

# The Case Arguing ‘Reason to Believe’ as Mens Rea

Siddharth Pankaj Tiwari  
National University of Juridical Sciences (NUJS)  
Kolkata, India

## ABSTRACT:

Almost all the offences in the Indian Penal Code have been carefully defined so that they include the precise evil intent which is the essence of that particular offence. Different words which have been used in the IPC to denote mens rea are voluntarily, 'Corruptly', 'knowingly', 'dishonestly', 'Wantonly' or 'fraudulently' or the like. By using these words, the Indian Penal Code gives effect to the doctrine of mens rea. One of the terms used to denote mens rea used in IPC is "reason to believe" which has been defined in section 26 of the IPC as "A person is said to have reason to believe a thing, if he has sufficient cause to believe that thing but not otherwise." This paper tries to analyse the term "reason to believe" and draws a comparison with mens rea with the help of the decided cases.

## I. INTRODUCTION

The Indian penal code drafted by Lord Macaulay was introduced in 1860 in India. The crimes provided in the IPC are mainly based on guilty intention or *mens rea*. But this word that is *mens rea* is nowhere mentioned or defined in IPC. This lack of particular definition raises several questions like what is *mens rea*, how to determine *mens rea* of a person, what's the nature of *mens rea* etc.

Various terms have been used in IPC to denote the term *mens rea*. M.C. Setalvad states that<sup>1</sup>

*"What the Indian Code (Indian Penal Code) seem to have done is to incorporate into the common law crimes the mens rea needed for that particular crime, so that the guilty intention is generally to be gathered not from the Common Law but from the statute itself".*

This view seems to be true as imports of *mens rea* have been indicated by the words such as "dishonestly", "fraudulently", "voluntarily", "intentionally" etc. in the statute i.e. IPC and one such term is "reason to believe".

## II. THE MENTAL ELEMENT OF THE CRIME

The whole criminal law can be said to be based on the Latin maxim "*actus non facit reum nisi mens sit rea.*" which means that without the intent to commit the crime, a crime cannot be committed even if there is an act.<sup>2</sup> Thus whether it's a robbery or small cheating everything require the criminal intent i.e. known as *mens rea* to decide the culpability of the person.

*Mens rea* has several degrees' proportion to which the punishment is awarded to the offender. Generally, the intention is considered to be the highest form of *mens rea* then knowledge then "reason to believe then

<sup>1</sup>M.C.Setalvad, The Common Law of India, p. 139

<sup>2</sup> PSA Pillai's Criminal Law 11th Ed. p. 37

“recklessness” and then “negligence.” So they form some sort of a hierarchy where the intention could be considered as their king. Like Murder has the most serious punishment whereas punishment in section 304A, i.e. “*Causing death by negligence*”, of the IPC is less than it.

Generally, *mens rea* is determined by both objective standard like in *Virrasingh* case and subjective standard as applied in the case of *Ram Bahadur Thapa v state of orrisa*.<sup>3</sup>

Furthermore, some crimes just don't require *mens rea* for giving punishment to the defendant as they are strict liability crime and they don't require *mens rea* because of the language of the statute is construed as such.

Like in *RanjitUdeshi v. State of Maharashtra*<sup>4</sup> the defendant was held liable for selling a book titled “Lady Chatterley's Lover” by David Herbert Lawrence containing some obscene material and the criteria of *Hicklin test* was fulfilled on reading this book. The defendant argued that he lacked the required *mens rea* as he did not know that the contents of the book contained some obscene and explicit material, thus he lacked intent. But even then the court convicted the defendant as by going with the wordings of Section 292<sup>5</sup> knowledge on the part of the offender was not required but the commission of the crime was required<sup>6</sup>.

Every person has fundamental rights and he is free to do anything and every able-bodied person who makes the wrong decision with criminal intent should be liable for the same.<sup>7</sup> The reason for deciding crime on the basis of *mens rea* is probably because the *mens rea* or the mental state is what controls our physical actions and thus commission of the crime can be said to be the result of the extension of *mens rea*.

### III. REASON TO BELIEVE

Section 26 of the Indian Penal code defines what is “reason to believe”. According to it “*A person is said to have reason to believe a thing, if he has sufficient cause to believe that thing but not otherwise.*” In Indian context “intention” or “knowledge” or “reason to believe” are taken as import of *mens rea* almost in all the crimes.<sup>8</sup>

Similar to *mens rea* and intention “reason to believe” is also an intangible thing which cannot be seen and but only can be deduced. There are several explicit mentions of ‘reason to believe’ in the IPC such as sections 202,411,412 etc. which is not the case with *mens rea*. Whereas Reason to believe also finds its place in section 132 of I.T. Act 1961 through which any authority derives power to conduct a search if it has “reason to believe”.

<sup>3</sup> MANU/OR/0052/1960

<sup>4</sup> AIR 1965 SC 881

<sup>5</sup> Section 292 of IPC 1860

<sup>6</sup> PSA Pillai's Criminal Law 11th Ed. p. 41

<sup>7</sup> PSA Pillai's Criminal Law 11th Ed. p. 38

<sup>8</sup> Joti Parshad Vs.: State of Haryana AIR 1993 SC 1167; A.S. Krishnan and Ors. Vs. State of Kerala MANU/SC/0233/2004;

The phrase “*if he has sufficient cause to believe*” implies that what requires is not only the existence of sufficient cause but this sufficient cause must be in the knowledge of the person, and if it is existence is unknown to person and he has no knowledge of it then the person has no “reason to believe” that thing<sup>9</sup>. There are both the subjective and objective standards are taken into consideration in deciding whether the person had “reason to believe” or not. This section talks about whether someone in the position of the accused would have had a reason to believe and whether a third person will also conclude the same thing if placed in similar conditions and circumstances. Hence it can be seen that the “whether a person had the reason to believe will depend on a case to case basis on different facts and different circumstances” as held in *Kuttayan Alias NambiThevar, In Re*<sup>10</sup>

In every section where the phrase reason to believe has been used as the required mental element knowledge is also used with it like “knowing or having reason to believe” This indicates that these both have been utilized to show the required *mens rea* of the offence and if any of the two is found to be true then, then it will be sufficient to indict a person who has this knowledge or reason to believe.<sup>11</sup>

Locke states that knowledge is “the highest degree of the speculative faculties, consists in the perception of the truth of affirmative or negative propositions.<sup>12</sup>” The phrase “reason to believe” is not as strong as knowledge. There are some offences where greater emphasis on knowledge and “reason to believe” has been considered insufficient. Like the offence of section 181.

“Reason to believe” shows and means “*adequacy of cause and not legitimacy of belief.*”<sup>13</sup> For example, B comes to my home with blood on his clothes and body and carrying a weapon. Then B may not be sure whether a crime was committed by him or not but that doesn't mean that B doesn't have reason to believe it if no other reasonable conclusion can be deduced from the given situation.

#### IV. CASE ANALYSIS

In *Jyotiprasad vs State Of Haryana*<sup>14</sup>, the issue involved in this case was that, did the accused had “knowledge” or “reason to believe” regarding the stamps in his possession that whether they were counterfeited or not.

It was held in this case that “reason to believe” can be said to be “another facet of state of mind”.

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<sup>9</sup>S.K. Sarvaria, R A Nelson Indian Penal Code 9th ed. Vol. 1 p. 174

<sup>10</sup>LNIND 1959 MAD 219

<sup>11</sup> Kumar Askand Pandey, Principles of Criminal law in India, p. 123

<sup>12</sup> Aditya Dodalla and Shreya Deb, Mens Rea: An Integral part of Crime, The World Journal On Juristic Polity

<sup>13</sup> Ibid

<sup>14</sup> Supra note 8

“Reason to believe” is not something as same as “suspicion” or “doubt”. “Reason to believe” is on a higher pedestal than the “suspicion” or “doubt” as same as “knowledge” is on a higher pedestal than “reason to believe.”

Knowledge is said to be part of both intention as well as reason to believe but the degree of *mens rea* is different in of the three. The intention is greater in terms of surety of outcome than “knowledge” which in turn is greater than “Reason to believe”. In the present case, the court held that the appellant had reason to believe that stamps in his possession were counterfeit and the court interpreted reason to believe as *mens rea*.

Furthermore, the court said that “A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same.<sup>15</sup>” This view of the court can be seen in cases where a person is selling Rolex watch at very cheap prices. A reasonable person would have reason to believe that either that watch is fake or either it is stolen.

In Hamid Ali and Anr. Vs. The State<sup>16</sup> accused were found in possession of forged notes. It was held in the case that the “suspicion” and “doubt” cannot be at the same level as “reason to believe” and neither can be raised to the level of ‘reason to believe’ to convict an accused.

A person is said to have “reason to believe” “if the situations and circumstances are such that “any reasonable man would conclude the nature of the thing concerned by probable reasoning”<sup>17</sup>.

The person is punished under the offence that was in fact committed not on the offence that the accused had “reason to believe” was committed.<sup>18</sup>

In *Titu Kumar Deb Vs. State of Tripura*<sup>19</sup> the accused had the “reason to believe” that the slips used to withdraw the money were forged even then the accused used them to withdraw money from the bank, resulting into his conviction under 471 of the IPC.

Whereas in *Palvinder Kaur Vs. The State of Punjab*<sup>20</sup> the accused was acquitted as “reason to believe” or “knowledge” formed major ingredient of section 201 of IPC and “reason to believe’ was not proved.

Thus existence or non-existence of “reason to believe” in the absence of other imports of *mens rea* plays a huge role. It may either lead to a conviction as in *Titu Kumar Deb Vs. State of Tripura*<sup>21</sup> in its presence, whereas in the case of *Palvinder Kaur Vs. The State of Punjab*<sup>22</sup> its absence led in acquittal.

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<sup>15</sup> Supra note 8

<sup>16</sup> Hamid Ali and Anr. Vs. The State 1961 CriLJ 801

<sup>17</sup> Supra note 8; Abdul Kareem Vs. State of Mysore

<sup>18</sup> Roshan Lal and Ors. Vs. State of Punjab MANU/SC/0089/1964

<sup>19</sup> Titu Kumar Deb Vs. State of Tripura MANU/TR/0088/2017; Charles Shayaraj and Ors. Vs. State MANU/TN/5240/2018; Charles Shayaraj and Ors. Vs. State MANU/TN/5240/2018

<sup>20</sup> Palvinder Kaur Vs. The State of Punjab MANU/SC/0038/1952; Sujith S/o Kalesan Vs. Respondent: State of Kerala MANU/KE/0729/2007; Wattan Singh and Ors. Vs. State of Punjab MANU/SC/0089/2004

There are several acquittals<sup>23</sup> in the cases as the import of *mens rea* “reason to believe” was not attributed to the accused thus not fulfilling the elements of the crime that is both the *mens rea* and *actusreus*. And also several convictions<sup>24</sup> on the presence of “reason to believe” thus showing that the “reason to believe” is taken as same as *mens rea*.

## V. CONCLUSION

*Mens Rea* or guilty intention of any person has the highest surety of outcome of the *actusreus* on the other hand, it is less in the “reason to believe” import of *mens rea*. “Reason to believe” is something short of “knowledge” but more than “suspicion” or “doubt”. In belief, multiple hypotheses are possible whereas in knowledge only one hypothesis is possible.

On analysis of the aforementioned cases, we conclude that the reason to believe was acting as deciding factor into determining the culpability of the accused as it either resulted into conviction or acquittal even if there was some *actusreus* on the part of the accused. Thus from the analysis of the cases, we may conclude that reason to believe acts as the import of *mens rea*.

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<sup>21</sup> Supra note 17

<sup>22</sup> Supra note 18

<sup>23</sup> R. Renold Vs. State MANU/TN/0729/2015; Emperor vs Latoor AIR 1930 All 33; Kishan Lal Vs. State MANU/UP/0263/1979; Prabha Malhotra and Ors. Vs. State MANU/UP/1132/1999; Bhagguram and Ors. Vs. State of Madhya Pradesh MANU/MP/0141/1981; Mukhtar Hussain Vs. State of Odisha MANU/OR/0554/2018

<sup>24</sup> The Present Case Emanated from The ... vs Padmanabha Rao; MoinuddinMozumdar Vs. State of Assam MANU/SC/0145/1971; Budhan Singh and Ors. Vs. State of Bihar MANU/SC/8110/2006; Pankaj Srivastava Vs. The State of Jharkhand MANU/JH/0365/2017