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The Thin Line Between Innocence and Liability: Mistake of Fact and Mistake of Law under the Bharatiya Nyaya Sanhita, 2023

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ABSTRACT

To convict someone of a crime, the law usually needs two things: a wrongful act (actus reus) and a guilty mind (mens rea). The General Exceptions chapter of the Bharatiya Nyaya Sanhita, 2023 (BNS) builds on an old legal idea, expressed in two Latin phrases: ignorantia facti excusat and ignorantia juris non excusat. In plain terms, a mistake about the facts can excuse a person, but a mistake about the law cannot. If someone honestly and reasonably gets the facts wrong, they may lack the guilty mind the law requires, so the act may not be a crime at all. But if someone simply did not know a law existed, that is not accepted as an excuse, because the law assumes every person knows the law once it has been properly published. This paper looks at Sections 14 and 17 of the BNS, which carry forward Sections 76 and 79 of the Indian Penal Code, 1860 (IPC), and traces how courts have applied this distinction, from the old English case of Queen v. Tolson to the Supreme Court's 2025 decision in Sakshi Arha v. Rajasthan High Court. It argues that although the rule is clear in theory, it still raises real questions of fairness, especially as laws multiply and not everyone has equal access to legal information.

Keywords: *mistake of fact, mistake of law, mens rea, general exceptions, Bharatiya Nyaya Sanhita, ignorantia juris*

I. INTRODUCTION

If a person breaks a rule they never knew existed, the law usually treats them more harshly than a person who broke no rule at all but was honestly wrong about the facts in front of them. This is the idea behind the maxim *ignorantia facti excusat, ignorantia juris non excusat*: ignorance of fact can excuse a person; ignorance of law cannot. The BNS does not leave this to guesswork. It is written directly into the General Exceptions in Chapter III. The law works on the

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assumption that everyone knows the law of the land. This assumption is not always realistic, but the alternative, letting people say 'I did not know it was illegal' and get away with it, would make it almost impossible to enforce any law at all. At the same time, if someone's actions come from an honest and reasonable misunderstanding of the facts, and not from ignorance of the law, they may not have the guilty mind the offence requires. In that case, the act may not be a crime.

This paper looks at that distinction as it stands under the BNS, which came into force on 1 July 2024. It also looks at the case law that shaped this rule both before and after the new code, and asks whether the rule still makes sense today.

II. OBJECTIVES OF THE STUDY

- To understand why a mistake of fact can excuse a person from criminal liability, but a mistake of law cannot.
- To study the ingredients of Sections 14 and 17 of the BNS and compare them with the older provisions of the IPC.
- To look at both old and recent cases to see how courts tell an honest factual mistake apart from an unacceptable claim of not knowing the law.
- To weigh the costs of each rule: allowing fake excuses on one side, and punishing people who genuinely did not know better on the other.
- To bring in recent judgments, including a 2025 Supreme Court ruling, to see how the rule is being applied today.

III. LITERATURE REVIEW

Douglas Husak has questioned the traditional view that not knowing the law can never reduce a person's guilt.¹ He agrees that the rule serves a purpose: it stops people from falsely claiming ignorance to dodge punishment, and it pushes citizens to make some effort to learn the rules that apply to them. But he argues that the rule, as it is usually stated, goes too far. His main point is that what really matters for guilt is whether a person understood that what they were doing was wrong, not whether they knew the exact legal label for it. If someone genuinely did not realise their act was wrong, Husak says their guilt is lower, even if their mistake was technically about the law rather than the facts. On this view, the line between mistake of law and mistake of fact is not as sharp as the old maxim suggests.

¹ Douglas Husak, *Ignorance of Law: A Philosophical Inquiry* (Oxford University Press 2016).

Indian courts, however, have taken a firmer, more traditional line. In *Union of India v. Ganesh Das Bhojraj*, the Supreme Court held that once a notification is published in the Official Gazette, there is no need to serve individual notice on every person; publication itself is treated as giving everyone constructive knowledge of the law.² *B.K. Srinivasan v. State of Karnataka* added an important condition to this: the law or notification must first be properly and clearly published before anyone can be presumed to know it.³ Writers on this subject have often pointed out the gap between this formal rule and everyday reality. Many people cannot read the Gazette, do not have easy access to legal information, or simply cannot keep up with the sheer number of new rules and notifications.⁴ The BNS has not solved this problem. If anything, as more rules and regulations pile up across different sectors, the old assumption that everyone knows the law becomes harder to defend in practice, even though courts continue to apply it strictly.

IV. MISTAKE OF FACT UNDER THE BNS

A. The Basic Idea

Sections 14 and 17 of the BNS largely repeat, without real change, the protection that Sections 76 and 79 of the IPC used to give. Both sections rest on a simple idea: if a person is wrong about a fact that matters to the offence, they cannot be said to have formed the guilty intention the law requires. A mistake, in this sense, means a wrong belief caused by genuine ignorance or misunderstanding of what was actually happening. This kind of mistake removes *mens rea*; it does not just excuse an act that would otherwise count as a crime, it means the crime, properly understood, was never really committed.

Section 14 protects someone who is bound by law to do something, or who honestly and in good faith believes they are bound by law to do it, because of a mistake of fact (not a mistake of law). Section 17 gives similar protection to someone who is justified by law in doing an act, or who honestly believes, because of a mistake of fact, that they are justified. Both sections are careful on one point: the mistaken belief must come from getting the facts wrong, never from misunderstanding what the law actually says.

B. Ingredients of Section 14

- The person is bound by law to do the act; or
- The person honestly believes, in good faith, that they are bound by law to do it; and

² *Union of India v. Ganesh Das Bhojraj* (2000) 9 SCC 461.

³ *B.K. Srinivasan v. State of Karnataka* (1987) 1 SCC 658.

⁴ Shrutanjaya Bhardwaj and Rishav Devrani, 'Ignorance of Law is a Good Excuse' (RSRR Blog, 10 September 2023) <https://www.rsrr.in/post/ignorance-of-law-is-a-good-excuse> accessed 7 July 2026.

- That belief comes from a mistake of fact, not a mistake of law.

A standard example: a soldier fires on a mob under the lawful order of a superior officer. He commits no offence, because he was acting under a real legal duty. Another example: a court officer, acting in good faith, arrests the wrong person by an honest mistake while executing a warrant. He too is protected. Private citizens who help the police under a legal duty, now found in Section 40 of the Bharatiya Nagarik Suraksha Sanhita, 2023, get similar protection.

C. Ingredients of Section 17

- The person is justified by law in doing the act; or
- The person honestly believes, in good faith, that they are justified by law in doing it; and
- That belief comes from a mistake of fact, not a mistake of law.

A common example: a person sees what looks like a murder taking place and, acting in good faith, arrests the person who appears to be the attacker, meaning to hand them over to the police. Even if it later turns out the 'attacker' was actually acting in self-defence, no offence is committed, because the mistake was about the facts. 'Justified by law' here simply means 'not prohibited by law.'

D. How Courts Have Applied This

The key English case is *Queen v. Tolson*.⁵ Mrs Tolson was tried for bigamy after she remarried, honestly and reasonably believing, after making extensive enquiries, that her missing husband was dead. The court held that her honest and reasonable mistake of fact meant she lacked the criminal intent needed for the offence, and it quashed her conviction. This case is still the standard example of how an honest mistake about the facts, even a wrong one, can be a full answer to a criminal charge.

Indian courts have applied the same reasoning under the old IPC provisions, and that case law still matters for reading the BNS. In *Chirangi v. State*, a widower, suffering a sudden bout of temporary insanity, mistook his own son for a tiger while out gathering leaves on a hillside, and killed him.⁶ The Nagpur High Court held that he did not understand the nature of his act, and that his belief, however tragic, was a genuine mistake of fact rather than any mistake of law. He was acquitted. In a similar case, *State of Orissa v. Khora Ghasi*, a man guarding his field shot an arrow at what he honestly believed was a bear, only to find he had killed a person.⁷ The court

⁵ *Queen v. Tolson* (1889) 23 QBD 168.

⁶ *Chirangi v. State* AIR 1952 Nag 282.

⁷ *State of Orissa v. Khora Ghasi* (1978) Cri LJ 1305 (Ori).

held that his honest mistake of fact gave him the protection now found in Sections 14 and 17 of the BNS.

These cases show a consistent test: the mistake must be honest, it must be reasonable in the circumstances, and it must be about a fact that actually matters to the offence, not just a legal label attached to that fact.

V. MISTAKE OF LAW: WHY IT IS NOT A DEFENCE

A mistake of law means a person did not know a particular law existed, or misunderstood what it required. Unlike a mistake of fact, this is never accepted as a defence, and the rule applies equally to citizens and foreigners. The reasoning is practical: if not knowing the law were accepted as an excuse, almost everyone accused of a crime would say they did not know, and courts would have no real way to check who was telling the truth. So the rule protects legal certainty and makes the law enforceable, even though it can feel unfair in individual cases.

This idea goes back to Roman law and was absorbed into the common law system that India inherited. Courts have long held that once a law is properly published, usually in the Official Gazette, there is no need to notify each person individually. Publication itself counts as notice to everyone.⁸ The clearest example of how strictly this rule can be applied is *State of Maharashtra v. Mayer Hans George*.⁹ A foreign national arriving in Bombay was found carrying undeclared gold, which broke a Reserve Bank notification that had come into force only a few days before his arrival. He said he did not know about the notification. The Supreme Court held that where a law creates a strict offence to protect an important public interest, here, the country's foreign exchange reserves, a person cannot use their own ignorance of a properly published notification as a defence.

More recently, the Supreme Court applied the same principle in *Sakshi Arha v. Rajasthan High Court*, decided on 8 April 2025.¹⁰ In that case, some candidates from reserved categories were turned down for the post of Civil Judge because they had submitted their caste or category certificates in the wrong form, or from the wrong authority, as set out in the recruitment rules. They argued that they had simply not understood the finer procedural requirements or missed the relevant deadline. A three-judge bench rejected this argument. It held that the rule 'ignorance of law is no excuse' applied fully here, and noted that these candidates, being law graduates sitting for a judicial exam, were if anything better placed than an ordinary person to know what

⁸ *Union of India v. Ganesh Das Bhojraj* (2000) 9 SCC 461; *Harla v. State of Rajasthan* AIR 1951 SC 467.

⁹ *State of Maharashtra v. Mayer Hans George* AIR 1965 SC 722.

¹⁰ *Sakshi Arha v. Rajasthan High Court* 2025 INSC 463.

was expected of them. The case shows that this rule still carries real weight, even outside criminal law, and that courts are unwilling to relax it just because it produces a harsh result for the person in front of them.

That said, courts have not applied the rule with the same rigidity in every case. In some situations, judges have softened it where a whole group of people clearly has no real way to learn or understand the law in question, for example, where illiteracy and a total lack of public awareness efforts made it plainly unfair to hold people to the usual standard.¹¹ These cases do not overturn the general rule. They show that questions of good faith and reasonableness still matter, even within a rule that is, in principle, strict and absolute.

VI. GENERAL EXCEPTIONS UNDER THE BNS: STRUCTURE AND BURDEN OF PROOF

Chapter III of the BNS, covering Sections 14 to 44, sets out the General Exceptions. These are situations where an act that looks like an offence is not treated as one, or where liability for it is reduced. These exceptions apply not only to offences under the BNS itself, but also to offences under any other special or local law, because of how Section 2(24), read with Section 3(1) of the Sanhita, defines the word 'offence.'

The exceptions fall into two broad groups:

- Excusable acts, under Sections 14, 17, 18, 20, 21, 22, 23 and 24, where the guilty mind needed for the offence is simply missing.
- Justifiable acts, under Sections 15, 16, 19, 25 to 27, and 30 to 44, where the circumstances give the person a legal justification for what they did, even though the mental element might otherwise be present.

Normally, it is the prosecution's job to prove guilt. But Section 108 of the Bharatiya Sakshya Adhiniyam, 2023 flips this rule where an accused person wants the benefit of a General Exception: it is then for the accused to show, on a balance of probability, that their case fits within one of the exceptions in Chapter III.

¹¹ See the Madhya Pradesh High Court's observations on illiteracy and legal awareness in a 2023 POCSO Act matter, reported in 'Unjust To Apply "Ignorance Of Law Is No Excuse" Rule In Case Of Illiterate POCSO Offenders: Madhya Pradesh High Court' (LiveLaw, 14 April 2023) <https://www.livelaw.in/news-updates/madhya-pradesh-high-court-pocso-act-illiterate-offender-awareness-pocso-act-teenage-relations-226189> accessed 7 July 2026.

Chirangi v. State, discussed above, is a good example of how this burden works in practice. The accused was able to show, on the facts, that his belief was honestly held, so the exception applied to him.¹²

VII. MISTAKE OF FACT VS MISTAKE OF LAW

Mistake of Fact	Mistake of Law
A wrong belief about a fact or situation.	Not knowing about, or misunderstanding, a law.
Counts as a General Exception and can be used as a defence.	Cannot be used as a defence in any situation.
The accused must prove the mistake existed and was made in good faith.	This question does not arise, because the defence is not available at all.
Protects an honest, innocent state of mind.	Stops people from escaping liability just by claiming ignorance.
Can fully excuse or justify the act.	Cannot excuse or justify the act.

Table 1: Mistake of Fact compared with Mistake of Law

VIII. SUGGESTIONS

- Legal literacy efforts need to be strengthened, especially in areas where rules and notifications change often, so that the assumption 'everyone knows the law' rests on firmer ground.
- Courts should keep testing claims of mistake of fact carefully, checking not just whether the belief was honest but also whether it was reasonable in the circumstances, so that the exception does not become a shortcut for made-up defences.
- Where a law places heavy procedural demands on ordinary citizens (as opposed to regulated businesses), the government should take real steps to publicise those demands, rather than relying only on formal Gazette notices.
- Following the reasoning in *Sakshi Arha*, professionals and near-professionals, such as law graduates, should expect courts to hold them strictly to the rule that ignorance of law is no excuse, and should treat compliance with procedural rules as a first priority, not an afterthought.

IX. CONCLUSION

The BNS keeps, almost unchanged, the long-standing line between an excusable mistake of fact and an inexcusable mistake of law. Sections 14 and 17 still protect a person who acts in good faith under a genuine misunderstanding of the facts, as seen in *Tolson*, *Chirangi*, and *Khora Ghasi*; in such cases, the guilty mind the law requires is simply absent. On the other hand, the

¹² *Chirangi v. State* AIR 1952 Nag 282.

rule that ignorance of law is no excuse, confirmed again as recently as *Sakshi Arha* in 2025, still holds that not knowing the law gives no relief, because allowing that excuse would undermine both legal certainty and the practical working of the justice system. The basic distinction remains sound in principle. But how fair it feels in practice depends heavily on whether courts and lawmakers take seriously the assumption at its heart, that the law really is known, or at least knowable, by the people it binds. As regulation keeps growing more complex, that question, rather than the basic rule itself, is likely to remain the harder one to answer.

X. BIBLIOGRAPHY

A. Cases

- *Queen v. Tolson* (1889) 23 QBD 168
- *Chirangi v. State* AIR 1952 Nag 282
- *State of Orissa v. Khora Ghasi* (1978) Cri LJ 1305 (Ori)
- *B.K. Srinivasan v. State of Karnataka* (1987) 1 SCC 658
- *Union of India v. Ganesh Das Bhojraj* (2000) 9 SCC 461
- *Harla v. State of Rajasthan* AIR 1951 SC 467
- *State of Maharashtra v. Mayer Hans George* AIR 1965 SC 722
- *Sakshi Arha v. Rajasthan High Court* 2025 INSC 463

B. Legislation

- Bharatiya Nyaya Sanhita 2023
- Bharatiya Nagarik Suraksha Sanhita 2023
- Bharatiya Sakshya Adhiniyam 2023
- Indian Penal Code 1860

C. Secondary Sources

- Douglas Husak, *Ignorance of Law: A Philosophical Inquiry* (Oxford University Press 2016)
- Shrutanjaya Bhardwaj and Rishav Devrani, 'Ignorance of Law is a Good Excuse' (RSRR Blog, 10 September 2023) <https://www.rsrr.in/post/ignorance-of-law-is-a-good-excuse> accessed 7 July 2026
- 'Unjust To Apply "Ignorance Of Law Is No Excuse" Rule In Case Of Illiterate POCSO Offenders: Madhya Pradesh High Court' (LiveLaw, 14 April 2023)

<https://www.livelaw.in/news-updates/madhya-pradesh-high-court-pocso-act-illiterate-offender-awareness-pocso-act-teenage-relations-226189> accessed 7 July 2026
