26)
27. See KENNY, OUTLINES OF CRIMINAL LAW (12th ed. 1926) [↑](#footnote-ref-27)
28. L. R. 2 C. C. R. I54 (i875). [↑](#footnote-ref-28)
29. 23 Q. B. D. i68 (I889). [↑](#footnote-ref-29)
30. Such as questions of insanity, infancy, coverture, compulsion, etc. [↑](#footnote-ref-30)
31. "The maxim 'Actus non facit reum nisi mens sit rea,'"' says Justice Stephen, [↑](#footnote-ref-31)