# IPC Section 91

## Section 91 of the Indian Penal Code: Exclusion of Acts Done by Consent  
  
Section 91 of the Indian Penal Code (IPC) clarifies the limitations of consent as a defense to criminal liability. While consent can be a valid defense in certain situations, Section 91 specifies circumstances where even with consent, an act can still constitute an offense. This section plays a crucial role in balancing individual autonomy with the protection of public interest and preventing harm.  
  
\*\*The Wording of Section 91:\*\*  
  
Section 91 states: "The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given."  
  
\*\*Understanding the Scope of Section 91:\*\*  
  
Section 91 essentially limits the scope of the exceptions provided in Sections 87, 88, and 89 of the IPC. These sections deal with acts done with consent:  
  
\* \*\*Section 87:\*\* Act not intended and not known to be likely to cause death or grievous hurt, done by consent.  
\* \*\*Section 88:\*\* Act not intended to cause death, done by consent in good faith for person’s benefit.  
\* \*\*Section 89:\*\* Act done in good faith for benefit of child or insane person, by or by consent of guardian.  
  
Section 91 clarifies that even if an act falls under the exceptions provided by Sections 87, 88, or 89, it will still be considered an offense if it is independently illegal, regardless of the harm caused or intended to be caused to the person giving consent.  
  
\*\*Key Elements of Section 91:\*\*  
  
\* \*\*Offenses independent of harm:\*\* Section 91 focuses on acts that are criminal in themselves, irrespective of whether they cause any actual harm. The focus is on the inherent illegality of the act, not the consequences.  
  
\* \*\*Irrelevance of consent:\*\* Even if the person consents to the act, it will not be a defense if the act itself is prohibited by law. Consent cannot legitimize an otherwise illegal activity.  
  
\* \*\*Limitation on exceptions:\*\* This section clarifies that the exceptions provided in Sections 87, 88, and 89 are not absolute. They do not apply to acts that are inherently criminal.  
  
\*\*Illustrative Examples:\*\*  
  
To better understand the application of Section 91, let's consider some examples:  
  
1. \*\*Illegal Prize Fight:\*\* Two individuals agree to participate in an illegal prize fight. Even though both parties consent to the physical violence, the act itself is illegal and punishable under the law. Section 91 would prevent them from using consent as a defense.  
  
2. \*\*Unnatural Offences:\*\* Even if two consenting adults engage in sexual acts considered "unnatural" under Section 377 of the IPC, their consent would not be a defense. The act itself is criminalized, regardless of consent.  
  
3. \*\*Child Marriage:\*\* Even if a minor girl's parents consent to her marriage, the act itself is illegal under the Prohibition of Child Marriage Act. Section 91 prevents the parents' consent from legitimizing the illegal act.  
  
4. \*\*Euthanasia:\*\* Even if a terminally ill patient consents to euthanasia, the act itself is illegal in India. The patient's consent cannot make the act legal.  
  
5. \*\*Female Genital Mutilation:\*\* Even if a family consents to female genital mutilation for cultural or religious reasons, the act is illegal and harmful. Consent cannot be used as a defense.  
  
6. \*\*Duelling:\*\* Even if two individuals agree to a duel, the act is illegal and dangerous. Consent cannot be used to justify the act.  
  
7. \*\*Giving or Taking Dowry:\*\* Even if both parties involved in a marriage agree to the giving and taking of dowry, the act is illegal under the Dowry Prohibition Act. Consent does not legitimize the illegal transaction.  
  
8. \*\*Consensual Sexual Intercourse with a Minor:\*\* Even if a minor consents to sexual intercourse with an adult, the act is considered statutory rape and is illegal. The minor's consent is irrelevant due to their age and inability to provide legally valid consent.  
  
  
\*\*Distinction from Section 90:\*\*  
  
While both Sections 90 and 91 address the limitations of consent, they operate in different ways:  
  
\* \*\*Section 90:\*\* Defines what constitutes valid consent and clarifies that consent given under fear, misconception, or by individuals lacking capacity is not valid consent.  
  
\* \*\*Section 91:\*\* Addresses situations where even valid consent cannot be used as a defense because the act itself is illegal, irrespective of consent.  
  
  
\*\*Purpose and Significance of Section 91:\*\*  
  
Section 91 serves several important purposes:  
  
\* \*\*Protecting Public Interest:\*\* It ensures that certain acts that are deemed harmful to society or against public policy remain illegal, even if individuals consent to them.  
  
\* \*\*Preventing Exploitation:\*\* It prevents individuals from using consent as a shield for illegal activities, particularly in situations where one party might be vulnerable or under duress.  
  
\* \*\*Upholding the Rule of Law:\*\* It reinforces the principle that certain acts are inherently illegal and cannot be legitimized by consent.  
  
\* \*\*Balancing Individual Autonomy and Societal Interests:\*\* It strikes a balance between respecting individual autonomy and the need to protect society from harm.  
  
  
\*\*Application and Interpretation of Section 91:\*\*  
  
The application of Section 91 requires careful consideration of the specific facts and circumstances of each case. The courts must determine whether the act in question is independently illegal, regardless of consent. This involves interpreting relevant laws and considering societal values and public policy.  
  
  
\*\*Conclusion:\*\*  
  
Section 91 of the IPC is a crucial provision that clarifies the limitations of consent as a defense to criminal liability. It ensures that acts that are deemed inherently illegal remain so, even if performed with the consent of the involved parties. This section plays a vital role in protecting public interest, preventing exploitation, and upholding the rule of law. Its application requires careful consideration of the specific facts and circumstances of each case, with a focus on balancing individual autonomy and societal interests. Understanding Section 91 is essential for a comprehensive understanding of the legal framework surrounding consent and its limitations in the Indian legal system.