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Rethinking the maxim ignorantia juris non excusat

Deepa Kansra

I. Introduction

The proliferation of criminal laws in different legal systems has made legal practitioners and scholars deliberate upon the present day relevance of old age principles and concepts. The maxim *ignorantia juris non excusat* (*ignorantia juris* hereinafter) also falls in this category.

The application of criminal law is said to rest on the maxim *ignorantia juris*, meaning ignorance of law is no excuse. The application of the maxim has from time immemorial been defended on grounds of convenience, utility, and community interests.[1] At the same time it has been challenged on grounds of legality and morality.[2] The application of the maxim in criminal matters is secured through penal laws. These laws are further validated through judicial pronouncements. Penal statutes and judicial pronouncements have largely been the basis to determine the exceptions and scope of the maxim.

[1]Sharon L. Davies, "The Jurisprudence of Willfulness: An Evolving Theory of Excusable Ignorance*", Duke L. Journal*, Vol 48 (1998); Jerome Hall, "Comment on Error Juris"*, The American Journal of Comparative Law*, Vol 24 (1976); Dam M. Kahan, "Ignorance of Law Is An Excuse –But Only For The Virtuous", *Michigan Law Rev*iew , Vol 96:127,(1997); Vera Bolgar, "The Present Function of The Maxim ignornatia juris neminem excusat- A Comparative Study", *Iowa L Rev.* 628 (1967).

[2]Paul Rozenweig, "Ignorance of Law is no Excuse: But it is a Reality", No. 2812 *The Backgrounder*, 2 (June 2013). *Rozenzweig* on the maxim writes, "the phrase captures an important concept about culpability. It stems from a time when criminal law was grounded in morality and a shared understanding of wrongfulness and when crimes were self-evident wrongs—what the law calls "wrong in their essence," or "malum in se." The rule that "ignorance of the law is no excuse" was born at a time when there were fewer than a dozen common law felonies, and all those crimes stemmed from and mirrored a commonly shared moral code…Today, the criminal law is a collection of social preferences. Some of them are obvious and reflect common sense notions of wrongfulness, but many reflect only a legislative judgment…"

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Corresponding Author: Deepa Kansra, dkansra@gmail.com
Citation: Kansra, D. (2020). Rethinking the maxim ignorantia juris non excusat. *Academia Letters*, Article 43. https://doi.org/10.20935/AL43.

Breaking it down to a single case in hand, several factors come into picture including the *nature of the crime* in question, the *mental state* of the person accused, the *conduct of the accused person*, the *objective or public utility of the criminal legislation* or provision, and the *reasons* or *justifications* offered for its rigid or qualified application. The single case is viewed in light of the general provisions of criminal law of the legal system in which the case is being tried. The uniqueness of each case and the criminal statutes of legal systems make it both complex and conducive to generalize or conclude on the true import and application of the maxim *ignorantia juris*.

II. Exceptions to the rule

An overview of the legal developments in different jurisdictions indicates that determinations on the application of the maxim *ignorantis juris* need jurisdprudential and legal reconsideration. According to Ciuni and Tuzet, "in the last decade, a host of different legal systems have defined some restrictions to the scope of *Ignorantia legis non excusat.* These restrictions depend on some qualification of the relavant ignorance, and they introduce, de facto, standards of excusability".[3] Arnold states, "the academic literature on inculpable ignorance of the law has also revealed the emergence of several contrasting themes".[4] Further, conceptual determinations appear lacking based on arguments about morality, reasonableness, good faith and injustice.

Husak in this regard pushes for a reconsideration of the *rule itself*, as distinct from its exceptions. According to Husak, there has been a unmistakable trend to expand the conditions under which ignorance of law should be a defence. Based on the theories and decisions the trend has merely served to enlarge the number of exceptions without questioning the rule. He writes, "no one has proposed to reverse the common law presumption by countenancing ignorance of law as a defence, and then describing exceptions under which ignorance of law would not exculpate".[5]

[3] Roberto Ciuni, Giovanni Tuzet, "Inevitable ignorance as a standard for excusability: An Epistemological Analysis", Vol. 196: 10 *Synthese* (March 2019).

[4] Nciko Arnold, "Ignorance of the Law is no Defence: Street Law as a Means to Reconcile this Maxim with the Rule of Law", *Strathmore Law Review*, 27 (June 2018).

[5] Douglas N. Husak, "Ignorance of Law and Duties of Citizenship" , Vol. 14: 1 *Legal Studies* (March 1994).

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III. Statutes and Interpretations

Arguments for reform have been advocated in light of both penal statutes and judicial pronouncements on the subject. In 1971 for instance, the Law Commission of India in its 42nd Report provided an extensive discussion on the subject. The Report defended the provisions of the Indian Penal Code which make no exception to the rule. The report, bearing in mind the conditions of the Indian society, nature of penal laws and opinion of judicial courts provided the following conclusions;

1. *On justification:* As per the report, the real justification for not allowing mistake of law as a defence seems to be that the operation of a provision of the law is intended to be independent of its being known to everybody and it ought to be so. If it were not so, great uncertainty will be introduced in the enforcement of the law and may well lead to justice.

2. *On collateral enquiries :* The report says, if exceptions are provided, many investigations into offences would have to branch off into collateral enquiries because it would be obviously unfair to send up the person charged for a trial when there is something in his plea of ignorance of the legal provision.

3. *Sentencing by courts:* The report provides, judicial courts under existing provisions if satisfied about the genuiness of the plea of ignorance take account of it while passing a sentence. We do not therefore recommend any change in the existing position.

4. *Role of foreign precedents :* The report states, since the magnitude of the population, the number of prosecutions involving such issues, the literacy of the citizens and other similar factors, which vary from country to country, will also have to be taken into account. If other countries have expressly provided for a defence, it is not necessary that it would work in India.

In another context, new concepts for minimizing the effects or rigid application of the maxim have been advocated. Authors Ciuni and Tuzet explore the concept of *inevitable ignorance* as distinct from ignorance that could be avoided.[6] While there analysis is based on the case law of the Italian courts, they open a discussion on the following points; whether *inevitability* is a necessity? And under what possible conditions can ignorance be rendered *inevitable*? They also bring in key jurisprudential questions on the sanctity of the maxim in both criminal and constitutional law in light of the unrestricted application of the maxim as

[6] *Supra* note 3. Also see case *Nicholas Brady Heien* v. *North Carolina* 574 U. S.(2014).

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unconstitutional. Based on their case analysis of several decisions, Ciuni and Tuzet offer the following points as four *crucial conditions implicit in the notion of inevitable ignorance* of a person about a given norm; (a) the agent entertains a false belief about the norm (b) the agent checked all the evidence that we could reasonably require that she checked, if any; (c) the evidence the agent actually checked, or presupposed as acquired already, supports the false proposition believed by the agent; (d) the agent was rational in accepting the evidence, since the latter was to be deemed trustworthy.

While most arguments in favour of re-defining the scope and application of the maxim have been made in light of penal law and its application by judicial courts, over the years there has been a linking of the discussion with notions of constitutional morality and morality of the penal order. These shifts have made the maxim a curious case for re-consideration both in law and in penal jurisprudence.

IV. Conclusion

The contrasting themes and approaches on the subject further warrant for a jurisprudential exploration of the maxim *ignorantia juris* in criminal law. The same would mark out areas of agreement and uniformity across jurisdictions, coupled with the areas of disagreement. The exercise would enhance the legitimacy of criminal law by ensuring a smoother process of norm determination, internalization and application.

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