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).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
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).
9. Act of a person of unsound mind (section 84).
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).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:—

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

Onus of proving exception lies on accused.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.[2.]

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.[3.]

Applicability of General exceptions during investigation.—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under IPC, 1860 as per Chapter IV of IPC, 1860. If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.[4.] Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under IPC, 1860. This shall be done, by virtue of section 6 of IPC, 1860. In the light of section 6 of IPC, 1860, definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in IPC, 1860 subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.[5.]

[s 85] Act of a person incapable of judgment by reason of intoxication caused against his will.

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing

what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.—

Under this section a person will be exonerated from liability for doing an act while in a state of intoxication if he at the time of doing it, by reason of intoxication, was

(1) incapable of knowing the nature of the act, or

(2) that he was doing what was either wrong or contrary to law;

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.[185.]

Voluntary drunkenness is no excuse for the commission of a crime.[186.] A person cannot become himself drunk with liquor and commit an offence and then come and say that he had consumed the liquor and, therefore, the benefit of section 85 should be given to him.[187.] The law pronounces that the obscuration and divestment of that judgment and human feeling which in a sober state would have prevented the accused from offending, shall not, when produced by his voluntary act, screen him from punishment, although he be no longer capable of self-restraint.[188.] It is also no excuse to say that because of it he failed to resist the impulse to act in a certain way[189.] or that because of it he acted like an automaton.[190.]

[s 85.1] Voluntary drunkenness.—when an excuse.—

Nevertheless voluntary drunkenness is a factor which has to be taken into consideration at least in two types of cases, *viz.*,

(i) where a specific intent is an essential element of an offence charged and the evidence shows that the state of intoxication of the accused is such that he is incapable of forming the specific intent essential to constitute the crime.[191.] In the Indian context, for example, it would be intent to kill as in clauses 1, 2, and 3 of section 300, IPC, 1860. In such cases, however, even if the accused fails to actually form the specific intent, section 86, IPC, 1860, would impute the necessary guilty knowledge to him and he would, therefore, be liable for culpable homicide not amounting to murder though not of murder.[192.] Thus, voluntary intoxication amounting to prove incapacity to form the required specific intent would be a limited excuse to reduce an offence of murder (section 302) to one of culpable homicide not amounting murder (section 304, IPC, 1860). This is, however, a question of fact in each case.

In a case of wife-burning, her dying declaration disclosed that her husband consumed liquor, scolded her and then set her afire after pouring kerosene on her. She fought the fire and tried to run away but the accused again caught hold of her and again poured oil and inflamed her. It was held that these circumstances showed that the mental faculties of the accused were not impaired to such an extent that he was prevented from forming the requisite intention to cause death. He was convicted under section 302 and not section 304, Part II.[193.]

(ii) where habitual drunkenness has resulted in such a diseased condition of the mind that the accused is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. In such a case M'Naughten Rules (section 84, IPC,

1860) would come into play and he would be absolved from liability.[194.] The most common example of such an alcoholic disease is "Delirium Tremens" which is produced by prolonged and habitual excessive drinking and results in loss of the faculty of reasoning or serious defect of reasoning. In other words, "insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged."[195.]

Under this section if a man is made drunk through stratagem or the fraud of others, or through ignorance, or through any other means causing intoxication without the man's knowledge or against his will, he is excused.[196.]

[s 85.2] CASE.—

The accused ravished a girl of 13 years of age and, in furtherance of the act of rape, placed his hand upon her mouth and his thumb upon her throat, thereby causing death by suffocation. The sole defence was a plea of drunkenness. It was held that drunkenness was no defence unless it could be established that the accused at the time of committing rape was so drunk that he was incapable of forming the intent to commit it (which was not alleged), inasmuch as the death resulted from a succession of acts, the rape and the act of violence causing suffocation, which could not be regarded independently of each other; and that the accused was guilty of murder.[197.]

Drink is an aggravating feature in the award of sentence. In reference to one of the accused persons there was no evidence to establish that the effect of intoxication was such as to cause him to lack the specific intent for murder, particularly in view of the fact that, on his own admission, he was following instructions given by the other accused and he was able to give the police a lucid account of his actions. The degree of intoxication fell far below that which would preclude the formation of specific intent required for murder.[198.]

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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).
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185. *Bablu v State of Rajasthan*, (2006) 13 SCC 116 [LNIND 2006 SC 1134] : AIR 2007 SC 697 [LNIND 2006 SC 1134] : 2007 Cr LJ 1160 , the Court stated three propositions as to the scope of the section:

(i) the insanity whether produced by drunkenness or otherwise is a defence to the crime charged;

(ii) evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts

proved in order to determine whether or not he had this intent; and

(iii) the evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind is affected by drink so that he more readily gave to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

186. *Chet Ram vState*, 1971 Cr LJ 1246 ; (HP) *Bodhee Khan*, (1866) 5 WR (Cr) 79; *Boodh Dass*, (1866) PR No. 41 of 1866.

187. *Venkappa Kannappa Chowdari v State of Karnataka*, 1996 Cr LJ 15 (Kar).

188. *Mobeni Minji*, 1982 Cr LJ NOC 39 (Gau).

189. *Director of Public Prosecutions v Beard*, (1920) AC 479 ; *AG for Northern Ireland v Gallagher* (1963) AC 349 .

190. *Brathy v AG for Northern Ireland,* (1963) AC 386 .

191. *Director of Public Prosecutions v Beard*, (1920) AC 479 ; *Ramsingh*, (1938) Nag 305; *Samman Singh*, (1941) 24 Lah 39; *DPP v Majewski* (1976) 2 All ER 142 ; *Shankar Jaiswara v State of WB*, (2007) 9 SCC 360 [LNIND 2007 SC 651] : (2007) 3 SCC Cr 553, the appellant abused the victim in a filthy language, and when told to leave, stabbed him seven times to his death with a sharp weapon, so many wounds shows no loss of self control, witnesses did not testify to the degree of intoxication, in such circumstances it could not be said that there was no intention on the part of the appellant or that he was out of his senses on account of intoxication.

192. *Mathai Mathew*, 1952 Cr LJ 1304 (TC); *Basdev v State of PEPSU*, 1956 Cr LJ 919 (2) : AIR 1956 SC 488 [LNIND 1956 SC 34] ; see also R. Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, pp 604-605.

193. *Mavari Surya Satyanaraina v State of AP,* (1995) 1 Cr LJ 689 .

194. *Davis* (1881) 14 Cox cc 563; AG for *Northern Ireland v Gallagher; DPP v Board, Supra.*

195. *Basdev*, 1956 Cr LJ 919 (at p 922-SC).

196. 1 Hale PC 32.

197. *Director of Public Prosecutions v Beard*, (1920) AC 479 .

198. *Sooklal v Trinidad and Tobago*, (1999) 1 WLR 2011 , [Lord Hope of Craighead, PC].

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[s 86] Offence requiring a particular intent or knowledge committed by one who is intoxicated.

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been

intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.—

Offence requiring particular intent or knowledge.—By reading the above section, it is clear that in the first part of the section the words 'intention or knowledge' are mentioned, but in the latter part of the section the word 'knowledge' is only mentioned and the word 'intention' is omitted. In case of voluntary drunkenness, knowledge is to be presumed in the same manner as if there was no drunkenness. If really the Parliament wanted the word 'intention' also to be presumed even in the case of an act done in a drunken state of mind, the said word could have been mentioned in the Second part also, but the same is omitted. Therefore, whether the accused was having intention or not while committing an act cannot be presumed as in case of knowledge.[199.] As certain guilty knowledge or intention forms part of the definition of many offences, this section is provided to meet those cases. It says that a person voluntarily intoxicated will be deemed to have the same knowledge as he would have had if he had not been intoxicated. There may be cases in which a particular knowledge is an ingredient, and there may be other cases in which a particular intent is an ingredient, the two not being necessarily always identical. The section does not say that the accused shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. Therefore, although there is a presumption so far as knowledge is concerned, there is no such presumption with regard to intention.[200.] Thus, this section attributes to a drunken man the knowledge of a sober man when judging of his action but does not give him the same intention. This knowledge is the result of a legal fiction and constructive intention cannot invariably be raised.[201.] Drunkenness makes no difference to the knowledge with which a man is credited and if a man knew what the natural consequences of his acts were, he must be presumed to have intended to cause them.[202.] But this presumption may be rebutted by his showing that at the time he did the act, his mind was so affected by the drink he had taken that he was incapable of forming the intention requisite for making his act the offence charged against him.[203.]

So far as knowledge is concerned the Court must attribute to the intoxicated man the same knowledge as if he was quite sober but so far as intent or intention is concerned, the Court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. If the man was beside his mind altogether for the time being, it would not be possible to fix him with the requisite intention. In other words, where a man goes so deep into drinking that he becomes really incapable of forming the requisite specific intent or knowledge for the offence, then in such a case too section 86 of the Code would impute the requisite knowledge to the accused though not the requisite intention. Thus, where the accused in a state of extreme intoxication caused a fatal injury in the abdomen of his friend but by virtue of his highly intoxicated state of mind was incapable of knowing then as to what he was doing far less forming the requisite intent to kill as envisaged in section 300, IPC, 1860, he could not be convicted under section 302 as he did not have the requisite intent to kill but he could still be convicted under section 304 Part II, IPC, 1860, by virtue of imputed knowledge under section 86, IPC, 1860.[204.] In this connection see also the discussion under sub-head "voluntary drunkenness: when an excuse" under section 85, *ante*. But if he had not gone so deep in drinking and from the facts it could be found that he knew what he was about the Court will apply the rule that a man is presumed to intend the natural consequences of his act or acts.[205.]

[s 86.1] CASES.—

Accused husband beating his wife and throwing burning lamp on her under influence of liquor. Since he himself consumed the liquor he is not entitled to claim benefit under section 86 of IPC, 1860.[206.] Act of the accused of walking a distance to the house of a witness and concealing the weapon and his wearing apparels showed that he was conscious and capable of understanding of his act. No evidence as regards the degree of intoxication or any evidence of any attending general circumstances to arrive at a conclusion that accused was beside his mind altogether temporarily at time incident.[207.] On the basis of evidence in this case, it cannot be said that the accused was so much intoxicated at the time of the incident that he was beside his mind altogether for the time being. He did set his wife on fire, but as soon as her sari started burning he realised the folly of his act and started extinguishing the fire. It shows that he was not so much intoxicated that he was besides his mind altogether. Therefore, the rule that a man is presumed to intend the natural consequences of his act can be applied to him also. Conviction under section 302 IPC, 1860 altered to one under section 304(1) IPC, 1860.[208.]

[s 86.2] Sections 85 and 86.—

The reading of sections 85 and 86 together makes it clear that section 86 is an exception to section 85. These provisions show that if the intoxication is induced voluntarily, the act done is an offence even if the person is incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law. This section obviously covers all offences. That is why; it appears that it became necessary to enact section 86 to take care of offences requiring a particular intent or knowledge on the part of the intoxicated offender. The section takes care of such offences and states that if intoxication is involuntary, neither knowledge nor intention in committing the offence will be presumed. If however, it is voluntary only knowledge of the offence on the part of the offender will be presumed but not intention in committing it. What section 86 means and no more as compared to section 85. The degree of intoxication demanded by both sections, however, remains the same. In fact, it is instructive to note that section 84 which exempts persons of unsoundness of mind also expects the degree of unsoundness to the same extent, viz., incapability of knowing the nature of the act or of the knowledge that what is being done either wrong or contrary to law. Hence, the conclusion is inescapable that to avail of the exception under section 86, the degree of intoxication of the offender must be such that he is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Intoxication short of this degree will not entitle the offender to the benefit of the exception.[209.]

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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).

199. *Mavari Surya Satyanaraina v State of AP*, 1995 Cr LJ 689 (AP).

200. *Dil Mohammad*, (1941) 21 Pat 250; *Basdev v State of PEPSU*, 1956 Cr LJ 919 (2) : AIR 1956 SC 488 [LNIND 1956 SC 34] .

201. *Pal Singh*, (1917) PR No. 28 of 1917.

202. *Judagi Malah*, (1929) 8 Pat 911.

203. *Samman Singh*, (1941) 24 Lah 39.

204. *Enrique F Rio v State*, 1975 Cr LJ 1337 (Goa).

205. *Basdev v State of Pepsu*, (1956) SCR 363 [LNIND 1956 SC 34] : AIR 1956 SC 488 [LNIND 1956 SC 34] .

206. *Gautam Bhila Ahire v State of Maharashtra*,. 2010 Cr LJ 4073 (Bom); *Pidika Janu v State of Orissa*, 1989 Cr LJ (NOC) 104 ,

207. *Shankar Jaiswara v State of WB*, (2007) 9 SCC 360 [LNIND 2007 SC 651] : (2007) 3 SCC (Cr) 553.

208. *Babu Sadashiv Jadhav v State of Maharashtra*, 1984 Cr LJ 739 (Bom).

209. *State of Maharashtra v Ashok Yashwant*, 1987 Cr LJ 1416 (Bom).