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Ignorantia Facti Excusat, Ignorantia Juris Non Excusat: Mistake of Fact and Mistake of Law under the General Exceptions of the Bharatiya Nyaya Sanhita, 2023

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Abstract

The maxim that ignorance of fact may excuse while ignorance of law never does is among the oldest principles of criminal law. This article examines how the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the Indian Penal Code, 1860 from 1 July 2024, preserves this distinction in Chapter III (General Exceptions). It argues that the line between fact and law is less stable than the maxim suggests, and proposes legislative and judicial reforms to address the injustice that can follow.

Keywords: *ignorance, general exceptions, juris, mistake of fact, mistake of law*

I. Introduction

Criminal liability traditionally requires a guilty act (*actus reus*) and a guilty mind (*mens rea*). A person who acts under a genuine mistake about the facts lacks the required mental state. For example, a person who takes another's identical umbrella, honestly believing it to be their own, does not intend to commit theft. A person who acts in ignorance of the law, however, is presumed to have the necessary intent, because the law is deemed knowable by everyone.

Two rationales support this rule. The first is necessity: if ignorance of law were a defence, every accused would claim it and courts could not test the claim.[1] The second is the social-order argument that the State must be able to enforce its commands uniformly.[2]

This article asks how the Bharatiya Nyaya Sanhita, 2023 (BNS) operationalises the fact/law distinction in its general exceptions, and whether the distinction is sustainable in an age of expanding, technical legislation.

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[1] Law Commission of India, *Report No. 42: Indian Penal Code* ¶ 4.9 (1971), https://www.advocatekhoj.com/library/lawreports/indianpenalcode/22.php.

[2] *Id.* ¶ 4.8.

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II. Application of legal provisions and exceptions

A. Mistake of fact expressly protected

Two sections of Chapter III carry the maxim in their text.

- **Section 14 BNS** (corresponding to Section 76 of the Indian Penal Code, 1860 (IPC)) protects a person who is not in fact bound by law to do an act but, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes themselves bound to do it.[3]
- **Section 17 BNS** (corresponding to Section 79 IPC) protects a person who is not in fact justified by law but, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes themselves justified.[4]

The phrase "and not by reason of a mistake of law" is the statutory embodiment of the maxim.[5] Both sections also depend on good faith, which the Sanhita defines in terms of due care and attention.[6] An honest but careless belief therefore does not qualify.[7]

B. Related exceptions where mistake operates indirectly

- **Section 18 BNS** (accident in a lawful act) depends on the absence of criminal intention or knowledge, and **Section 19 BNS** (act likely to cause harm but done without criminal intent and to prevent other harm) on the absence of a criminal intention to cause harm.[8]
- **Section 22 BNS** (unsoundness of mind) addresses incapacity to know the nature of the act or that it is wrong or contrary to law. Here, notably, ignorance of the wrongfulness of an act is itself part of the defence, a limited recognition that incapacity can displace the presumption of legal knowledge.[9]
- **Section 28 BNS** (consent given under fear or misconception of fact) shows that a factual misconception vitiates consent.[10]

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[3] The Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023), § 14; The Indian Penal Code, No. 45 of 1860, India Code (1860), § 76.
[4] Bharatiya Nyaya Sanhita § 17; Indian Penal Code § 79.
[5] Law Commission of India, *supra* note 1, ¶ 4.6 (on the same words in §§ 76 and 79 of the Indian Penal Code).
[6] Bharatiya Nyaya Sanhita § 2(11).
[7] *State of Orissa v. Bhagaban Barik*, (1987) 2 SCC 498, (1987) 2 SCR 785, 789 (India) (applying the corresponding definition in § 52 of the Indian Penal Code).
[8] Bharatiya Nyaya Sanhita §§ 18–19.
[9] *Id.* § 22.
[10] *Id.* § 28.

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- **Section 30 BNS** (acts done in good faith for the benefit of a person) turns on good faith, and the private defence provisions (**Sections 34 to 44**) turn on reasonable apprehension, which is a mistake-of-fact question.[11]

C. Mistake of law: the general rule

Nothing in Chapter III excuses an offender who did not know their act was prohibited.[12] Courts have held that knowledge of the law is not an element of the offence unless the statute makes it one.[13]

III. Case law

- *R v. Prince* held that a defendant's honest and reasonable belief that a girl was eighteen was no defence to taking an unmarried girl under sixteen out of her father's possession, because the statute imposed liability on that element regardless of belief.[14]
- *R v. Tolson* accepted an honest and reasonable belief that the husband was dead as a defence to bigamy, and is the classic English statement of mistake of fact.[15]
- *Chirangi v. State* is the standard Indian illustration of the Section 79 IPC (now Section 17 BNS) line of reasoning: the accused, in a moment of delusion, believed that his son was a tiger and killed him with an axe, and the Nagpur High Court set aside his conviction because he was protected by mistake of fact.[16]
- *State of Maharashtra v. M.H. George* held that the accused's ignorance of a Reserve Bank notification did not excuse a violation of foreign exchange regulation, which confirms that mistake of law is no defence even where the mental element appears otherwise absent.[17]
- *State of Orissa v. Bhagaban Barik* rejected a plea of mistake of fact under Section 79 IPC for want of good faith, which requires due care and attention, and convicted the accused under Section 304 Part II IPC. The Court also quoted with approval the statement that the mistake must relate to fact and not to law.[18]

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[11] *Id.* §§ 30, 34–44.
[12] Law Commission of India, *supra* note 1, ¶ 4.6 (on the Indian Penal Code).
[13] *See State of Maharashtra v. M.H. George*, AIR 1965 SC 722, (1965) 1 SCR 123, 163 (India).
[14] *R v. Prince*, (1875) LR 2 CCR 154 (Eng.).
[15] *R v. Tolson*, (1889) 23 QBD 168 (Eng.).
[16] *Chirangi v. State*, AIR 1952 Nag 282 (India).
[17] *M.H. George*, *supra* note 13, (1965) 1 SCR at 163 (treating the notification as published by its appearance in the Official Gazette, and the respondent's ignorance of it as irrelevant to his liability).
[18] *Bhagaban Barik*, *supra* note 7, (1987) 2 SCR at 789, 791.

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- *Nathulal v. State of Madhya Pradesh* considered the role of an honest belief about facts in an economic offence and its relationship with *mens rea*: the Supreme Court acquitted a foodgrain dealer who stored stock under a *bona fide* belief that the licence he had applied for had been issued, because he had not intentionally contravened the Essential Commodities Act, 1955.[19]
- *Lim Chin Aik v. The Queen* held that a person cannot be convicted for breaching a prohibition that was never published or made known to them, a strong authority for a "reasonable opportunity to know" limit on the maxim.[20]
- *R v. Smith (David)* treated a mistaken belief about civil property rights as a mistake that negates the mental element of criminal damage, showing how a mistake of civil law can operate with the same effect as a mistake of fact.[21]

IV. CRITICAL ANALYSIS

The fact/law boundary is unstable. Many real-life mistakes are mixed. A person who believes they own property commits a mistake that is partly factual (who has title) and partly legal (what the transfer rules produce). *R v. Smith* shows that courts sometimes treat such mistakes as negating the mental element, whatever their label, to avoid convicting the honest.[22] Sections 14 and 17 BNS offer no guidance, so outcomes depend on how a judge labels the mistake.

The presumption of knowledge is a fiction. India has a vast body of central, state, and delegated legislation, much of it technical, frequently amended, and available mostly in English. The BNS itself replaced a code that had stood for over 160 years,[23] and citizens, police, and lawyers are still adapting. Insisting that every person knows the law is hard to defend as a factual assumption, and increasingly looks like a rule of convenience.[24]

Strict liability compounds the problem. In regulatory offences, mistake of fact may not help either, where *mens rea* is excluded.[25] The accused is then denied both defences.

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[19] *Nathulal v. State of Madhya Pradesh*, AIR 1966 SC 43 (India).
[20] *Lim Chin Aik v. The Queen*, [1963] AC 160, 171 (PC). *But see M.H. George*, *supra* note 13, (1965) 1 SCR at 160–61, 163–64 (distinguishing *Lim Chin Aik* and treating publication in the Official Gazette as sufficient).
[21] *R v. Smith (David)*, [1974] QB 354 (CA) (Eng.).
[22] *Id.*
[23] Bharatiya Nyaya Sanhita § 358(1).
[24] LAW COMMISSION OF INDIA, *supra* note 1, ¶ 4.8 (stating that "the presumption about everyone knowing the law cannot stand scrutiny for a moment").
[25] *See Sarjoo Prasad v. State of Uttar Pradesh*, AIR 1961 SC 631, (1961) 3 SCR 324, 327–28 (India) (holding a seller of adulterated food punishable without proof of *mens rea*, and ignorance of the nature or quality of the food no defence unless the written-warranty conditions of § 19 of the Prevention of Food Adulteration Act, 1954 are met); *cf. M.H. George*, *supra* note 13, (1965) 1 SCR at 153–54 (finding "no scope for the invocation of the rule of *mens rea*" under the Foreign Exchange Regulation Act, 1947, beyond the conscious act of bringing gold into India).

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Good faith is demanding. The requirement of due care and attention is sensible, but it places the burden on the accused, who must show the reasonableness of their belief without clear statutory standards.[26]

Incapacity is the only door. Section 22 recognises ignorance of wrongfulness only for those of unsound mind, and Section 23 only for those intoxicated without their knowledge or against their will, which leaves no pathway for a sane and sober person who was misled, for example by official advice.[27]

V. SUGGESTIONS

1. **A limited "reasonable mistake of law" provision.** Following the approach in some common-law systems, the BNS could recognise a defence where the accused relied on an official statement, court decision, or written legal advice that was later found erroneous, subject to good faith and due diligence.[28]
2. **Publication and accessibility duties.** Following *Lim Chin Aik*, convictions under subordinate legislation should require proof that the instrument was duly published and reasonably accessible,[29] with translation into regional languages.[30]
3. **Statutory clarification of mixed mistakes.** An explanation to Sections 14 and 17 should state that a mistake about a civil-law right, which negates the mental element required by the offence, is treated as a mistake of fact.[31]
4. **Sentencing mitigation.** Where the maxim denies a defence, courts should treat a genuine, reasonable ignorance of a technical rule as a mitigating factor.
5. **Public legal literacy.** A presumption of knowledge is only fair if the State invests in legal awareness, plain-language summaries, and free access to the new criminal codes.

VI. CONCLUSION

The BNS carries forward the IPC's careful wording, protecting mistakes of fact in Sections 14 and 17 and refusing the same protection to mistakes of law. The principle remains defensible as

[26] The Bharatiya Sakshya Adhiniyam, No. 47 of 2023, INDIA CODE (2023), § 108.
[27] Bharatiya Nyaya Sanhita §§ 22–23.
[28] *See* LAW COMMISSION OF INDIA, *supra* note 1, separate Note by R.L. Narasimham ¶ 5 (reproducing Model Penal Code § 2.04(3) (Proposed Official Draft 1962)). *But see* LAW COMMISSION OF INDIA, *supra* note 1, ¶ 4.7 (declining to change the rule).
[29] *Lim Chin Aik*, *supra* note 20, at 171; GLANVILLE WILLIAMS, CRIMINAL LAW: THE GENERAL PART 292 (2d ed. 1961), *quoted in* LAW COMMISSION OF INDIA, *supra* note 1, separate Note by R.L. Narasimham ¶ 15.
[30] *Cf.* LAW COMMISSION OF INDIA, *supra* note 1, ¶ 4.10 (treating translation into the language of the accused and wide publication as what a due-diligence test would presuppose).
[31] *See Smith (David)*, *supra* note 21.

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a rule of administrative necessity, but its application is increasingly strained by the complexity of modern law and the blurred border between fact and law. A narrow, carefully drafted defence for reasonable reliance on official sources, combined with better publication and accessibility of laws, would preserve the maxim's purpose while reducing injustice. The next step for Indian courts is to develop principled tests for classifying mixed mistakes rather than relying on labels.

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