

an end to procrastinated litigation and there is possibility to give fair justice. This cumbersome procedure makes no meaning. It is well said in a maxim of telugu language “to catch a rat, digging the whole hill”. Further in the words of Justice *Mohammad* “justice delayed is justice denied”.

That I made a little venture for curtailing the eddings in early disposal of cases, the other intellectuals can come forward and advance their thoughts in this regard. Finally I leave with the saying of *Williams Scott Downey* “Law without Justice is a wound without cure”.

GENERAL EXCEPTIONS UNDER INDIAN PENAL CODE, 1860

By

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Introduction :

Indian Penal Code was enacted in the year 1860 on the recommendations of the first law commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord *Thomas Babington Macaulay*. The Indian Penal Code of 1860, subdivided into 23 Chapters, comprises 511 Sections, and the General Exceptions are narrated in Chapter-IV from Sections 76 to 106 of IPC.

Definition of Crime:

Meaning of crime in Indian Penal Code has been highlighted as the commission of an act prohibited by law of the land. Criminal Law is a branch of public law. Crime means wrongs done by human beings. It authorizes the infliction of State punishment.

A person shall be guilty of a crime under Indian Penal Code if he has *mens rea* and *actus reus* concurrently. In criminal proceedings, State is a party as crime is not only a wrong against the individual but also against the whole society. Criminal law is considered as

a barometer to gauge the moral turpitude of the society at a given time.

The concept of crime depends largely on the social values, accepted norms and behavioral patterns of a particular society at a given time. According to *Blackstone*, a crime is an act committed or omitted in violation of a public law either forbidding or commanding it.

Crime - A Civil or a Moral Wrong

Crime is basically disobedience of penal law. For example, an offender disobeys the prohibited laws governed by the Criminal Law, he is liable to be punished. The consequence of violation of law is sufferance of punishment by the offender. The object of criminal law is called as “penal retribution”.

Crimes are not civil wrongs. In a civil wrong, the defendant is liable to pay compensation to the plaintiff. This is because the object of civil law is to restore the plaintiff to his/her original position by compensating him/her. The object of civil law is restorative justice.

Moral wrongs are not punishable. Moral wrongs do not create a claim for compensation. There is no liability for a person who commits a moral wrong. For example, disobedience of parents is a moral wrong. The child is not liable for punishment or liable for paying compensation to his/her parents for disobeying them.

Burden of Proof in Crimes

The burden of proof in crimes is on the State or Prosecution. The prosecution must prove the guilt of the accused beyond reasonable doubts. If any doubt is present in the mind of the Court, then the Court shall have to acquit the accused under benefit of doubt.

In civil litigation however the burden of proof is different than in criminal litigation. In civil litigation, one must prove the case on preponderance of probabilities. This is an easier burden of proof than in criminal litigation.

The burden of proving crime is more onerous and difficult to discharge in criminal litigation and all benefit of any doubt present in the mind of the Court is reaped by the accused. The task of proving the guilt of accused is performed by the prosecution. The task of proving the innocence of the accused is performed by the defense. The State is the prosecutor in the criminal trial. The State fights the case on behalf of the victim and the society at large. Criminal trials are adversarial in nature. Two adversaries show the guilt and innocence of the accused person to the Court upon which the Court gives a decision.

General Exceptions – Excusable and Justifiable

According to Section 6 of IPC, throughout this Code every definition of

an offence, every penal provisions, and every illustration of every such definition or penal provision, shall be understood subject to the exception contained in the chapter entitled “GENERAL EXCEPTION,”, though those exception are not repeated in such definition, penal provision or illustration.

Generally, a crime is committed when it fulfills the two essentials for constituting the crime. They are: *Mens Rea* and *Actus Reus*. Apart from this, the crime committed should be backed by justifications and excuses. Therefore, the general exception under IPC is divided under two heads: (1). *Justifiable* and (2). *Excusable*: Those exceptions from which the bad character or bad intention of the person committing the crime cannot be inferred are said to be excusable exception to the crime. They include: Mistake of fact; Infancy; Accident; Insanity and Intoxication and the other part *i.e.*, justifiable falls under Judicial act, Necessity, Consent, Duress, Communication, Trifles and Private defence.

Mistake of Fact & Law – Good Faith

An act of State is an act done by any representative of the Government's authority, civil or military, either sanctioned or ratified by the Government. To claim protection under this section, one has to establish:

‘Good faith’ is defined under Section 52 of IPC which means that an act done with ‘due care and attention’. In order to claim the benefit of mistake of fact under this provision, then the accused has the onus to prove that the belief which they had about their actions being justified in law was in good faith and due care and attention. Absence of good faith is enough to deny him the benefit that he claims.

Mistake of fact is excusable. Mistake of law is inexcusable. Mistake of fact is a

bona fide mistake in good faith alongwith a belief that you are also justified by law to do something. Section 79 of the IPC says that an act done by a person justified, or by mistake of fact believing himself justified by the law is no offence.

For instance, “A” sees commit what appear to A to be a murder. A in the exercise, to the best of his judgment,

Exerted in good faith of the power which, the law give to all persons of apprehending murderers in the fact, seizes A, in order to bring Z before the proper authorities. A has committed no offence, though it may turn-out that Z was acting in self-defense.

State of West Bengal v. Shiv Mangal Singh,
1981 Cri. LJ 1683

When the police were patrolling in the outskirts of the town during the night, some group of armed persons attacked them and an officer rank of ACP was badly injured, the Dy. Commissioner of Police ordered firing against the unknown persons and as a result of the same two persons are died, the Court held that the police were protected under Sections 76-79, being they were bound to protect law and order and officer firing orders is given in good faith.

Lakshman Singh v. State of Orissa,
AIR 1988 SC 83

It was held that, the deceased abused the accused, and aggrieved one beaten the deceased with a heavy lathi and as the result of the same, the deceased died. The Trial Court held that the accused exceeded his right of private defense, and convicted the accused under Section 304 Part I and the same was upheld by the Apex Court.

Judicial Acts:

Judicial Acts are those acts which are derived from normal exercise of judicial power within proper jurisdiction. They can also be called as “Act of a Judge”. The Sections 77 and 78 of the Indian Penal Code exempts a Judge in cases where he proceeds irregularly in the exercise of powers which the law bestows on him as well as where he, in good faith, exceeds his jurisdiction and has no lawful powers.

Objective of the judicial act to include in General Exception :

A separate section was included in the general exception of Indian Penal Code for Judges especially because a Judge has to be indifferent and unbiased while delivering the judgments. Therefore in order to render justice, Judges’ decisions cannot be under scrutiny because even if the judgments pronounced are wrong or not in favour, then the judicial review is a tool for reviewing the judgment. But if the acts are challenged then Judges will be bound to act according to the will of the people or Government.

Acting Judicially

The phrase “acting judicially” is an essential ingredient for the offence to attract the particular exception to immune the acts of a Judge while acting under judicial capacity. When the act done or ordered is in a judicial capacity, his protection is absolute and no enquiry can be entertained against him even if the act done was erroneously or illegally done.

Lack of Motive

The motive and intention have a thin difference between them. Motive is the reason which forms the intention. The mere presence of a good motive can never be

an excuse for the commission of crime. When an act is done with a motive, it cannot amount to insanity but when an act is done in insanity, it cannot amount to the absence of motive. This means that even if there was no motive, yet the act done with a reasonable state of mind cannot be said to be protected under this section because absence of motive cannot amount to insane act. However, the close relationship between the victim and the accused may provide a clue to the Court that in absence of motive, the act could be committed by an insane person only.

In the case of *S.W. Mohammed*, the Court held that the mere fact that no motive was present at the time of committing murder of his wife and children and his presence at the crime scene did not prove that he was insane or he did not have required *mens rea*. Whereas in other cases, where there was a similar situation but the person was insane for some months prior to the incident, the Court granted the benefit of this section under insanity.

Therefore, a motive itself is never sufficient to determine the culpability of the accused. Motive, deliberation and preparation and conduct before, at the time and after commission of offence are circumstances relevant for drawing inference of insanity. A trifling matter will not lead a case to conclusion of insanity. One has to establish other good reasons and grounds to prove his/her insanity.

Difference: Section 85 and Section 86

Section 86 of the Act is an exception to Section 85 of the Act. Section 85 covers the entire offences relating to intoxication whereas Section 86 take care of offences requiring specific intent and knowledge. Section 86 lays down that if the intoxication is involuntary then there was neither knowledge nor intention of committing the

crime. But if the intoxication is voluntary, then only knowledge will be taken into account and intention will no longer be considered.

Intoxication and Insanity

In a landmark case of *Basdev v. State of Punjab*, the difference between intoxication and insanity was highlighted. According to the Court, there are two conditions: (1). Defence of insanity caused by excessive drunkenness and (2). Defence of drunkenness causing incapacity of mind to form an intention.

If the defence of insanity is taken due to excessive drunkenness, then the accused cannot be relieved as it furnishes that insanity was induced by external agent and hence is liable.

But if the defence of drunkenness is taken, then the facts and circumstances of the case is taken into consideration to determine whether or not there was intention. However, in cases where it becomes difficult to establish such conditions and the passion of the accused has led to drunkenness and commission of crime, then it is assumed that the man knew the natural consequences of his act.

Plea of Private Defense

According to Section 96, things done while exercising the right of private defence are not an offence.

According to Section 97, everybody has a right of private defence of his own body and property, and others' body and property. Section 99 of the IPC puts certain reasonable restrictions on the right of private defence when this right is exercised against a public servant duly discharging his lawful duties. Section 99 also casts a duty on the defender not to inflict more harm than

necessary on the assailant meaning thereby that the defender cannot assume the role of the assailant by exceeding his right of private defence. Also under Section 99 there is no right of private defence if there is time to have recourse to public authorities.

Section 100 of the IPC, provides that subject to restriction under Section 99, the right of private defence extends even to the causing of death or any harm to the assailant if; there is reasonable apprehension of death, grievous hurt, rape, unnatural intercourse, kidnapping/abduction, wrongful confinement or acid attack.

According to Section 101, if the act of the assailant does not fall under various description of offences under Section 100 then the defender can in no case while exercising the right of private defence cause the death of the assailant.

According to Section 102, the right of private defence commences on reasonable apprehension of danger, or arises from attempt or threat even if the act be not yet committed, and it continues till the apprehension or threat of danger is there.

Conclusion

This article brings out the basic understanding of general exceptions of the offence committed in Indian Penal Code. Since IPC is a substantive law which determines the criminal liability of a person committing the Act in good faith or for self-defense cannot be punished, and lastly the Criminal Law also defined in Sections 97 and 99 that acts which there is no right of private defence to balance the justice between intentional and self-defense activities.

A COMPREHENSIVE ANALYSIS ON REPRODUCTIVE HEALTH AND SURROGACY IN INDIA – A STUDY ON THE LAW, POLICY AND PRACTICE

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ABSTRACT :

Over the past decade, legal, ethical and moral issues surrounding surrogacy are hotly debated. The new draft Surrogacy Bill, 2020 was finally approved by the Cabinet after it was referred to the 23-membered select

committee. At this juncture, it is pertinent to extensively study various aspects of Surrogacy. The basic subject-matter of this research is divided into five parts as follows:

The Part-A of this article covers concepts of Surrogacy and its earliest

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