# IPC Section 90

## Section 90 of the Indian Penal Code: Consent Known to be Given Under Fear or Misconception  
  
Section 90 of the Indian Penal Code (IPC) defines circumstances under which consent is not considered valid consent in the eyes of the law. This section is crucial in cases involving offences against the person, particularly sexual offences, where the question of consent plays a pivotal role. It essentially states that consent given under fear or misconception is not consent at all.  
  
\*\*The Wording of Section 90:\*\*  
  
Section 90 states: "A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.—unless the contrary is expressly declared, if the consent is given by a person who is under twelve years of age."  
  
\*\*Breakdown of Section 90:\*\*  
  
Section 90 can be broken down into three key parts:  
  
1. \*\*Consent given under fear of injury or misconception of fact:\*\* This part addresses situations where an individual gives consent due to coercion or a misunderstanding of the situation. The person doing the act must know or have reason to believe that the consent was obtained in this manner.  
  
2. \*\*Consent given by a person of unsound mind or intoxicated:\*\* This part invalidates consent given by someone who is incapable of understanding the nature and consequences of their consent due to mental incapacity or intoxication.  
  
3. \*\*Consent given by a child under twelve years of age:\*\* This part categorically states that consent given by a child under twelve is not valid consent, unless a specific provision in the Code explicitly states otherwise. This clause reflects the understanding that children below this age lack the maturity and capacity to make informed decisions about sexual acts.  
  
\*\*Elaboration on Key Aspects of Section 90:\*\*  
  
\*\*1. Consent Under Fear of Injury:\*\*  
  
This clause encompasses situations where consent is obtained through threats or intimidation. The fear must be of injury, which can be physical, emotional, or psychological. The threat doesn't necessarily have to be directed at the person giving consent; it could also be directed towards their loved ones. The crucial aspect is that the fear must be the driving force behind the consent. Examples include:  
  
\* \*\*Threat of physical violence:\*\* Consenting to sexual intercourse due to fear of being physically assaulted.  
\* \*\*Threat of reputational damage:\*\* Consenting to sexual activity due to fear of having private information exposed.  
\* \*\*Threat of job loss:\*\* Consenting to sexual favors from a superior due to fear of losing one's job.  
  
\*\*2. Consent Under Misconception of Fact:\*\*  
  
This clause addresses situations where consent is given based on a misunderstanding of the true nature of the act. The misconception must be related to a fact that is essential to the act itself. Examples include:  
  
\* \*\*Misconception about the nature of the act:\*\* Consenting to a medical procedure believing it to be something else.  
\* \*\*Misconception about the identity of the person:\*\* Consenting to sexual intercourse with someone believing them to be their spouse.  
\* \*\*Misconception about the purpose of the act:\*\* Consenting to touching believing it to be part of a medical examination, when it is actually for sexual gratification.  
  
\*\*3. Knowledge or Reason to Believe:\*\*  
  
For consent to be invalidated under the first part of Section 90, the person doing the act must know or have reason to believe that the consent was given due to fear or misconception. This subjective element is crucial. It requires an assessment of the accused's state of mind. If the accused genuinely believed the consent was freely and voluntarily given, they may not be held liable under this section, even if the consent was in fact given under fear or misconception. However, the standard is "reason to believe," implying a reasonable person in the same situation should have recognized the presence of fear or misconception. Willful blindness or deliberate ignorance cannot be used as a defense.  
  
\*\*4. Consent of a Person of Unsound Mind or Intoxicated:\*\*  
  
This part focuses on the capacity of the individual to give consent. If a person is suffering from a mental illness or is intoxicated to the extent that they are unable to understand the nature and consequences of their consent, then such consent is not valid. The level of intoxication must be such that it impairs their cognitive abilities to the point where they cannot comprehend the situation.  
  
\*\*5. Consent of a Child Under Twelve Years of Age:\*\*  
  
This clause provides blanket protection to children under twelve. It recognizes their inherent vulnerability and lack of capacity to make informed decisions about sexual acts. Consent given by a child under this age is considered invalid regardless of whether there was fear, misconception, or understanding of the act. This provision is in line with the principle of protecting children from sexual exploitation and abuse.  
  
\*\*Exceptions to Section 90:\*\*  
  
While Section 90 broadly invalidates consent obtained under duress or misconception, there are certain situations where exceptions may apply. For example, in medical procedures, a patient's consent might be deemed valid even if given under some level of fear, provided the procedure is necessary and in the patient's best interest. Similarly, in certain competitive sports, consent to physical contact that might otherwise be considered assault could be considered valid due to the inherent nature of the activity. However, these exceptions are narrowly construed and must be carefully analyzed based on the specific facts and circumstances of each case.  
  
\*\*Relationship with other Sections of the IPC:\*\*  
  
Section 90 is often read in conjunction with other sections of the IPC that deal with offences against the person, such as rape (Section 375), assault (Section 351), and kidnapping (Section 362). The definition of consent in Section 90 plays a crucial role in determining whether an act constitutes an offence under these sections.  
  
\*\*Practical Implications of Section 90:\*\*  
  
Section 90 has significant practical implications in criminal trials, especially in cases involving sexual offences. It places the burden on the prosecution to prove not only the act itself but also the absence of valid consent. The prosecution must demonstrate that the consent was obtained under fear, misconception, or that the complainant lacked the capacity to give consent due to age, mental incapacity, or intoxication. The accused's knowledge or reason to believe that the consent was not freely given must also be established.  
  
\*\*Conclusion:\*\*  
  
Section 90 of the IPC is a crucial provision that defines the boundaries of valid consent. It recognizes that consent obtained through coercion, misconception, or from individuals lacking capacity is not genuine consent in the eyes of the law. This section plays a vital role in protecting vulnerable individuals from exploitation and abuse. It underscores the importance of free will and informed decision-making in interpersonal interactions, particularly in the context of sexual activity. The interpretation and application of this section require careful consideration of the individual circumstances of each case, with a focus on ensuring justice and protecting the rights of all involved. The understanding and proper application of Section 90 are essential for a just and equitable criminal justice system.