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[s 81] Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention1 to cause harm, and

in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

ILLUSTRATIONS

(a) A, the captain of a steam 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 a 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.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act. A is not guilty of the offence.

COMMENT.—

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided.[66.] As in self-defence so in the prevention of harm the accused is faced with two choices both resulting in some harm and of sheer necessity to avoid a greater harm he has to commit an act which would otherwise be an offence. The test really is like this: there must be a situation in which the accused is confronted with a grave danger and he has no choice but to commit the lesser harm may be even to an innocent person, in order to avoid the greater harm. Here the choice is between the two evils and the accused rightly chooses the lesser one.[67.]

1. 'Without any criminal intention'.—Under no circumstances can a person be justified in intentionally causing harm; but if he causes the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property.

'Criminal intention' simply means the purpose of design or doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. The motive for an act is not a sufficient test to determine its criminal character. By a motive is meant anything that can contribute to give birth to, or even to

prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive is pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

Where an offence depends upon proof of intention the Court must have proof of facts sufficient to justify in coming to the conclusion that the intention existed. No doubt one has usually to infer intention from conduct, and one matter that has to be taken into account is the probable effect of the conduct. But that is never conclusive.[68.]

Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.[69.]

[s 81.1] *Mens rea*.—

It is a well settled principle of common law that *mens rea* is an essential ingredient of criminal offence. A statute can exclude that element, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excludes *mens rea*. There is a presumption that *mens rea* is an essential ingredient of a statutory offence; but this may be rebutted by the express words of a statute creating the offence or by necessary implication. But the mere fact that the object of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. It is also necessary to enquire whether a statute by putting a person under strict liability helps him to assist the State in the enforcement of the law; can he do anything to promote the observance of the law? *Mens rea* by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law. The nature of *mens rea* that will be implied in a statute creating an offence depends upon the object of the Act and the provisions thereof.[70.]

It is, however, held that *mens rea* is an essential ingredient in every offence except in three cases:

(1) cases not criminal in any real sense but which in the public interest are prohibited under a penalty;

(2) public nuisance; and

(3) cases criminal in form but which are really only a summary mode of enforcing a civil right.

The maxim *actus non facit reum, nisi mens sit rea* has, however, no application in its technical sense to the offences under the Penal Code, as the definitions of various offences contain expressly a proposition as to the state of mind of the accused. In other words, each offence under the Code except offences like waging war (section 121), sedition (section 124A), kidnapping and abduction (sections 359, 363) and counterfeiting coins (section 232) prescribes a *mens rea* of a specific kind which is not exactly the same as *mens rea* in the sense of being a guilty mind under the common law. Thus, throughout the web of the IPC, 1860 the doctrine of *mens rea* runs as a running thread in the form of "intentionally", "voluntarily", "knowingly", "fraudulently", "dishonestly" and the like. It is, therefore, not entirely correct to say that the doctrine of *mens rea* is inapplicable to the offence under the Penal Code. What the Code requires is not negation of *mens rea* but *mens rea* of a specific kind and this may differ from offence-to-offence.

In this section and in sections 87, 88, 89, 91, 92, 93, 95, 100, 104 and 106, 'harm' can only mean physical injury.[71.]

As to the doctrine of compulsion and necessity, see comment on section 94, *infra*.

[s 81.2] CASES.—

Where a Chief Constable not in his uniform came to a fire and wished to force his way past the military sentries placed round it, was kicked by a sentry, it was held that as the sentry did not know who he was, the kick was justifiable for the purpose of preventing much greater harm under this section and as a means of acting up to the military order.[72.] A person placed poison in his toddy pots, knowing that if taken by a human being it would cause injury, but with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from his pots. The toddy was drunk by and caused injury to some soldiers who purchased it from an unknown vendor. It was held that the person was guilty under section 328, and that this section did not apply.[73.] Where a Village Magistrate arrested a drunken person whose conduct was at the time a grave danger to the public, it was held that he was not guilty of an offence by reason of the provisions of this section or sections 96 or 105.[74.]

[s 81.3] English cases.—

A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life. At the trial of an indictment for murder it appeared that the prisoners D and S, seamen, and the deceased, a boy between 17 and 18, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean and was probably more than 1,000 miles from land; that on the 18th day, when they had been seven days without food and five days without water, D proposed to S that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the 20th day, D with the assent of S, killed the boy, and both D and S fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation. It was held that upon these facts there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder.[75.] A and B, swimming in the sea after shipwreck, get hold of a plank not large enough to support both; A pushes off B, who is drowned. This, in the opinion of *Sir James Stephen*, is not a crime as A thereby does B no direct bodily harm but leaves him to his chance of getting another plank. According to *Archbold* this is not a law now. In *R v Martin*,[76.] the defendant, charged with driving whilst disqualified, sought to raise necessity as a defence but on the trial judge ruling, in effect, that necessity was no defence to an 'absolute' offence, he changed his plea to guilty. The circumstances on which the defendant sought to rely were that his wife's son (the defendant's stepson) was late for work and accordingly in danger of losing his job, and that this had made his wife so distraught that she threatened to commit suicide unless he drove her son to work. There was medical evidence available indicating that it was likely that his wife would have attempted suicide had he not driven her son to work. The Court of Appeal, quashing the conviction, held that the trial judge should have left the defence to the

jury. The authorities were now clear, said the Court, and established the following principles. First, the law does recognise a defence of necessity whether arising from wrongful threats of violence to another or from 'objective dangers' (conveniently called duress of circumstances) threatening the defendant or others. Second, the defence is available only if the defendant can be objectively said to be acting reasonably and proportionately to avoid the threat of death or serious injury. Third, it is for the jury to determine whether because of what the defendant reasonably believed he had good cause to fear death or serious injury; and, if so, whether a person of reasonable firmness, sharing the characteristics of the defendant, would have responded as the defendant did.[77.]

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1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The Indian Evidence Act, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
66. *Stephen's Digest of Criminal Law,* 9th Edn, Article 11.
67. *Southwark London Borough Council v Williams*, (1971) Ch 734 , (1971) 2 All ER 175 ; *Wood v Richards* (1971) RTR 201 .
68. *Ramchandra Gujar*, (1937) 39 Bom LR 1184 , (1938) Bom 114.
69. *Gurcharan Singh v State of Punjab*, AIR 1956 SC 460 : 1956 Cr LJ 827 . *Kusta Balsu Kandnekar v State of Goa*, 1987 Cr LJ 89 Bom.
70. *Mayer Hans George*, (1964) 67 Bom LR 583 , AIR 1965 SC 722 [LNIND 1964 SC 208] : (1965) 1 Cr LJ 641 . See also *Nathulal*, AIR 1966 SC 43 [LNIND 1965 SC 97] : 1966 Cr LJ 71 .
71. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.
72. *Bostan*, (1892) 17 Bom 626.
73. *Dhania Daji*, (1868) 5 BHC (Cr C) 59.
74. *Gopal Naidu*, (1922) 46 Mad 605 (FB).
75. *Dudley and Stephens*, (1884) 14 QBD 273 .
76. *R v Martin*, (1989) 1 All ER 652 CA.
77. Reproduced from All ER Annual Review 1989.

THE INDIAN PENAL CODE

CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by Indian Penal Code, 1860 (IPC, 1860) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by section 6 IPC, 1860 enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in IPC, 1860, but the burden to prove their existence lied on the accused.[1.]

The following acts are exempted under the Code from criminal liability:—

1. Act of a person bound by law to do a certain thing (section 76).
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7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
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10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
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[s 82] Act of a child under seven years of age.

Nothing is an offence which is done by a child under seven years of age.

COMMENT.—

Under the age of seven years no infant can be guilty of a crime; for, under that age an infant is, by presumption of law, *doli incapax*, and cannot be endowed with any discretion. If the accused were a child under seven years of age, the proof of that fact would be *ipso facto* an answer to the prosecution.[78.] It is, therefore, desirable to bring some evidence regarding the age of the accused on the record.[79.]

The accused purchased for one *anna*, from a child aged six years, two pieces of cloth valued at 15 *annas*, which the child had taken from the house of a third person. It was held that, assuming that a charge of an offence of dishonest reception of property (section 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardians and dishonestly appropriated it to his own use.[80.]

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78. *Lukhini Agradanini*, (1874) 22 WR (Cr) 27, 28.
79. *Hiralal*, 1977 Cr LJ 1921 : AIR 1977 SC 2236 [LNIND 1977 SC 254] .
80. *Makhulshah v State*, (1886) 1 Weir 470.

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[s 83] Act of a child above seven years of age and under twelve of immature understanding.

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.