

13. Act done in good faith for the benefit of a child or an insane person or by the consent of the 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. Acts causing slight harm (**section 95**).

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

1. Act done by a person bound, or by mistake of fact believing himself bound, by law (**section 76**).

The general exception contained in section. 76–106 have the effect of converting an offence into a non-offence. They are of universal nature. They apply to the definition of every offence. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] .

The maxim *respondent superior* has no application to cases where an offence is committed by a subordinate official acting under the orders of his superior. The official is bound to exercise his own judgment and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible for his act.

Leading cases:—State of WB v Shew Mangal Singh. R v Latifkhan.

2. Act of a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (**section 77**).

A Judge will be protected where he is acting judicially and not ministerially. If he acts without *jurisdiction* and without *good faith*, he would be responsible.

3. Act done pursuant to the judgment or order of a Court of Justice while such judgment or order remains in force, and the person doing the act in good faith believes that the Court has jurisdiction although it has not (**section 78**). This section differs from the preceding section on the question of jurisdiction. It protects officers acting under the authority of a judgment or order of a court even though the court has no jurisdiction, provided the officer believed in good faith that the Court had jurisdiction.

4. Act done by a person justified by law, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith, believes himself to be justified by law to do it (**section 79**).

Mistake is a slip made by chance. It is not mere forgetfulness. Under sections 76 and 79 the mistake should be one of fact and not of law. An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act, is a good defence. An alleged offender is deemed to have acted under that state of facts which he, in good faith and on reasonable grounds, believed to exist when he did the act alleged to be an offence. *Ignorantia facti doth excusat*, for such an ignorance many times makes the act itself morally involuntary. But if an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits the act, then he is guilty of an offence.

Mistake of law is no defence because every person of the age of discretion is bound to know the law, and presumed to do so. If a person infringes the statute law of the country through ignorance or carelessness he abides by the consequences of his error.

The maxim *ignorantia juris non excusat* admits of no exception in its application to criminal offences. Even a foreigner who cannot reasonably be supposed in fact to know the law of the land is not exempted. Similarly, ignorance of a statute newly passed will not save a person from punishment.

Leading cases:—*R v Prince. R v Tolson. R v Esop. Bhawoo v Mulji. Mayer Hans George. Raj Kapoor v Laxman.*

Mayne deduces the following five rules, showing the extent to which ignorance of an essential fact may be pleaded as a defence, from the judgments in *Prince's* case.

(a) Where an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(b) Where an act is *prima facie* innocent and proper, unless certain circumstances coexist, then ignorance of such circumstances is an answer to the charge.

(c) Even in the last named case, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence.

(d) Where an act which is itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.

(e) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.

5. Accident. This must have been caused—

- (1) without criminal knowledge or intention,
- (2) in the doing of a lawful act,
 - (i) in a lawful manner,
 - (ii) by lawful means, and
 - (iii) with proper care and caution (**section 80**).

An 'accident' is something that happens out of the ordinary course of things.

6. Act done with the knowledge that it is likely to cause harm but done in good faith and without any criminal intention to cause harm, for the purpose of preventing, or avoiding, other harm to person or property (**section 81**).

Mens rea

It is a maxim of English law that *actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute a crime). A crime is not committed if the mind of the person doing the act in question be innocent. The above maxim has undergone a modification owing to the greater precision of modern statutes. Crimes are now more accurately defined by statutes than before. It has become necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is

of the essence of the offences created. In three cases *mens rea* is not an essential ingredient in an offence:

- (1) cases not criminal in real sense, but which, in the public interest, are prohibited under a penalty;
- (2) public nuisances; and
- (3) cases criminal in form but which are only a summary mode of enforcing a civil right.

The above maxim has little application to offences under [IPC, 1860](#), in its purely technical sense because the definitions of various offences expressly contain an ingredient as to the state of mind of the accused. Under the Code, therefore, *mens rea* will mean one thing or another according to a particular offence. The guilty mind may be a dishonest mind, or a fraudulent mind, or a rash or negligent mind, and so forth.

It may be observed that criminal law has nothing to do with motives of offenders. Intention is quite different from motive. A person may do an act with a very high and laudable motive but if his act amounts to a crime he will be guilty. Where some Hindus removed cows from the possession of some Mohammedans to prevent the cows from being slaughtered, they were held guilty of theft.

Whether a person can for self-preservation inflict harm on others is discussed at p 64. Such acts will not exempt the offender from the full severity of law. It is murder to kill another to save one's own life.

Leading cases:—*R v Dudley (or Mignonette case)*. *South Wark London Borough Council v Williams*.

7. Act done by a child under seven years (**section 82**); or by a child above seven and under 12 years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct (**section 83**).

Leading case:—*Hiralal*.

8. Act done by a person who, at the time of doing it, by reason of *unsoundness of mind*, is

- (1) incapable of knowing the nature of the act, or
- (2) that he is doing what is either wrong or contrary to law (**section 84**).

The 'unsoundness of mind' may be temporary or permanent, natural or supervening. But it must affect the cognitive faculties of the mind. If the offender is conscious that the act was contrary to law and one which he ought not to do, he is punishable. The act to be not punishable must be such as would have been excused by law, if the facts had been as the person of unsound mind supposed. Distinction has to be made between legal insanity and medical insanity. *Bapu v State of Rajasthan*, [\(2007\) 8 SCC 66 \[LNIND 2007 SC 774\]](#).

Leading cases:—*R v M'Naughton*. *R v Lakshman*. *R v Sakharan*. *Dahyabhai*. *S W Mohammad*. *Ahamadulla*.

The doctrine of irresistible criminal impulse was not accepted by the Calcutta High Court.

9. Act done by a person who, at the time of doing it, by reason of intoxication, is

- (1) incapable of knowing the nature of the act; or

(2) 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 (**section 85**).

If an intoxicated person commits an offence requiring a particular intent or knowledge, he is dealt with as if he had that intent or knowledge, unless the thing which intoxicated him was administered to him without his knowledge or against his will (**section 86**).

Drunkenness is one thing and the disease to which it may lead is a different thing. If a man by drunkenness, brings on a state of disease which causes such a degree of madness, even for a time, which would relieve him of responsibility if it had been caused in any other way, then he would not be criminally responsible.

Leading cases:—Basdev. Director of Public Prosecutions v Beard. Davis.

10. Act not intended, and not known, to be likely to cause death or grievous hurt, done by consent of the person, above 18 years to whom harm is caused (**section 87**).

Ordinary games, such as fencing, boxing, football and the like are protected by this section.

11. Act not intended, and not known to be likely to cause death, done in good faith by consent of the person to whom harm is caused for his benefit (**section 88**).

Surgical operations are protected under this section.

12. Act done in good faith for the benefit of a person under 12 years, or of an insane person, by or by the consent of his guardian. This exception does not extend to:—

(1) Intentional causing, or attempting to cause, death.

(2) The doing of anything which the doer knows to be likely to cause death, except to prevent death or grievous hurt, or to cure any grievous disease or infirmity.

(3) Voluntary causing, or attempting to cause, grievous hurt (except as above).

(4) The abetment of any offence, to the committing of which it would not extend (**section 89**).

A consent to be a true one must not have been given—

(1) by a person under fear of injury;

(2) by a person under a misconception of fact;

(3) by a person of unsound mind, and the person obtaining the consent knows or has reason to believe this;

(4) by a person who is intoxicated, and who is unable to understand the nature and consequence of that to which he gives his consent;

(5) by a person under 12 years of age (**section 90**).

An honest misconception by both the parties, however, does not invalidate the consent.

Leading case:—Williams.

Sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause to the person giving the consent (**section 91**), e.g., causing

miscarriage, public nuisance, offences against public safety, etc.

13. Act done in good faith for the benefit of a person, even without consent, if it is impossible for him to give consent, or is incapable of giving it, and there is no guardian from whom it is possible to obtain it in time for the thing to be done with benefit (**section 92**). This exception is subject to the same provisos as section 89, with the difference that it will not extend to causing hurt except to prevent death or hurt.

14. A communication made in good faith, although causing harm to the person to whom it is made, if it is for his benefit (**section 94**), e.g., communication in good faith by a surgeon to a patient that in his opinion he cannot live.

15. Act [except (a) murder, and (b) offence against the State punishable with death] done under threats which, at the time of doing it, reasonably cause the apprehension of *instant death*; provided the doer did not of his own accord, or from an apprehension of harm short of death, place himself in the situation by which he became subject to such constraint (**section 94**). Fear of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

No one can plead the excuse of necessity or compulsion as a defence to an act otherwise penal except as provided by this section.

Leading cases:—R v Deoji. R v Latifkhan. R v Maganlal.

16. Act causing such a slight harm that no person of ordinary sense and temper would complain of it (**section 95**).

This section deals with those cases which come within the letter of the penal law but not within its spirit. It is based on the maxim *de minimis non curat lex* (the law does not take account of trifles).

Private defence.

17. Act done in exercise of the right of private defence (section 96). Every person has a right, subject to certain restrictions, to defend,

(1) his own body and the body of any other person against any offence affecting the human body;

(2) the property, whether movable or immovable, of himself or of any other person, against any act, which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit any of such offences (**section 97**).

(3) against an act, which would otherwise be a certain offence, but is not that offence, by reason of the doer being of unsound mind, a minor, an intoxicated person, or a person acting under a misconception of fact (**section 98**).

The right of private defence is a defence right. It is neither a right of aggression nor of reprisal. *Thankachan v State of Kerala*, (2008) 17 SCC 760 . The right is available not only to the person put in danger but also to any member of the society who rises to the occasion with a spirit of rescue. Such a samaritan gets no legal right against the person rescued. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187]

Exceptions to the right of private defence.

There is no right of private defence against the following acts:—

- (1) An act which does not reasonably cause apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.
- (2) Same as above if done by the direction of a public servant.
- (3) Cases in which there is time to have recourse to the protection of public authorities (**section 99**).

Leading Cases:—Amjadkhan. Jaidev.

The right of private defence does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence (*ibid*).

Defence of body.

The right of private defence of the *body* extends to the causing of death or any other harm to the assailant under the following circumstances:—

- (1) An assault causing reasonable apprehension of death.

In this case if the defender be so situated that he cannot exercise the right without risk of harm to an innocent person, he may even run that risk (**section 106**).

- (2) An assault causing reasonable apprehension of grievous hurt.
- (3) An assault with the intention of committing rape.
- (4) An assault with intention of gratifying unnatural lust.
- (5) An assault with intention of kidnapping or abducting.
- (6) An assault with the intention of wrongfully confining a person under circumstances which may cause him to apprehend that he will be unable to have recourse to the public authorities for his release.
- (7) "Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act" (**section 100**).

Leading case:—Vishwanath.

Subject to the above restrictions, the right of private defence of body extends to the causing of any harm short of death (**section 101**).

It commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues (**section 102**).

Defence of property.

The right of private defence of *property* extends to the causing of death or any other harm to the assailant under the following circumstances:—

(1) Robbery.

(2) House-breaking by night.

(3) Mischief by fire to building, tent, or vessel, used as human dwelling or for custody of property.

(4) Theft, mischief, or house-trespass, reasonably causing the apprehension of death or grievous hurt (**section 103**).

Subject to the above restrictions, the right of private defence of property extends to the causing of any harm short of death (**section 104**). It commences when a reasonable apprehension of danger to the property commences and continues against—

(1) Theft, till

- (a) the offender has effected his retreat with the property, or
- (b) the assistance of the public authorities is obtained, or
- (c) the property has been recovered.

(2) Robbery, as long as

- (a) the offender causes or attempts to cause to any person death, or hurt, or wrongful restraint, or
- (b) the fear of instant death, or of instant hurt, or of instant personal restraint continues.

(3) Criminal trespass or mischief as long as the offender continues in the commission of criminal trespass, or mischief.

(4) House-breaking by night, as long as the house-trespass, which has been begun by such house-breaking, continues (**section 105**).

All the provisions relating to private defence from section 96 to section 106 have to be read together in order to have a proper grasp of the scope and limitations of this right.

Leading case:—Munney Khan v State.

Excessive use of the right of private defence is a matter which can be determined only on the facts of each case. It necessitates a combined view of subjective and objective factors.

Leading case:—Yogendra Morarji.

Mere verbal exchanges, however hot or abusive, do not create the right of private defence.

Leading case:—Jai Chand v State.

There is no right of private defence in a free fight.

Leading case:—Sikhar Bahera v State of Orissa.

An aggressor has no right of private defence.

Leading case:—**Dhananjai v State of UP**, AIR 1996 SC 556 .

Abetment, Chapter V.

There are three kinds of abetment dealt with in the Code. A person abets the doing of a thing, who

- (1) instigates any person to do that thing; or
- (2) engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of the conspiracy and in order to the doing of that thing; or
- (3) intentionally aids, by any act or illegal omission, the doing of that thing.

An abettor can be convicted, except in some cases, even where the principal culprit stands acquitted.

Leading cases:—**Hardhan Chakrabarty v UOI** **Faguna Kedar Nath v State of Bihar** **Jamuna Singh v State of Bihar**.

Abetment is separate and independent offence. *Kishori Lal v State of MP*, (2007) 10 SCC 297 .

The law of abetment is adapting itself to the social malaise of dowry which leads to suicides by married women.

Leading cases:—**Gurbachan Singh v Satpal Singh**. **Brij Lal v Prem Chand**.

A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing (**section 107**).

Leading Cases:—**Pratima Datta**. **Shri Ram**.

It is not necessary that the person incited should have a *mens rea* corresponding to that of the inciter *DPP v Armstrong*.

An abettor is a person who abets

- (a) the commission of an offence, or
- (b) the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor (**section 108**).

It should be noted that—

- (1) Abetment of an illegal omission may amount to an offence (*ib.*, **Explanation 1**).
- (2) It is not necessary that the act abetted should be committed (*ib.*, **Explanation 2**).
- (3) The person abetted need not be capable of committing an offence, nor have any guilty intention or knowledge (*ib.*, **Explanation 3**).
- (4) The abetment of an abetment is an offence (*ib.*, **Explanation 4**).

(5) It is not necessary in abetment by conspiracy that the abettor should concert the offence with the person abetted (*ib.*, **Explanation 5**).

(6) A person will be guilty of abetment who abets the commission of any act *without* and *beyond* India which would constitute an offence if committed in India (**section 108A**).

If the act abetted is committed but no express provision is made for its punishment, then it shall be punished with the punishment provided for the offence abetted (**section 109**).

If a person abetted does the act with a different intention or knowledge from that of the abettor, the latter will be punished as if the act had been done with his intention or knowledge (**section 110**). The liability of the person abetted is not affected by this section.

If the act done is different from the one abetted, the abettor is still liable for it, if it is a probable consequence of the abetment, and committed under the influence of the abetment (**section 111**). The liability is the same where the effect produced is different from that intended by the abettor (**section 113**).

The abettor is liable to cumulative punishment for the act abetted and for the act done if the latter is a distinct offence (**section 112**).

If the abettor is present when the offence abetted is committed, he is deemed to have committed such act or offence (**section 114**).

Mere presence will not render a person liable. He must be sufficiently near to give assistance, and he must participate in the act, no matter whether he is an eye-witness to the transaction or not. Presence during the whole transaction is not necessary (*ibid*). Lending encouragement and assistance would amount to abetment even if the abettor was not present at the place where the killing took place. *R v Cook*. A constable who kept watch while the head constable was committing rape inside their police station, was held liable as an abettor. *Ram Kumar v State of HP*.

If an offence punishable with death or imprisonment for life is abetted and no express provision is made for the punishment of such abetment, then the offender will be punished with imprisonment extending to seven years if the offence is not committed; but if an act causing harm is done in consequence, the imprisonment shall be extended to 14 years (**section 115**). If in such a case the offence is punishable with imprisonment, then the offender is punishable with imprisonment which may extend to one-fourth part of the longest term provided for that offence (**section 116**). If in the above case the abettor or person abetted be a public servant whose duty it is to prevent such offence, the imprisonment may extend to one-half of the longest term provided for the offence (*ibid*).

Abetting commission of an offence by the public or by more than ten persons is punishable with imprisonment extending to three years (**section 117**).

There are three sections which punish concealment of a design to commit offences by persons other than the accused, viz., sections 118, 119 and 120.

Criminal conspiracy. Chapter VA.

Criminal conspiracy is now a substantive offence under the Code. It was formerly punishable only as a species of abetment. It arises when two or more persons agree to do or cause to be done—

(a) an illegal act; or

(b) an act which is not illegal, by illegal means.

Such an agreement may be to commit an offence. But if it is not so, it is necessary that some *overt act* besides the agreement is done by one or more parties to such agreement in pursuance thereof (**section 120A**) *SC Bahri v State of Bihar*, (Supreme Court). It is difficult to prove conspiracy by direct evidence, *Hina Lal Harilal*. If the offence conspired to is punishable with death, imprisonment for life or rigorous imprisonment for two years or upwards, the offender is punishable in the same manner as an abettor: but in any other case, he is liable to be punished with rigorous imprisonment for six months, or fine, or both (**section 120B**). Conspiracy has to be treated as a continuing offence.

A single person can be tried and convicted for the offence. It is not necessary that conspirators must be known to each other or that every one of them should have taken part in each and every act done in pursuance of the conspiracy. A wife joining her husband with knowledge that he was involved in a conspiracy with others was held to be equally guilty. *R v Charstny*.

Leading cases:—Mirza Akbar. Bhagat Ram. Bhagwandas. V C Shukla. Kehar Singh Krishan Lal Pradhan Vinayak

Offences against the State. Chapter VI.

Offences against the State may be classified as follows:—

- I. Waging war against the Government of India.
 - II. Assaulting high officers.
 - III. Sedition.
 - IV. Waging war against a Power at peace with the Government of India.
 - V. Permitting or aiding the escape of a State prisoner.
- I. Waging war against the Government of India.**
1. Waging or attempting to wage war, or abetting waging of war (**section 121**).
 2. Conspiring to commit, within or without India, offences punishable by section 121 (**section 121A**).
 3. Collecting men, arms, or ammunition, or making any other preparation with a view to waging such war (**section 122**).
 4. Concealing a design to wage war with intent to facilitate waging of such war by any act or illegal omission (**section 123**).
- II. Assaulting the President, or the Governor of any State, with intent to compel or restrain the exercise of any lawful power (**section 124**).**

Sedition.

- III. A person commits sedition who,