Ignorance of law is an excuse

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INTRODUCTION:-

Law is all pervading. Almost all your actions are regulated by law except a few. We have all sorts of law like personal, family, civil, criminal, revenue, commercial, taxation, public and private international law and so on. Law can be statutory, customary, moral or ethical, ecclesiastical etc. But it is well known that ignorance of any of these laws cannot constitute an excuse. You are not permitted to plead ignorance as a defense to escape the rigors of law. If it is so, it is very easy for any person can put forward ignorance as a defense even though he was actually aware of the law and its full consequences. The law enforcement machinery shall come to a grinding halt if ignorance is accepted as a defense. Being a negative fact, court cannot insist on proof also. It requires the study of the mental position of the law breaker which is a real difficult exercise. For all these reasons the policy of law has always been to reject the plea of ignorance of law. Lord Ellenborough said "there is no saying to what extent the excuse of ignorance might not be carried, it would be urged in almost every case." Thus, the above discussion explains the philosophy or rationale behind the latin maxim "Ignorantia legis neminem excusat" which means that ignorance of law shall not excuse a person.

People and sometimes even legal experts express the maxim in a different way by stating that “every person is presumed to be aware of law” as if both are same and carry the same effects or produce same consequences. They assert or believe that “Every person is presumed to know the law or ought to have known the law” is a statement which emerges from the statement “ignorance of law is no excuse”. There is a real difference between the two statements. This article examines both the statements and makes an attempt to establish that both do not produce the same result or impact.

ORIGIN OF THE MAXIM
It is often said ‘ignorance of law is not an excuse’. As already stated above, it is based on the Latin Maxim "ignorantia legis neminem excusat" or "ignorantia juris, quod quisque, saepe tenetur neminem excusat".

It may be noted that ignorance of fact can be an excuse but not that of law. To quote an instance, if a legal heir on whom the estate falls is ignorant of the death of his ancestor, he is ignorant of a fact. But even if he is aware of the death, he is said to be ignorant of a law if he is not aware of his rights as the heir ((see in 1 spence’s chin juris 632- 633). Take another example. In India hunting of a Wild Buffalo (Bubalus bubalis) is an offence as per section 9 of the Wild life Protection Act 1972. If a person, who is ignorant of section 9 of the Wild life protection Act, shoots a wild Buffalo thinking that it is a domestic buffalo he is said to be acting in ignorance of law as well as of a fact.

It is generally accepted that the maxim had its origin in Roman law and there is a direct mention about the same in “The digest of Justicia” or Justinian’s Code. It is stated therein that ignorance of fact may be excused but not ignorance of law. It is a matter of common knowledge that English law is largely based on Roman law and thus naturally, the maxim crept into English Common law also.

The earliest reference of the maxim in English law can be found in Blackstone’s commentaries where he observed like this “often a mistake in point of law which every person of discretion not only may, but is bound and presumed to know, is in criminal cases no sort of defense. Ignorantia juris, quod quisque tenetur scire, neminem excusat is as well the maxim of our own law as it was of the Roman”.

From the above it is clear that he traces the origin of the maxim to Roman law and states that every person is bound or presumed to know the law. But he states that in Criminal cases it is not a defense. From there onwards English courts applied this maxim consistently as a rule of law and thus firmly got established in English law.

**Is the rule rigid and without exceptions?**

We have already noticed that the maxim had originated from Ancient Roman law. In those days the number of laws were quite few and thus can be easily remembered and understood. The number of laws or rules was very small and you can even count them. Therefore, in such a situation the rule may be justified. But please look at the present situation. There are thousands of laws made by the parliament and different states. There are thousands of rules framed by the executive arm ie the government. Even the Supreme Court and various High courts have framed rules of procedure/practice etc. There are customary laws and personal laws like Mohammaden law etc. There are hundreds and thousands of notifications and circulars which are binding on various parties. Above all we have number of judge made law derived from various court decisions which as everybody knows keeps on changing. Even the Government itself is not aware of the number of laws that are in operation and force in this country. Some of the laws like Companies Act,1956 contains 658 sections and in addition to those vast army of sections there are number of rules, regulations, notifications, circulars etc are also there. It is humanly impossible to remember much less understand this army of laws stacked in front of the citizens. Better not to say anything about illiterates or those who cannot understand English or Hindi ( the laws are framed in India in English and Hindi with translations in vernacular languages).
Viewed thus, there is a good justification for dilution of this rule. In fact courts in India, England and elsewhere refused to apply the maxim bluntly so as to render justice and to provide relief wherever it was found to be due applying the principles of justice, equity and good conscience.

**Every person is presumed to be aware of the law?**

The maxim “ignorance of law is not an excuse” is sometimes thought to be equivalent to the statement “Every person is presumed to be aware of the law”. But on a closer analysis it can be seen that both statements are not one and the same. There is absolutely no justification for the presumption that everybody is aware of all the laws in operation. It is a ridiculous presumption if not an arbitrary one. If everybody knows the law, then what is the necessity for the courts? If everybody knows the law then there is no need for consulting an advocate or a solicitor. We quite often find that District Court is reversed by the High Court which is in turn reversed by the Supreme Court. Is it not because the High Court was ignorant of the law?. If High court was aware of the law then why Supreme court reversed the judgement of the High court?. Thus it is crystal clear that High court was ignorant of the law. It is also equally possible that the Supreme Court itself may over rule or reverse its own decision and then it is quite clear that the Supreme Court was ignorant of the law while deciding the case at the first instance.

Over a hundred and thirty years ago, Maula J. pointed out in Martindale v. Falkner [1846] 2 CB 706 : " There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so."

Justice Lush in R v Tewkesbury corporation (LR 3 QB 629) observed that "there is no maxim which says that for all intents and purposes a person must be taken to know the legal consequences of his acts;" The great common law judge of the 20th century Lord Atkin observed in Evans Vs Bartam as follows "The fact is that there is no and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application”

**THE POSITION IN ENGLAND**

The English judges long back kicked aside the maxim whenever situations warranted. Scrutton L.J once said "it is impossible to know all the statutory law and not very possible to know all the common law". It was also the accepted position that the rule ignorance of law does not excuse cannot be pleaded to escape the consequences of criminal law, yet the law can take notice of the existence of doubtful point of law about which a person may be ignorant.

According to Lord Westbury in Cooper v. Phibbs, L. R. 2 H. L. 170, the word “Jus” in the maxim ignorantia juris baud excitatur is used in the sense of “general law, the law of the country,” not in the sense of “a private right.” The true meaning of that maxim is that parties cannot excuse themselves from liability from all civil or criminal consequences of their acts by alleging ignorance of the law, but there is no presumption that parties must be taken to know all the legal consequences of their acts, and especially where difficult questions of law, or of the practice of the court are involved.

At this juncture, it may be worthwhile to take note of the observations of Lord Westbury in Spread V Morgan 11 HL case 588(602) which is reproduced below:
“It is true that the law will not permit the excuse of ignorance of law to be pleaded for the purpose of exempting persons from damages for breach of contract or for crimes committed by them but on other occasions and for other purposes it is evident that the fact that such ignorance existed will sometimes be recognised so as to affect a judicial decision.”

Thus it is clear that the maxim has been applied in England only when facts and circumstances justify its application.

**Position in America**

The status given to the maxim in the US is not different from that of England or India. Attention is invited to the celebrated case of Lambert v California, a case decided by the Supreme Court in America where it was held as follows

“When applied to a person who has no actual knowledge of his duty to register, and where no showing is made of the probability of such knowledge, this ordinance violates the Due Process Clause of the Fourteenth Amendment.”

In Cheek v CHEEK v. UNITED STATES, 498 U.S. 192 (1991) the Supreme Court of America made the observations which are reproduced below.

“The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system. See e.g., United States v. Smith, 5 Wheat. 153, 182 (1820); Barlow v. United States, 7 Pet. 404, 411 (1833); Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common law rule has been applied by the Court in numerous cases construing criminal statutes. See, e.g., United States v. International Minerals & Chemical Corp., 402 US 558 (1971); Hamling v. United States,418 U.S 87 (1974): Boyce Motor Lines, Inc. v. United States,342 U.S 337 (1952).

The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend (498 U.S 192 at 200) the extent of the duties and obligations imposed by the tax laws. Congress has accordingly softened the impact of the common law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses. Thus, the Court almost 60 years ago interpreted the statutory term "wilfully" as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws.

In United States v. Murdock, 290 U.S 389 (1933), the Court recognized that: "Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct.”

Thus in the US also the maxim has been applied cautiously with so many exceptions.

**Position in India**

Let us now see the position in India. India being a country under British rule for a fairly long period of 200 and odd years have adopted the British laws though slightly modified to suite the Indian conditions and culture. Before the advent of the British
power Indian courts used to apply the personal laws of Hindus and Mohammadans to decide disputes brought before it. If the litigants are Hindus then Hindu law will apply and if litigants are Muslims Islamic law will apply. If one party is a Hindu and the other a Muslim then the law of the defendant would apply. But during the British rule Indian courts started applying the English common law to settle disputes along with Hindu law and other purely Indian laws. However, by and large it is the English laws that predominate. So far as the maxim is concerned India too applied the same with exceptions carved out.

The maxim was considered by the Hon Supreme Court in Motilal Padampat Mills Ltd V State of Uttar Pradesh reported in (1979) 118 ITR 326(SC). The Hon Court observed as follows

"It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law."

So the Hon court in very clear terms has stated the law. There is no room for doubt. In a case decided by the Hon Supreme court the judges openly admitted that they have never heard of the law which was stated to have been violated by an illiterate person in a remote village. Therefore, the Hon court acquitted the person charged for violating that law. India did not bluntly apply the maxim.

Attention is again invited to the decision of the Hon Supreme Court in the case of Commissioner of Income-tax v P.S.S. Investments P. Ltd reported in [1977] 107 ITR 0001 wherein the Hon court made these important observations which requires special attention.

"The intelligence of even those with legal background gets staggered in this continuous process of carving exceptions to exceptions. It seems more like a conundrum, baffling the mind and requiring special acumen to unravel its mystique. One can only wonder as to how the ordinary tax-payers, most of whom are laymen, can keep abreast of such laws. Yet the maxim is that everyone is presumed to know the law."

Thus it is clear that the courts have accepted ignorance of law as an excuse or refused to impose penalty when the violation of law was not deliberate or was innocently violated.

CONCLUSION

In view of the discussions above the author is of the view that the maxim has to be applied only in fit cases and that too facts and circumstance of the case warrants its application. The study of the status of the maxim in England, US and India above clearly indicates that courts are reluctant to accept the maxim bluntly. It cannot be totally done away with. My submission is that in a fit case when circumstances clearly warrant it, the maxim need not be applied and a person may be excused for his ignorance. It may not be admissible in criminal matters but in other areas of law it can be applied only if it is warranted.

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Recommended Read

- IBC is not a Recovery Law, it is Revival Law
- Insolvency & Bankruptcy Code - New Law On The Horizon Of India

RAVISHANKAR K
Dear Sir // Madam Please comment on this http://www.caclubindia.com/forum/help-me-company-not-recruiting-senior-staff-271835.asp#.UpC3P-Id0UY

AKSHAY DOSHI
nice article

SHIBU
Good article. "Ignorentia juris nor excusat" in a different style. You said it - human beings are not books, texts. But I believe the concept of fraud and error. Where error, an unintentional mistake but fraud an intentional one need to be punished.

JOSE
A useful article.

CA JAHANVI TRIVEDI
Very good explanation of the maxim. Would look forward for some more light on various laws which are favourable and one must know to protect his/her rights like labour laws, finance laws, etc.