

Reasonable Inquiry In The Defense of Mistake

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Abstract: The primary objective of this paper is to develop an understanding about the component of “reasonable inquiry” by the person claiming the defence who has been accused of committing a particular crime or an offence, which is against the laws of the land. It intends to bring out an effective study and understanding of this concept, which has no statutory definition under the criminal laws of India and other countries like the U.K. or the U.S. For purpose of developing such an understanding of the paper, reliance will be placed on analyzing the concept of reasonable inquiry in the defence of crime by virtue of a case-to-case basis analysis; to find out about to what degree a “reasonable inquiry” was made by the defendant claiming the defence.

Keyword: Component, Reasonable Inquiry, Statutory

1. Introduction

In the arena of criminal law, there are certain situations which if proven correct in the court of trial during the criminal proceedings, discharge the liability of crime from the shoulder of the defendants or the persons accused with offences which are against the basic order or will of the society. These particular things are known as defences to the crimes committed. If the defences are proved to be correct in the given facts and circumstances in the court of law, then it can acquit the criminals of the offences committed. Among all the defences claimed by the criminals, the mistake of defence is one, which is taken as a plea by majority of the criminals for getting them discharged from their criminal liabilities. The mistakes of defence are of two kinds. Firstly, a mistake of fact, which is generally claimed by defendants, accused of committing crimes. Simply put forth, a mistake of fact is one in which the defendant claims that he/she was under a mistaken belief that there were certain facts and circumstances which he was unaware of that compelled him to take drastic steps or steps that lead to the commission of the crime. The Second component of mistake of defence is a mistake of law, which is generally not allowed except in certain legislations only if there are compelling circumstances. The reason behind generally not accepting mistake of law as a defence is because of the Latin principle of “ignorantia juris non excusat”

that means” ignorance of law excuses none”. One, element of mistake of fact that has not been given much scope of discussion in many countries is the element of “reasonable inquiry” in the defence of mistake. The term “reasonable inquiry” has no statutory definition in Indian law, and it is an element, which has been discussed, in some foreign cases. “Reasonable Inquiry” generally enunciates the steps taken by the defendant to ascertain the correctness of the given situation while doing acts the leads to the crime committed by the defendant. During the course of this project, the researcher will be looking at the various situations pertaining to the mistake of defence and how the judicial interpretations of the reasonable component of the inquiry can be held applicable in cases concerning the claims of mistake as a defence to crime. The analysis of reasonable inquiry as a part of the mistake of defence will be done on a case-to-case basis for concluding as to whether there was a reasonable inquiry taken by the defendant in relation to claiming mistake as a defence for the alleged crime committed by the concerned defendant. However, the scope of the project will be limited to the understanding of mistake as a defence in India, U.K. and the U.S. and understanding “reasonable inquiry” on a case-to-case basis and analyzing its scope as a part of the defence of mistake in India.

MISTAKE AS A DEFENCE IN INDIA

MISTAKE OF FACT AS A DEFENCE

Mistake of fact is followed as a defence in India and is recognized under Sections 76 and 79 of the Indian Penal Code which state that the act must have been done in good faith under honest and reasonable belief of the existence of given set of circumstances in which he was justified to do that act.¹ The general rule governing mistake of fact as a defence is that the accused or the alleged offender must have acted in good faith under reasonable grounds that he believed to exist which led him to the doing of the alleged offence.² The Indian Penal Code adds another condition to the mistake of fact as a defence, i.e. it prescribes that the person committing the act must

¹ Ratanlal and Dhirajlal, *THE INDIAN PENAL CODE* (33rd edn, Lexis Nexis Butterworths Wadhwa Nagpur 2010).

² R v Tolson (1889) 23 QBD 168

believe himself to be either 'bound by law'³ or believing himself to be 'justified under the law'⁴ while committing the alleged offence. Besides that simply doing an act in good faith cannot be considered to be enough for the purpose of establishing a mistake of fact in a particular case, it has to be accompanied by a bona fide intention on behalf of the accused or the defendant while committing the act. Though Sections 76 and 79 of the Indian Penal Code as such talk about offences committed in good faith with a bona fide intention being empowered under the law, but Sec 76 essentially talks about an assumption of being bound by the law, whereas Sec 79 talks about being authorized under the law for committing an alleged offence under the mistake of fact.⁵ As per the laws of India, an accused can claim mistake of fact as a defence when he commits honest and reasonable mistakes, which can be justified or proved in the present circumstances pertaining to the case. However, an ignorance of a fact material to the case would make the act morally involuntary. Section 79 makes an offence a non-offence. If any authority under its jurisdiction imposes sanctions upon something, then persons responsible for creating it cannot be held liable as they had bona fide belief that the act done by them in no way amounted to offence under the laws of the land.⁶ However, if it can be prima facie established that if a wrongful act is committed under a mistaken belief and which is wrong in it and is prohibited by a statute or the laws of the land, then the defence of mistake of fact cannot be claimed by the accused.⁷ Acts done with a bona fide belief that there was an existence of a certain situation that existed which was essential for committing a wrongful act, cannot be used a tool for prosecution against the person claiming mistake of fact as a defence.⁸

Thus it can be concluded that mistake of fact as a defence comes up with certain conditions i.e. it comes down to the point as to whether the concerned defendant was empowered under the laws of the land to commit an act with good faith and bona fide intention under a reasonable and honest mistaken belief of facts and circumstances of the case, the ascertainment of which lead to the commission of the offense or the crime in the concerned situation.

MISTAKE OF LAW AS A DEFENCE

As far as Indian Law is concerned, the ignorance of law or mistake as to law cannot be claimed as a defence so as to discharge liability of the defendant

or the accused from the offences committed. The Latin maxim "ignorantia juris non excusat" which states that "ignorance of law excuses none" applies to the criminal provisions in India. Mistake of law cannot be in any way claimed as a defence i.e. a mistake of law or a mistake as to what actually is the law can in no way claimed as a defence in criminal law.⁹ It is also said that, the ones who have committed the errors should be prepared to suffer the consequences of the wrongful act done.¹⁰ Besides that this rule extends to the situations or cases wherein there was no possibility or feasibility of the defendant knowing that the concerned law actually existed in India.¹¹ Above all, there is as such no requirement of the knowledge of the law or its circulation outside the territorial boundaries of India that is required to make the law enforceable in relation to the concerned offences.¹² In the case *King v Tustipada Mandal*¹³ there were certain guidelines laid down by the court for determining situations where the principles of Mistake of Law or fact could be held applicable which can be laid down or enunciated as follows.

- (1) That when an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.
- (2) That where an act is not *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge.
- (3) That the state of the accused person's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence.
- (4) Where an act which is in itself wrong i.e., under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.
- (5) Where a statute makes it penal to do an act under certain circumstances, It is a question upon the wording & object of the particular statute, whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.

Thus, when it comes to a defence pertaining to the mistake of law, it is not allowed in India as India

³ Indian Penal Code.1860, s. 76

⁴ Indian Penal Code.1860, s. 79

⁵ P Atchuthen S Pillai and KI Vibhute, *P.S.A. Pillai's Criminal Law* (11th edn, LexisNexis Butterworths India 2012).

⁶ RajKapoor v Laxman AIR 1980 SC 605

⁷ R v Prince (1875) LR 2 CCR 154

⁸ Chirangi v State (1952) CriLJ 1212

⁹ King v Tustipada Mandal AIR 1950 Ori 284

¹⁰ Queen-Empress v Fischer (1891) ILR 14 Mad 342

¹¹ State of Maharashtra v M.H. George AIR 1965 SC 722

¹² Ibid [78]

¹³ Tustipada [24]

strictly follows the principle as to the fact that ignorance of the law cannot excuse anyone. As law is the reason behind the maintenance of order in the society, the violation of the law or ignorance or lack of knowledge of the law in anyway cannot be said to be in anyway a claim for defence for commission of an offence. Even when there is a case of the defendant being reasonably unable to know as to the recent coming about of the law, even then a plea or an excuse cannot be taken as to the fact that the defendant wasn't aware about the existence of the law. Thus, in relation to the mistake of law as a defence it can be said that there is a strict liability imposed upon individuals in that regard and in that scenario in any way it cannot be claimed as a proper defence after committing a crime, be whatever the reason behind commission of the offense or the crime by the said defendant.

MISTAKE AS A DEFENCE IN ENGLISH LAWS

MISTAKE OF FACT AS A DEFENCE

When we take into consideration the principles of English Law pertaining to crimes and defences, then at that point of time mistake of fact can be claimed as a defence for an offense provided that it is a legitimate one irrespective as to whether it is reasonable or not. In the English law or law governing the United Kingdom, mistake of fact cannot be claimed always as a defence to a crime as such. Besides that the reasonability component of the mistake is looked upon strictly and until and unless the courts are satisfied as to the reasonability and honesty of the mistake committed along with establishing it to be a genuine one, only then can mistake of fact can be claimed as a defence. So, a mistake of fact which is unreasonable, but a proper one or legitimate one on the facts and circumstances of the case can be construed to be a proper ground for claiming and granting mistake of fact as a defence.¹⁴ Besides that, it has also been held that merely an honest mistake of fact can be sufficient for establishing the correctness or legitimacy behind claiming mistake of fact as a defence and it is not necessary to ascertain the reasonability criteria of the mistake committed by the defendant.¹⁵

There is another provision in English law which states that in case of mistake of civil law is found out, it is sufficient to establish the existence or justify the need for a defence of mistake. In these cases mens rea of causing criminal loss or damage cannot be established or said to have occurred and holding reasonable belief isn't necessary as the liability arises out of a civil law and not from a criminal law and only by proving a honest belief, the mistake of fact can be established successfully without actually

¹⁴ R v Williams (1987) 3 All ER 411

¹⁵ DPP v Morgan (1975) 2 WLR 913

looking as to whether the belief of the defendant leading to the act was actually reasonable.¹⁶ So taking into consideration the mistake of fact as a defence in English criminal law, whether the mistake was reasonable or not does not carry much importance, the matter to be given utmost consideration is the fact as to whether there was an honest belief and whether the mistake committed was one having a genuine nature?

MISTAKE OF LAW AS A DEFENCE

The provisions do not allow mistake of law as a defence. In no way mistake of law can be claimed as a defence by the defendant however grave or intricate be the situation. English law permits no exception even when the case concerns a foreigner reasonably unaware of the existing laws applicable in the United Kingdom.¹⁷ English law even states that even if there were strong reasons to believe that the procedures followed were unlawful, he cannot claim mistake of law as a defence for a wrongful act committed as ignorance of law is not an excuse.¹⁸ There can be many possible circumstances in which it is not reasonably feasible for the concerned defendant about the applicability of the particular laws in a country in which committed the crime which was different from his country of existence. But, even in such cases ignorance of law cannot be granted as an exception. The fundamental reason being that by claiming ignorance of law, defendants could escape criminal liability thereby leading to lack of order in the society.¹⁹ The strictness of English law in relation to the defence of mistake can be further re-affirmed by mentioning the existence of a situation where it was impossible for accused to be aware about the laws pertaining to the case in the given circumstances, such as a case of a person being on the high seas.²⁰ Above all, when there is a legislation specifying a particular act to be wrongful in nature, the commission of such an act under a mistaken belief will not attract the defence of mistake.²¹

Thus, in this case it can be concluded that the English laws are strict with regard to the knowledge of the law and merely because a person was reasonably unaware of the existing laws in the worst situations possible, even in such cases, ignorance of the law cannot be claimed as an excuse for getting discharged of the liability occurring from offences prohibited by the law.

EXCEPTION TO MISTAKE OF LAW AS A DEFENCE IN U.S.A

¹⁶ R v Smith (1974) Q.B. 354

¹⁷ R v Esop (1836) 7 C & P 456

¹⁸ R v Lee (2000) EWCA Crim 53

¹⁹ Bilbie v Lumley (1802) 2 East 469

²⁰ R v Bailey (1800) Russ & Ry 1.

²¹ Prince (Lord Blackburn)

Generally, Mistake of law is not favored as a defence in most jurisdictions of the world. Most of the countries govern their laws on the principle of "ignorantia juris non excusat" that means "ignorance of law excuses none". But, there is a narrow exception to this area of law in the United States. In the case of the United States of America, there are different laws governing order in different states. So, situations may arise in which a native of one state is unaware of a law recently passed in a state he doesn't belong to and if he commits an offence in another state wherein that offense has been prohibited under the recently passed legislation, he can be excused for the crime committed. In the famous case of *Lambert v California*²² the defendant had failed to register herself under the newly changed law of California and she was imprisoned for 3 years and fined \$250. The Supreme Court of the United States reversed this imprisonment that in such cases it is important for the convict to have knowledge about the law or it should be reasonable to have the knowledge of the law in the present circumstances. In that case it was held by the court that, "where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process".²³ This famous case is an exception to the famous rule of "ignorance of law excuses none", because its talks about criminal motive of the defendant or the person committing the offences. Thus, when mistake of law is generally not accepted as a defence, this is an exception to the general rule and it can exist in the U.S. in the abovementioned situation.

IMPORTANCE OF REASONABLE INQUIRY BY THE DEFENDANT CLAIMING DEFENCE OF MISTAKE

The concept of "Reasonable Inquiry" in the defence of mistake is one, which has no statutory or codified definition. Thus, the researcher would try to enunciate the concept based on the judicial trends. Simply put forth, the concept of "reasonable inquiry" by the defendant claiming the defence of mistake of fact or law can be defined as the steps taken by the defendant or the accused to ascertain the correctness of the given circumstances which he believed to be true and that led him to commit the offense which made him liable for prosecution. The researcher would like to develop an understanding about this concept with the help of a few cases to throw light upon the component of "Reasonable Inquiry" in the defence of mistake and illustrate its importance in the defence of mistake pleaded by the defendant after commission of certain offences.

²² Lambert v. California, (1957) 355 U.S. 225

²³ Ibid (Justice Douglas)

ENGLISH CASES ON REASONABLE INQUIRY BY THE DEFENDANT

1. R v Prince: Reasonable Inquiry not conducted by defendant to ascertain correctness of the situation

This was an important case in relation to reasonable inquiry in relation to the defence of mistake. The defendant in this case was accused of taking a girl under the age of 16 from the lawful possession of her parents which was against Section 55 of the Offences Against the Person Act 1851.²⁴ The defendant had pleaded that he was under the mistaken belief that the girl was 18 years of age and had consented to come along with him. But the court ruled against the defendant because what he did was in contravention to the legal provisions of the abovementioned act. As per the facts and circumstances of this particular case, it was the duty of the defendant to reasonably enquire about the age of the girl, as he was well aware about the fact that taking a girl below 16 years was prohibited under the law. But the defendant made no "reasonable inquiry" i.e. he took no necessary precautions or steps to ascertain as to whether the girl he was abducting was one who was below 16 years. He believed the words of the girl and thought that she was 18 years of age. Thus, in this case the defendant cannot be entitled to the defence of mistake and this was a case in which necessary steps or precautions were not taken in any manner for ascertaining the correct age of the girl which was a fact material to the merits of the case and important for the defence claimed. As, the defendant had taken no necessary measures to actually find out the age of the girl he was taking away from the lawful possession of her parents, he cannot be said to have conducted a "reasonable inquiry" in this case.

2. R v Tolson: Reasonable inquiry conducted by the defendant before committing the said offense.

This was an important case concerning bigamy. In this particular case, the concerned woman was actually deserted by her husband, but she was actually made to believe that her husband had drowned in the sea. The woman waited for six years for the return of her husband and in that period tried her best to find about the whereabouts of her husband. When she could not manage to do so and she had reasonable grounds to believe about the death of her husband, she married another man. Her previous husband turned up 11 months after her second marriage and she was accused of committing the offense of bigamy. But, in this case the lady was acquitted of the offense of bigamy. The reason being, the lady had "reasonably inquired" about the whereabouts of her husband and had waited for a period of more than 6 years to find out where her

²⁴ Offences Against the Persons Act.1861, s. 55

husband was actually. The fact that the lady had tried her best to find out about her husband and had reasonable ground to believe that her husband was no more in this world, she was acquitted of the offense of bigamy. In this case, it can be said that the defendant by waiting for a period of six years and trying to find out information about her husband had conducted a "Reasonable Inquiry" in the facts and circumstances of the case, and thus was acquitted of the offense she was convicted with. Hence, it can be said that this is a case of "reasonable inquiry" conducted by the defendant claiming the defence of mistake to avoid conviction as there were necessary measures taken by her in the present case to actually find out as to where her husband was which was an aspect material to the situation and facts pertaining to the case. Thus, this was a case of proper conducting of "Reasonable Inquiry" in the defence of mistake.

CANADIAN CASES ON REASONABLE INQUIRY BY THE DEFENDANT

Under this part of the project, the researcher will focus upon two important cases in relation to reasonable inquiry to be conducted by the defendant. Under the Canadian law, it is necessary for the defendant to prove that reasonable inquiry was done or reasonable steps were taken by the defendant for the purpose of claiming mistake of fact as a defence in offences concerning strict liability. Besides that in relation to sexual offenses or cases concerning alleged sexual violence against the wishes of the victim, it is necessary on the part to take reasonable care to ascertain whether the person the defendant was having sex with consented to it. Under Canadian law, strict liability and sexual offences do not require mens rea or the intention to commit the offense. If such offences are committed then the defendant can be held liable. The defendant only if it can be established according to the facts and circumstances of the case that reasonable inquiry was made or reasonable care taken by defendant to ascertain correctness of the situation can only claim the mistake of fact. Under this section, one case of each category will be discussed in which defendant was not allowed defence of mistake for failing to take reasonable care to ascertain the correctness of the situation.

1. R v City of Sault Ste. Marie : Strict Liability offense in which mistake of fact as a defence was disallowed as reasonable inquiry not conducted by the defendant to ascertain correctness of the situation

The case of *R v City of Sault Ste. Marie*²⁵ was a landmark judgment delivered by the Supreme Court of Canada which laid down the principle that in cases concerning that of strict liability, defence of mistake

cannot be claimed when no reasonable inquiry conducted on the part of the defendant to ascertain the correctness of the situation. In this case, the City of Sault Ste. Marie had given a contract to Cherokee Disposal Co. Ltd. for disposing of the waste system of the city. Besides that there was 20 feet tall structure which was constructed and whenever the wastes of the city were disposed of into it, it resulted into seepage of waste into the stream thereby causing pollution to public waterways. The City was charged with the offense of causing disruption to the public waterways. The plea taken by them was that they had no mens rea to carry out the offence and they were under a mistaken belief that the waste disposal would not lead to seepage and blockage of public waterway. The court held that the defence of reasonable mistake of fact could not be claimed in this case, because this was a case concerning strict liability and because there were no reasonable inquiry made or no steps taken by the defendant to ascertain as to whether construction of 20 feet tall structure and waste disposal would lead to blockage of public waterway. Hence, the mistake of fact as a defence was not allowed by the Supreme Court of Canada because of the fact that reasonable inquiry was not conducted by defendant i.e. the defendant took no reasonable care or no reasonable steps were taken by the defendant for ascertaining as to whether construction of 20 feet tall structure would lead to seepage in the stream. Hence, it was held that mistake of fact could not be granted as a defence because reasonable inquiry was not conducted by the defendant to ascertain as to whether commission of act would lead to disruption of public waterway.

2. R v Ewanchuk: Plea of Mistaken Belief of implied consent was not granted by the court as defendant had not reasonably inquired about the consent of the victim to have sexual intercourse.

In the case of *R v Ewanchuk*²⁶ decided by the Supreme Court of Canada, the mistake of fact as to the implied consent of the victim was not accepted as a defence, as the defendant had not taken reasonable steps i.e. conduct reasonable inquiry as to whether the victim had consented to have sexual intercourse with the defendant. As per Sec 273.2 of the Canadian Criminal Code, it is the duty of the defendant to take reasonable steps or conduct reasonable inquiry to find out in the prevalent circumstances as to whether the concerned person was consenting and if he does not take necessary steps to ascertain that, then he cannot be claim the defence of mistake of fact as to implied consent to escape from liability of sexual offence committed.²⁷ As per the facts and circumstances of the case, the defendant was accused of sexually assaulting the victim on the pretext of

²⁵ R v City of Sault Ste. Marie (1978) 2 S.C.R. 1299

²⁶ R v Ewanchuk, (1999) 1 S.C.R. 330

²⁷ Canadian Criminal Code .1985, s. 273.2

conducting an interview. The defendant had taken the plea that he was under a mistaken belief of fact as to the consent of the victim in having sexual intercourse with him. However, it was found out that the victim had not consented; rather she had said no every time the defendant approached her, and on each instance, the defendant used more force every time and the victim had to give into the desires of the defendant as she was fearful of him. The Supreme Court of Canada, held in this case that, the defendant could not take the plea of mistake of fact as to the consent of the victim in having sexual intercourse, because he had made no reasonable inquiry or he had taken no reasonable steps for ascertaining as to whether the victim had willfully consented to having sexual intercourse with him. The defendant ultimately was held liable for sexual assault in this case because of the fact that he had not conducted reasonable inquiry to ascertain as to whether there was the consent of victim to having sexual intercourse before having sexual intercourse with her.

U.S. CASES ON REASONABLE INQUIRY BY THE DEFENDANT

In the laws of United States, it is said that if the defendants had reasonably inquired and believed that the present situation was correct, then they can claim the mistake of honest and reasonable belief behind committing the concerned offense in relation to commission of strict liability offences. The court has further stated that if the defendant can in any way prove that it would have been impossible to reasonably ascertain the circumstances. He can be excused of the crime. Under this section, the author will examine two cases, one in which reasonable inquiry was conducted by the defendant and the other in which the defendant conducted no reasonable inquiry or failed to take necessary steps as to prevent the occurrence of the offense.

1. United States v Kantor: Defendants charged with making pornographic movies by employing a minor were discharged for conducting reasonable inquiry to ascertain correctness of the situation

In the case of *United States v Kantor*²⁸, the defendants charged with employing a minor as a porn actor for their porn movie during the rule of President Ronald Reagan, under whose regime a law in prohibiting use of minors in pornographic movies was passed by the government. The defendants in this case were charged with employing minor as an object in their pornographic film. They took the plea of honest and reasonable mistake of fact behind committing the offense. Subsequently, they were acquitted in this case. The reason behind this acquittal was, the defendants had checked the birth

certificates and other necessary details which showed that the employed minor was an adult, though in reality she was a minor. Besides that the parents of the minor actress made the defendants believe that their daughter was an adult. The defendants were further re-assured of this fact by virtue of the body structure of the minor actress and it further led them to believe that she was an adult and not a minor. The fact that, the defendants had done everything necessary to find out the age of the minor i.e. conducted a reasonable inquiry to ascertain the correctness of the age of the actress, they were not held to be liable for violating the law or contravening the law prevalent at that time in the U.S.

2. United States v Park: Defendant was strictly held liable for failing to complying with the requisite standards and failing to reasonably inquire or ascertain the correctness of the situation.

In the case of *United States v Park*²⁹, the defendant was the CEO of a company charged with shipping adulterated food and failing to comply with food safety standards. Besides that, there was failure on part of defendant to ensure that his company legally kept the warehouses sanitary. The defendant took the plea that he was under a reasonable belief that necessary legal requirements were fulfilled by his company, but he was held liable because he had failed to conduct reasonable inquiry or take reasonable steps for ascertaining as to whether the food manufactured by the company complied with food safety standards and besides that whether the warehouses were legally sanitary. In this case, it was established that the duty is upon the defendant to establish before a court of law that in the prevalent circumstances it would be impossible on part of the defendant itself or any other person in the place of the defendant to reasonably determine the correctness of the situation i.e. reasonably inquire as to whether the prevalent situation was correct. In this particular case, the defendant was not allowed the mistake of honest and reasonable mistake of fact as he had not reasonably inquired as to whether the legal procedures and standards were complied with in his company.

3. POSITION AND SCOPE OF DEVELOPMENT IN INDIAN LAW

Taking a look at "reasonable inquiry" as a component in the defence of mistake under the Indian law, there hasn't been much development in this particular area under the Indian law. The Indian law of defence of mistake of fact in general gives importance to the question of being empowered under the law or the question of the defendant

1.1.1. ²⁹ *United States v Park*, (1975) 421 U.S. 658

²⁸ *United States v. Kantor*, 677 F. Supp. 1421 (C.D. Cal. 1987)

committing the offense in “good faith” according to the facts and circumstances of the case. As per the judicial trends in Indian under this are of criminal law, the law of India states that the defendants can get discharged of their liabilities provided that they to a reasonable extent show that they had committed the act in good faith are empowered under the law.³⁰ Though in many cases the concept of “reasonable extent” of good faith has been enunciated in various cases, yet this is one aspect which has been given importance i.e. “reasonable inquiry” as such has not been much discussed in Indian case laws. Indian cases haven’t necessarily talked about the necessity of essential steps been taken by the defendant for believing that in the present circumstances there was the necessity of committing the said act. Though great importance is given to honest and reasonable mistakes committed in the worst of circumstances, yet on a judicial level there hasn’t been much discussion about the need or importance of “reasonable inquiry” by the said defendant in the offense committed by him presuming the given set of facts and circumstances as necessary for the offense committed by him. Thus, the researcher would like to conclude by stating that, “Reasonable Inquiry” as a judicial trend or as an important element of defence of mistake is still an area which needs major consideration from the courts in India so as to reasonably assess the necessity of the mistake committed by the defendant on the belief of truth of a certain set of circumstances which necessitate the commission of such an act that was essential in the situations pertaining to the case.

CONCLUSION

By virtue of thorough assessment of the mistake of defence and the component or element of “reasonable inquiry”, it can be very well established that this is one area of criminal law which requires more consideration i.e. it is a concept that has not where been explicitly defined. Rather, this is a concept which actually is quite subjective in nature i.e. it is a case of determining it on the basis of judicial trends. The establishment of “reasonable inquiry” by the defendant claiming the defence of mistake is one that can in no way be found out by virtue of a particular standard rule, it is one that is to proven by the ascertainment of the facts and circumstances of each case pertaining to the claim of mistake of defence made by the defendant before a court of law. In the opinion of the author, there is a need to lay down a standard rule for determining what can exactly constitute “reasonable inquiry” by person claiming the defence because determining it subjectively in each and every case is a tedious task. Thus, the author would like to conclude by stating

that, the concept of “reasonable inquiry” by the defendant is one which is an important element of mistake of defence which requires due consideration in the present scenario and on basis of the judicial trends there is a need to precisely point out its importance and how it is to be discussed or elaborated in cases pertaining to the defence of mistake.

REFERENCES

1. Berliner, D. (1991). Rethinking the Reasonable Belief Defence to Rape. *The Yale Law Journal*, 100(8).
2. Crimes: Mistake of Fact as a Defence. (1931). *Michigan Law Review*, 29(5).
3. Criminal Law. Bigamy. Honest Mistake of Law Is a Defence If Result of Diligent Effort to Discover the True State of the Law. (1949). *Virginia Law Review*, 35(5).
4. Criminal Law. Mental Element. Defendant’s Reasonable Belief That Prosecutrix Was above the Age of Consent Is a Defence to a Charge of Statutory Rape. *People v. Hernandez* (Cal. 1964). (1965). *Harvard Law Review*, 78(6).
5. Criminal Law: Mistake of Fact as a Defence: Bigamy. (1921). *Michigan Law Review*, 20(1).
6. Fraud: Doctrine of Reasonable Inquiry. (1904). *Michigan Law Review*, 3(2).
7. Gaur, K. D. (2013). *Criminal Law: Cases and Materials* (7th Edn.). Lexis Nexis.
8. Hall, L., & Seligman, S. J. (1941). Mistake of Law and Mens Rea. *The University of Chicago Law Review*, 8(4).
9. Levenson, L. L. (1993). Good Faith Defences: Reshaping Strict Liability Crimes. *Cornell Law Review*, 78(3).
10. Messe, E., & Jr., P. J. L. (2012). Reconsidering the Mistake of Law Defence. *Journal of Criminal Law and Criminology*, 102(3).
11. Nourse, V. (2008). After the Reasonable Man: Getting Over the Subjectivity/Objectivity Question. *New Criminal Law Review*, 11(1), 33–50
12. Ratanlal & Dhirajlal. (2010). *The Indian Penal Code*. (V. R. Manohar, Ed.) (33rd edn.). Nagpur: Lexis Nexis Butterworths Wadhwa
13. Simons, K. W. (2008). Self-Defence: Reasonable Beliefs or Reasonable Self-Control? *New Criminal Law Review*, 11(1), 51-90.
14. Williams, G. (2009). *Text Book of Criminal Law*. (Sweet & Maxwell, Eds.) (2nd edn.). New Delhi: Universal Law Publishing Pvt. Ltd.

³⁰ Keso Sahu v. Saligram Shah (1977) CriLJ1725 (Ori)