

CHAPTER IV : INDIAN PENAL CODE

GENERAL EXCEPTIONS

TABLE OF CONTENTS

INTRODUCTION_____	1
BURDEN OF PROOF_____	1
GENERAL EXCEPTIONS_____	1
MISTAKE OF FACT_____	2
INEVITABLE ACCIDENTS_____	2
INTOXICATION_____	3
INSANITY_____	4
CONSENT_____	4
RIGHT TO PRIVATE DEFENCE_____	6
CONCLUSION	

LIST OF AUTHORITIES

1. JAGEHSWAR v. EMPEROR
2. Director of Public Prosecution v. Majewski
3. Cheek v. United States
4. Hari Singh Gond vs State Of M.P
5. Surendra Mishra vs State Of Jharkhand
6. Parichhat vs State of M.P
7. Mahabir Choudhary v. State of Bihar

INTRODUCTION

As we all know that the Indian Penal Code, 1860 describes various offences which a person can commit along with the punishments one would be facing in case of such proven guilty. However as we have seen in various sciences and other fields also, everything that exist comes with a few exceptions. Same happens in case of certain types of offences. General Exceptions are also said to be as “defences”. The various sections contained in this chapter control all other sections defining offences and not just one offence. General understanding of these general exceptions can be stated as various defences which a person who is accused of an offence under the Code or any special or local law can plead in order to waive off the liability.

BURDEN OF PROOF

Now before we get into the concept of various types of these defences, let us first know certain basics about it. Since we all know in order to prove a person guilty or not guilty of an offence it is needed to be proved in court by one of the parties. Same is the case here. The general rule states that it is the duty of the prosecution to prove the prisoner’s guilt and if at the end of and in the whole the case, there is a reasonable doubt created by the evidence given as to whether the accused has committed the offence or not, the accused can claim acquittal on the basis the ground of benefit of doubt. This concept in legal language is known as burden of proof which lies with the prosecution or the side of the accused.

VARIOUS KINDS OF EXCEPTIONS

Under the Indian Penal Code, 1860, there are six various kinds exceptions or defences available for us which are mentioned broadly in thirty-one sections, that are, from Section 76 of the IPC¹. The primary motive of these defences is to absolve the accused from the criminal liability as said before.

1. MISTAKE OF FACT(Sections 76, 79):

According to the section 76 of IPC, no such act which is done by a person, in good faith, and not under the mistake of law who is bound by or believes himself to be bound by law to do so will attract any liability of any offence prescribed under law.² In simple words it means that if a person does any act which otherwise if done would have constituted an offence, is done with no evil intent or done with mere good faith or under the obligations imposed by law upon him will not make him guilty under any offence.

The reasoning behind this concept is that in order to constitute a crime or offence, one must fulfill two basic conditions, namely-

- a) Evil intent;

¹ INDIAN PENAL CODE, 1860

² <https://indiankanoon.org/doc/202169/>

b) Voluntary act arising out of that intent.

If any one of these two conditions doesn't get fulfilled, then the act would not amount to an offence and so a person if doing an act has no evil intent will not fulfill the first condition and thus no liability shall arise. Now let us take a few examples to understand the concept better.

- A, a soldier, fires on a mob by the order of his senior officer bound by law to follow, has committed no offence.³
- B, a High Court Judge, pronounces death punishment of person who had committed a grave offence, is not guilty of murder.⁴

However, as the above section mentions a clause that is “**mistake of law**” which might give this defence a break point. According to law, mistake of law is no defence. This is because the judiciary believes that every person who is a citizen of India or who is a foreigner who stays or visits India should know the law of the land and any mistake of which will not be a ground of excuse at any point.⁵

2. **INEVITABLE ACCIDENT :**

The word ‘accident’ by its general meaning gives us an idea about this defence. In the knowledge of a lay man something which occurs suddenly and without any knowledge of it happening can be excused with a belief that if the person who has done the act had the knowledge that his act would lead to any harm to any person, he would have not started the act in the first place.

According to Section 80 of IPC, in order to claim the defence of accident some ingredients must be fulfilled. They are-

- a) The act must be an accident;
- b) There should not be criminal intention or knowledge;
- c) The accident must be the outcome of a lawful act.

The whole idea behind this defence is to waive of the liability of the person who has done an act which lead to inflicting some harm upon the person but in a manner which was lawful and done by lawful means.

In the leading case of *JAGEHSWAR v. EMPEROR*⁶, the accused was beating a person with his fists when the latter with a two month child on her shoulder interfered. The accused hit the woman but the blow struck the baby due to which the child dies. Here in this case however the act which was the blow intended to hit the woman, struck the child, was just an accident but still the initial act of the accused that is of beating was not lawful and thus he cannot claim the defence of accident.

However in some cases a person does an act which is likely to cause harm but to prevent another harm but do not have criminal intentions. Such cases fall under the category of inevitable accidents. In scenarios like such the harm to be prevented or avoided shall be of

³ Illustration (a) of section 76 of IPC.

⁴ Section 77 and 78 of IPC.

⁵ Cheek v. United States, 498 U.S. 192

⁶ A.I.R. 1924 Oudh 228 : 24 Cri L.J. 789

nature such that it was inevitable and imminent so as to justify the risk of doing the act with the knowledge that it might inflict harm.

For example- a, the captain of a vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down to boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.⁷

3. INTOXICATION (Section 85) :

Intoxication is seen as a perspective in which an individual loses discretion and his capacity to pass judgment.

The Indian Law on this point elaborates this defence with three conditions to be fulfilled in order to claim this defence. They are-

- a) The nature of act must be unknown to the person;
- b) The person should be unaware of the fact whether the act he is doing is right or wrong;
- c) The person should have been intoxicated out of his will, that is, without his consent.

Each of these conditions have their own importance in claiming the defence. The first condition which says that the person shall be incapable of knowing the nature of the act means that the person who had consumed alcohol or anything else that had intoxicated him in such quantity that it had made his mind to be out of senses which in turn lead him to not understanding the act he is doing. For example, A, who had a bad day, goes to a bar and drinks one glass of 10 ml of whiskey which had only 10 percent alcohol in it and starts beating another man in the bar. Here A cannot claim the defence the intoxication as this amount of alcohol in a reasonable man's eye wouldn't render a man out of his senses.

The second condition however means that the person should not be able to understand the nature of his act. As in the case above, A could understand the nature of his act as he knew beating someone is wrong still he did so the knowledge of the nature of the act was there.

Thirdly, the condition of consent arises. This is an important condition in this defence. By taking the same example as above, we can clearly know that A had given his consent by asking for the glass of whiskey himself.⁸ Had the case here be that A had asked for soft drink and the bartender had served him hard drink and that to of greater quantity than asked, then it would not be considered as given consent and the claim for the defence might hold some water.

⁷ Illustration (a) to section 81 of IPC.

⁸ Director of Public Prosecution v. Majewski 1976] 2 All ER 142.

4. INSANITY:

“Actus Non Facit Reum Nisi Mens Sit Rea,” which means, an act, without a guilty mind, does not make an offender liable.

This defence secures an individual who is unequipped for understanding the idea of the demonstration done by him. The unsoundness of brain ought to be of such a degree that it makes the wrongdoer totally bumbling in knowing the idea of the demonstration. The factor that the individual is experiencing a psychological maladjustment is without anyone else inadequate to demonstrate that he is crazy.

It should be noted that the framers of the IPC preferred to use the expression “insanity of mind” instead of the term “insanity.” Insanity’s scope is very limited, while the mind’s insanity covers a large area.

⁹For this defence, the following elements are to be established-

- a) The accused was in a state of unsoundness of mind at the time of the act.
- b) He was unable to know the nature of the act or do what was either wrong or contrary to the law. The term ‘wrong’ is different from the term ‘contrary to the law.’

The court in certain major judgements differentiated the meaning between medical and legal insanity.¹⁰ A person with merely medical illness cannot be exempted from criminal liability.¹¹ It was said that it is important that the person committing an offence should be facing the unsoundness of mind at the time of commission of the offence.

For example- A, who gets bouts of insanity, beats a child to death. Here in this case, if A while beating the child had suffered that bout or stroke of insanity, then he can claim the defence of insanity otherwise just on the basis of the fact that he has a medical illness won’t allow him to take the defence.

5. CONSENT (Sections 87 and 90):

*“Act not intended and not known to be likely to cause death or grievous hurt, done by consent.—Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.”*¹²

To understand this section better, we can simplify it into-

⁹ <https://indiankanoon.org/doc/1433889/>

¹⁰ Hari Singh Gond vs State Of M.P, 2008

¹¹ Surendra Mishra vs State Of Jharkhand on 6 January, 2011

¹² Section 84 of IPC, <https://indiankanoon.org/doc/287914/>

- a) The act should have been done with neither the intention of causing death or grievous hurt nor with the knowledge that such act is likely to cause death or grievous hurt.
- b) The harm that is caused to any person was with the consent.
- c) Person giving the consent is above 18 years of age.
- d) Consent given must be expressed or implied.

Now to begin with, let us understand the meaning to expressed and implied consent. If a person himself clearly states that he or she is agreeing to an event which a reasonable man can foresee would lead to harm then the consent is said to be expressed. For example- X, had an operation of his spine. However, before the activity, the specialist instructed him to sign a paper in which it was explicitly referenced that activity may cause his demise. X signed the paper as he had a horrendous torment. X passed on. The specialist won't be liable.

Implied consent however does not include direct or in person consent but it is understood by the nature of the event by the person that such act would lead to any harm.¹³ **For example,** A and Z agrees to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

The consent however should be free and not under any kind of compulsion or from a person who is incapable of understanding the consequences of the act. Consent taken under the fear of injury or misconception of fact is no free consent. Likewise, consent of an unsound person or person intoxicated and a child below the age of 12 years of age is not a valid consent.

In *Dasrath Paswan vs State Of Bihar*¹⁴

In this case, the accused has failed at an examination for three consecutive years. By disappointing these continuous failures he decided to end his life. He discussed his decision with his wife who was a literate woman of 19 years of age. His wife said to kill her first and then kill himself. Accordingly, the accused killed his wife first and was arrested before he could kill himself. It was held that the wife had not given her consent under the fear of injury or misconception of fact. Hence, the accused would not be liable for murder.

6. RIGHT TO PRIVATE DEFENCE –

It is simply the principal obligation of man to support himself. The privilege is perceived in each arrangement of law and its degree fluctuates in the opposite proportion to the limit of the state to ensure life and property of the residents. It is the essential obligation of the state to ensure the life and property of the people, however no express, regardless of how enormous its assets, can bear to depute a cop to canine the means of each rouge in the nation. Therefore this privilege has been given by the state to each resident of the nation to bring law into his own hand for their security. One thing ought to be certain that, there is no privilege of private guard when there is an ideal opportunity to have plan of action to the assurance of police specialists.

¹³ Illustration to section 87.

¹⁴ AIR 1958 Pat 190, 1958 (6) BLJR 60, 1958 CriLJ 548

According to Section 97, the right of private defence is of 2 types:

- (a) Right of private defence of body,
- (b) Right of private defence of property.

This Section limits exercise of the privilege of private protection to the degree of supreme need. It must not be more than should be expected for shielding hostility. There must be sensible misgiving of threat that originates from the assailant as animosity.

In *Parichhat vs State of M.P.*,¹⁵

A lathi blow on his father's head, his son, the accused, gave a blow with a ballam on the chest of the deceased. The court decided that the accused has obviously exceeded his right of private defence.¹⁶

However, there is no right of private defence against an act which does not reasonable cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

In *Mahabir Choudhary v. State of Bihar*,¹⁷

The court saw that privilege to private guard can't be utilized to execute the transgressor except if the individual concerned has a sensible reason to expect that in any case demise or egregious hurt may follow in which case that individual would have full proportion of right to private safeguard including slaughtering".

CONCLUSION-

All of these defences are treated to be as exceptions under the Indian Penal Code for the every purpose of them to be applicable to every offence mentioned under this code. Not always there is a possibility that the act of a wrongdoer is actually a wrong. The law makers had formulated these laws to protect its citizens and make sure that no one is being wronged at any point by the law. But as even our fundamental rights come with a few restrictions so does these defences. The important rule behind each of these exceptions is to safeguard oneself and not use in inappropriately.

¹⁵ AIR 1972 SC 535

¹⁶ <https://indiankanoon.org/doc/1724851/>

¹⁷ (1996) 5 SCC 107