# IPC Section 90: Consent known to be given under fear or misconception. Consent of insane person. Consent of child.

## IPC Section 90: Consent Known to be Given Under Fear or Misconception - A Detailed Explanation  
  
Section 90 of the Indian Penal Code (IPC) delves into the crucial aspect of consent and its validity in the context of criminal law. It clarifies that consent obtained under duress, misconception, or from individuals lacking capacity is not considered valid consent for the purposes of exempting an act from criminal liability. The section 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 appears from the context, if the consent is given by a person who has not attained the age of eighteen years."\*\*  
  
  
This multifaceted section requires a detailed analysis to understand its implications:  
  
\*\*1. Consent Under Fear of Injury:\*\*  
  
The first part of Section 90 addresses consent given under duress or coercion. If a person consents to an act due to fear of injury to themselves or another person, that consent is not considered valid consent within the meaning of the IPC. The threat can be explicit or implicit, direct or indirect. The key is that the consent must be a direct consequence of the fear instilled by the other party.  
  
  
\*\*2. Consent Under Misconception of Fact:\*\*  
  
This part of the section deals with consent given based on a misunderstanding of the relevant facts. If a person consents to an act due to a mistaken belief about a crucial fact relating to the act, that consent is not considered valid. The misconception must be about a fact material to the act, not a trivial or irrelevant detail. The person performing the act must know or have reason to believe that the consent was given due to this misconception.  
  
  
\*\*3. Knowledge or Reason to Believe:\*\*  
  
For consent given under fear or misconception to be invalid, the person performing the act must know or have reason to believe that the consent was obtained through such means. This introduces an element of subjective awareness on the part of the actor. If they genuinely believe the consent is freely and informedly given, they might have a defense even if it later turns out that the consent was obtained through fear or misconception. However, willful blindness or deliberate ignorance cannot be used to escape liability. If the circumstances are such that a reasonable person would have recognized the presence of fear or misconception, the actor cannot claim ignorance.  
  
  
\*\*4. Consent of Insane Person:\*\*  
  
The second part of Section 90 addresses consent given by individuals deemed "insane" due to unsoundness of mind or intoxication. If a person is unable to understand the nature and consequences of the act they are consenting to due to their mental state or intoxication, their consent is not considered valid. This recognizes that individuals lacking mental capacity cannot make informed decisions about their own well-being or safety.  
  
  
\*\*5. Consent of Child:\*\*  
  
The final part of Section 90 deals with the consent of minors. Unless the context suggests otherwise, consent given by a person below eighteen years of age is not considered valid consent within the meaning of the IPC. This reflects the legal principle that minors are not considered fully capable of making informed decisions about matters that might affect their well-being or safety. This provision overrides any other provision in the code which mentions consent unless the contrary appears from the context. For example, the age of consent for sexual intercourse under the POCSO Act, 2012, is 18 years. Therefore, even if a person below 18 years has given consent for sexual intercourse, it will not be considered valid consent.  
  
  
\*\*6. Burden of Proof:\*\*  
  
The burden of proving that consent was given under fear, misconception, or by a person lacking capacity lies on the prosecution. They must demonstrate that the consent was not freely and informedly given and that the person performing the act knew or had reason to believe this.  
  
  
\*\*7. Examples:\*\*  
  
\* A person consenting to sexual intercourse due to fear of being physically harmed.  
\* A person consenting to a medical procedure due to a misunderstanding about its nature or risks.  
\* A person consenting to a contract while intoxicated and unable to understand its terms.  
\* A minor consenting to a potentially harmful activity without understanding the risks involved.  
  
  
\*\*8. Judicial Interpretation:\*\*  
  
Courts have consistently emphasized the importance of free and informed consent. They have held that consent obtained through coercion, deception, or from individuals lacking capacity is not valid consent and cannot be used as a defense against criminal liability.  
  
  
\*\*9. Policy Considerations:\*\*  
  
Section 90 reflects a policy of protecting vulnerable individuals from exploitation and harm. It recognizes that consent must be genuine and informed to be legally valid and that individuals under duress, misconception, or lacking capacity cannot provide such consent.  
  
  
\*\*10. Interaction with other Sections:\*\*  
  
Section 90 clarifies the meaning of consent across various sections of the IPC. It serves as a qualifying provision for any section where consent is relevant to determining criminal liability. It ensures that the defense of consent cannot be misused to justify acts that are inherently harmful or exploitative.  
  
  
\*\*11. Conclusion:\*\*  
  
Section 90 of the IPC plays a crucial role in clarifying the concept of consent within criminal law. It establishes that consent obtained through fear, misconception, or from individuals lacking capacity is not valid consent and cannot be used as a defense against criminal charges. This section protects vulnerable individuals from exploitation and upholds the principle that genuine consent must be free, informed, and given by individuals with the capacity to understand the nature and consequences of their actions.