

LL.M. IV SEMESTER

SUBJECT: Specific Principles of Criminal Law

CODE: L-4005 A

Excusable Defences

- Chapter 4 deals with the “ *General Exceptions*” which a person , accused of an offence under the code or any special or local law can plead. This chapter exempts certain acts from criminal liability.
- Principles enunciated in Chapter 4 are in fact rules of evidence carrying either conclusive or rebuttable presumptions.
- They deal with the circumstances which preclude the existence of ‘ *Mens rea*’.
- Huda calls these principles “*Condition of non imputability*”
- Kenny calls them “*condition of exemptions from criminal liability*”. If the existence of facts , or circumstances bringing the case within any of the exemptions is proved, negatives the existence of ‘ *Mens rea*’ necessary to constitute the offence and thereby furnishes a ground for exemption from criminal liability.

Chapter 4 deal with two broad classes of exception :-

- 1- Excusable Defences
- 2- Justifiable Defences

| Excusable Defences | Offences | Sections |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------|
| Excusable Defences are those where act committed is excused for want of necessary requirement of ‘ <i>Mens rea</i> ’ In such cases the act is not criminal because the intention was not criminal | Mistake of fact | Sec. 76-79 |
| | Accident | Sec. 80 |
| | Incapacity – Infancy | Sec. 82&83 |
| | Insanity | Sec. 84 |
| | Intoxication | Sec. 85& 86 |

Mistake :- Nothing is an offence which is “ *Ignorantia facti excusat ignorantia legis neminem excusat*” is well known Maxim of Criminal Law, It means ignorance of fact is an excuse , ignorance of law is no excuse . The maxim ignorantia facti excusat follows the doctrine of Mens rea . Nothing is an offence which is done by a person bound , by law nothing is an offence which is done by a person who is, or who by reason of a mistake of fact , in good faith believe himself to be bound by law to do it. (Read Sec.76 IPC)

Key words -

- Mistake of fact and not law
 - Bound by law
 - Good faith
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- In Indian Law on mistake is contained in Sec. 76&79 of IPC
Essentials of sec. 76 may be analysed as follow :-
 - 1- An act done by a person who is bound by law In doing that or
 - 2- An act done by a person who believes in himself to be bound by law in doing that.
 - 3- The belief must be reason of a mistake of law, mistake must relate to fact & not to law .

Mistake of fact - “*Mistake is not mere Forgetfulness*” (Barrow v. Issacs, 1891 QB417) It is a slip made, but by Mischance (Sandford v. Bed (1899) 65 QB 73)

Cases - R. v. Princes

R. v. Tolson

Cundy v. Le Cocq

Rex v. Levett

Bhawoo Jivasi v. Mulli Dayal

- **Sec. 79** on the other hand, deals with cases where by reason of a mistake of fact the person under such mistake considers himself simply justified by law to act in a particular way.
- **Nothing** is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it (Sec. 79)

Ingredients -

- An act done by a person under a mistake of fact
- Mistake must be committed in good faith
- Mistake must relate to fact & not to law
- The person doing the act is either justified by law or believes himself to be justified by law in doing an act.

Cases – Joseph Thommen v. Joseph Antony 1957 Cr. L.J. 166

- Kesho Sahu v. Saligram Shah 1977 Cr.L.S. 1725 (Orissa)

Accident :-

- **Sec. 80** of the IPC is based on the principle that no act is “*Per-se*” criminal unless the act or did it with criminal intent.
- **Accident** doesn’t mean a happening by a chance but such happening must be unintentional and unexpected . It means an undesigned happening out of the ordinary course which no man of ordinary prudence could anticipated or provide against .
- **Nothing** is an offence which is done by an accident or misfortune & without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care & caution (Sec.80 IPC)
- Its ingredients are as follows –
- The act must be an accident or misfortune
- The act must not be done with any criminal intention or knowledge
- The accident must be the outcome of a lawful act done in lawful manner by lawful means
- The act must have been done with proper care & caution.

- Both the words accident & misfortune imply injury to another. Accident involves injury to another misfortune implies as much injury to the author as to another unconnected with the act. An injury is said to be caused accidentally when it neither wilfully nor negligently caused.
- State v. Rangaswamy AIR 1952
- Jageshwar v. Emperor , AIR 1924
- Shakhir Kahn v. Crown , AIR 1931
- Ammrondra v. State of Karnataka , AIR 1998
- This sec. exempts the doer of an innocent or lawful act in an innocent in lawful manner from any unforeseen result that may ensue from accident or misfortune, if either of these elements is wanting the act will not be excused on the ground accident. (Sukhdev Singh V. Delhi State Gov. of NCT of Delhi) 2003 Cri.

Infancy

- In legal sense both boys & girls were held to be infants under the age of 07 years & were immune from punishment under English & Roman Law, they are under a natural disability of distinguishing between good & evil.
- Both under English & Roman law, when the boy became of 14 & the girls of 12 they were said to have attained the age of discretion & therefore children above this age were held liable for offences committed by them.
- So the children before they attained this age were said to be “ *doli incapax*” yet if it appears to the court that they were *doli capax* and could discern between good & evil, they may be convicted and suffer the sentence .
- In India a child below seven years of age is considered to be *doli incapax* and therefore can't be held guilty of any offence.
- Merely the evidence of that age would be a conclusive proof of the innocence of a child and would “ *ipso-facto*” be an answer to any charge against him . (Queen v. Lakhini Agradanini 1874)

- The defence of infancy was raised for the first time before the S.C. in the case of Gopinath Ghosh v. State of West Bengal , AIR 1984
- The Sec. 82 & 83 deals with the law of infancy. Sec 82 provide that “Nothing is an offence which is done by a child under 07 year of age : it means a child below the age of 07 years (doli incapax)
- Sec. 83 provide that “ Nothing is an offence which is done by a child above 07 years of age” & under 12 Who has not attained the sufficient maturity of understanding to judge the nature & consequences of his conduct on that occasion. (Ulla Mahapatra , 1950)

| Act of the Child | Liability |
|--------------------------------------------------------------|------------------------------------------------------------------------------|
| Below 07 years of age | No liability |
| Act done by a child above 07 years but under 12 years of age | If attained sufficient maturity of understanding no immunity will be granted |
| Above 12 years of age | Liable in all respects |

Insanity (Sec 84)

- 1- A person may lack sufficient mental capacity to form a criminal intent because immaturity of age or because of some defect of the mental faculty.
- 2- When such defect is caused by some disease of mind , a person is said to be insane. Therefore, those who are under a natural disability of distinguishing between good & evil, as infants under the age of discretion, idiots, and lunatics, are not punishable by criminal prosecution whatsoever.
 - A - R.V. Arnold (1727)
 - B – Lord Ferrer’s (1760)
 - C- Bowelr’s Case (1812)
 - D – R. v . M’Naghten Rules (1843)
- 3- Act of person of unsound mind –
 - Nothing is an offence which is done by a person who , at the time of doing it , by reason of unsoundness of mind , is incapable of

knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

This Sec. lays down the test of responsibility in case of alleged unsoundness of mind.

Ingredients :-

- Act must be done by a person of unsound mind
- Such person must be incapable of knowing – The nature of act or that the act was contrary to law or that the act was wrong.
- Such incapability must be by reason of unsoundness of mind of the offender.
- The incapability of the nature stated above in point 2 must exist at the time of doing of the act constituting the offence.
- Person of unsound mind – There are four kinds of persons who may be said to be not of sound mind, (Non compos mentis)
- An idiot
- A lunatic or a madman
- One made non compos by illness
- One who is drunk

Non Compos Mentis – A person made non compos mentis by illness is exempted from criminal liability in cases of such acts which are committed while under the influence of his mental disorder.

Medical & Legal insanity – Medical insanity is solely dependent on medical grounds while legal insanity depends on the factors required to be proved in a court of law to enable the accused to be acquitted of the charge.

Medically a person may be certified sane or insane as the case may be, but legally he will be held insane (of unsound mind) Only if he successfully proves the requirements of the law under Sec. 84 .

Intoxications

Intoxications –Sec. 85 & 86

- The Indian Law on involuntary drunkenness is contained in Sec. 85 of the IPC
- The Sec. affords the same protection to an accused as Sec. 84 to a person of unsound mind.
- In order to claim exception from criminal liability under Sec. 85 the accused has to established that : - At the time of doing the act by reason of intoxication he was incapable of knowing.

The nature of the act or

That he was doing what was either wrong it contrary to law and

That the thing which intoxicated him was administrated to him without his knowledge or against his will.

Without his knowledge means ignorance of the fact that what is being administered is or contains or is mixed with intoxicant

- An act which does performed not out of his on conscious volition but compulsion by some outside agency by over powering or paralysing his will by overt physical acts is an against one's will. (Jethu Ram 1960 Cr.L.J. 1093)
- Involuntary drunkenness is the defence but voluntary drunkenness is no defence for the commission of a crime.

The Director public prosecution v. Beard 1920 A.C. 479

- The law relating to voluntary drunkenness is contained in Sec. 86 of the Code.
- A person voluntarily intoxicated will be deemed to have the same knowledge as the would have if he had not been intoxicated. he can only be punished on
- The basis of knowledge of any particular intention.
Basudeo V. State of Pepsu AIR 1956 S.C.488
Sarathi V. State of M.P. 1976 Cr.L.J. 594

When a person wants to claim the defence of intoxication than he has to prove that the intoxicated thing was administered to him without his knowledge or against his will.

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