BLOGS

All You Need to Know About Mens Rea and Actus Reus

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Introduction

For centuries, a simple yet profound Latin maxim has formed the bedrock of criminal law:*Actus non facit reum nisi mens sit rea*. This translates to “an act does not make a person guilty unless their mind is also guilty.”

This principle dissects a crime into two essential components: a physical element and a mental element. In legal terms, these are the *Actus Reus*(the guilty act) and the *Mens Rea* (the guilty mind). To hold a person criminally liable, the prosecution must prove both beyond a reasonable doubt.

This post will explore the anatomy of a crime through these two pillars and shed focus on comparison between IPC and Bharatiya Nyaya Sanhita.

Actus Reus: The Guilty Act

Actus Reus is the physical component of a crime. It is the wrongful act, omission, or state of affairs that is prohibited by law. It is the tangible part of the offence that you can see or observe. This can manifest in several ways:

- A Positive Act: This is the most common form, where a person actively does something forbidden. For example, the act of stabbing someone is the actus reus of murder or hurt.
- An Illegal Omission: A person can also be held liable for not doing something. However, this only applies if they had a legal duty to act in the first place. For instance, a jailor failing to provide food to a prisoner, leading to the prisoner’s death, is an illegal omission.

Comparison (IPC vs. BNS): The fundamental understanding of *actus reus* remains consistent between the IPC and the BNS. The definition of an “act” including an “illegal omission” provided in Section 33 of the IPC has been retained.

The BNS continues to define crimes through their physical elements, such as the act of taking property in theft or causing bodily injury in assault. The core principle that a wrongful physical act must occur has not changed.

Mens Rea: The Guilty Mind

Mens Rea is the mental or psychological element of a crime. It refers to the guilty state of mind of the accused at the time they committed the *actus reus*. It is the element of fault or blameworthiness. The law recognizes different levels of *mens rea*, with some being more culpable than others.

- Intention: The highest degree of fault, where the accused has a clear desire to commit the act and achieve the prohibited consequence.
- Knowledge: The accused is aware that their actions will almost certainly lead to a prohibited result, even if they don't actively desire it.
- Recklessness: The accused foresees a risk of harm from their actions but decides to take that risk anyway.
- Negligence: The accused fails to exercise the standard of care that a reasonable and prudent person would have exercised in the same situation.

Comparison (IPC vs. BNS): The IPC never explicitly defined the term "mens rea" in one place. Instead, it embedded the concept into the definitions of specific offences using words like "intentionally," "knowingly," "voluntarily," "dishonestly," or "fraudulently." The BNS, 2023, continues this established practice. It does not introduce a general, overarching definition of *mens rea*. Rather, the required mental state is defined within each specific crime, preserving the structural approach of the IPC.

Key Developments and Clarifications in the BNS

While the foundational principles are the same, the BNS has introduced new offences and clarified existing ones, which in turn refines the application of *actus reus* and *mens rea*.

Introduction of New Offences

The BNS brings in new categories of crime that did not exist in the IPC, each with a specific mental and physical element.

- Organised Crime (Section 111, BNS): The actus reus involves unlawful activities like kidnapping, extortion, or land grabbing. The mens rea is the specific “intention to gain any direct or indirect material benefit,” carried out as a member of a criminal syndicate.
- Terrorist Act (Section 113, BNS): The IPC did not have a dedicated provision for terrorism. The BNS introduces this with a high-threshold mens rea: the act must be done with the “intent to threaten or likely to threaten the unity, integrity, security, or sovereignty of India or with the intent to strike terror in the people.”

Clarification in Existing Offences

The BNS provides much-needed clarity in areas that were previously subject to extensive judicial interpretation under the IPC.

- Deceitful Means in Sexual Offences (Section 69, BNS): The IPC did not have a specific provision for sexual intercourse procured by deceitful means, such as a false promise of marriage. Such cases were often litigated under the complex framework of “consent” in the rape laws. Section 69 of the BNS now creates a distinct offence. Here, the actus reus is the act of sexual intercourse, and the specific mens rea is the knowledge of the “deceitful means” used to obtain consent.
- Attempt to Commit Suicide (Section 224, BNS): Section 309 of the IPC controversially criminalised any attempt to commit suicide. The BNS completely changes the mens rea for this act. Under Section 224, the act of attempting suicide is only punishable if it is done with the “intent to compel or restrain any public servant from discharging his official duty.” This decriminalises the act for those under mental distress and criminalises it only when it is used as a coercive weapon against the State.

The Role of General Exceptions

Both the IPC and the BNS acknowledge that a person should not be held guilty even if they have committed the *actus reus* with the required *mens rea*, provided their actions fall under certain exceptions.

The General Exceptions, previously in Chapter IV of the IPC and now in Chapter III of the BNS, include defences like mistake of fact, act of a person of unsound mind, intoxication without knowledge, and private defence. These fundamental defences, which essentially negate criminal

liability, remain largely consistent in the new Sanhita.

Conclusion

The bedrock of criminal law, the union of a guilty act and a guilty mind, remains unshaken in the transition from the IPC to the Bns. The BNS does not reinvent these core principles but rather builds upon them. It preserves the IPC's method of defining the mental state within each crime but sharpens the focus.

By introducing new offences with specific mental elements, such as organised crime, and by clarifying grey areas in existing law, like deceitful promises to marry, the BNS has refined the application of *actus reus* and *mens rea*, making them more attuned to the complexities of contemporary society.