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CRITICAL ANALYSIS OF INTOXICATION AS A DEFENCE IN IPC,1860

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INTRODUCTION

There are three categories of abnormal people: minors, mentally ill individuals, and intoxicated individuals. These people lack the logic necessary to comprehend the nature of the conduct they are committing, the methods they will use to carry it out, and its potential legal repercussions. As the definition of the majority of offences increasingly includes a mental component, there is a growing need for rules that protect those who are intoxicated from punishment.

The use of alcohol in violent crimes is highly prevalent. The effect of alcohol is that it is a depressant which reduces the stimulation of brain and whereby a person loses control of his acts. It weakens the inhibitions and impairs the ability to foresee consequences. Sec 85 and sec 86 of IPC deals with offenses committed by intoxicated person.

In this research paper we would analyse in detail the meaning of intoxication under Indian Penal Code, 1860. The defences used under intoxication and how intoxication is dealt in different countries would also be briefly discussed. This analysis would help us gain more knowledge on Section 84,85 and 86 of IPC and there practical applicability in various judgements and case laws.

RESEARCH OBJECTIVES

1. Determining the extent to which intoxication can be used as a defence.
2. To gain better knowledge on Section 84, Section 85, Section 86 of Indian Penal Code.
3. To analyse the crimes committed on intoxication by referring to various case laws.
4. Analysing the views of different jurists on intoxication and drawing conclusions from

them.

5. To draw a comparative analysis related to intoxication in different countries as it would be beneficial for future references.
6. To know the defences which are provided for such crimes.

RESEARCH METHODOLOGY

The current research is primarily based on articles and doctrinal research. The idea of referring and analyzing the existing data such as laws and statistics depict the research. The present research is majorly dependent on existing laws and their impact on the current situation. To perform a research on such a topic where values play an important role, doctrinal research is mostly preferred and it helps us to predict data more accurately.

In this research the information is not restricted “to analytical and prescriptive tools but also incorporates secondary and tertiary empirical data which helps in further critical analysis of the research topic”. Hence, the following research is approached using these tools which is suitable for this topic.

RESEARCH QUESTIONS

1. Should voluntary intoxication have been considered a mitigating element and if involuntary intoxication qualifies as an exemption to criminal liability?
2. Will a person will have a defence under section 85 if they claim that they were not in the appropriate frame of mind when they committed the offence while under the influence of alcohol?
3. How is intoxication as a defense treated in different countries across the world?

LITERATURE REVIEW

The definition of voluntary drunkenness, the conditions that must be met in order to qualify as an exemption, significant rulings on the matter, and discussions of how voluntary intoxication relates to criminal intent (Pillai,P.S.A., 2017)¹.

¹ 13 P.S.A PILLAI, CRIMINAL LAW 56, 2017

Information on recent legislative changes brought about by changes in criminality and the exemption from criminal liability, as well as the “scope of general exceptions' application during investigations, the application of mens rea to legal entities, landmark decisions regarding Sections 85 and 86 of the Indian Penal Code, 1860”, and mens rea's application to legal entities. (Ratanlal, Dhirajlal, 2017)².

According to the law on intoxication-related offences, intoxication can lead to incapacity that can serve as the foundation for criminal culpability. This incapacity can result from intoxication with alcohol or narcotics. (Arlie Loughnan, 2016).³

The origin of the idea, or the legal position that has been taken on the matter, explains intoxication as it is codified in Sections 85 and 86 of the Indian Penal Code, the ways in which a person can be intoxicated as well as important rulings concerning it, the burden of proof and various types of intoxication (Madhuri, B., 2015).⁴

The details of the common law and the doctrine of exculpatory, a brief explanation of the idea of voluntary intoxication, the use of particular intent as a method of motivation, and the results of scientific studies on alcoholism. (Jerome Hall, 1993)⁵

The history of the anti-drinking defence, the “partial responsibility doctrine,” the unusual anti-voluntary intoxication defence, the rationale behind the full responsibility rule, and legislative amendments. (Keiter, 2016).⁶

2 Ratanlal Ranchhoddas. Ratanlal & Dhirajlal's Law of Crimes : a commentary on the Indian Penal Code,1860. New Delhi : Bharat Law House, 2007.

3 Loughnan, A. (2016). The drugs made me do it: can prescription side-effects be an excuse for crime? The Conversation.

4 Madhuri B, Chennai: Voluntary Intoxication- As an Exception under IPC, 119 No. 17

5 Jerome Hall, General Principles of Criminal Law, New Jersey, The Lawbook Exchange, Ltd.,2005

6 KEITER APPELLATE LAW,<https://www.californiaappellateattorney.com/keiter-appellate-law-wins-at-the-california-supreme-court/> (last visited 31st October, 2022)

CHAPTER II

INTOXICATION AS A DEFENCE UNDER IPC

-What is intoxication?

The defense of intoxication, sometimes called 'drunkenness', operates where a defendant attacks an individual and claims that they were so drunk that they did not mean to do the act or did not know what they were doing. In order to succeed, the defendant must prove that they were so intoxicated that they could not form intentions and that they were incapable of forming a rational intention. -Intoxication as a defence under IPC compares with other criminal offenses in India.

-What is the intoxication defence? The defense of intoxication is not to be confused with the defence of being insane. Intoxication, which is a defense to crime, for the purpose of adjudication differs greatly from insanity.

Under the Indian Penal Code, only three crimes are recognized to have a defense of intoxication.

These are:

- I. Wilful murder
- II. Culpable homicide
- III. Rape (only for male defendants)

For all other criminal offenses, no intoxication defense exists under IPC and in the case of rape against a woman, intoxication may actually be used as evidence against her. In addition, the defense of intoxication can be used only by those persons who are above the age of 15, who are able to fully understand what it is that they are doing and have enough reason to do it.

-How is it used by defendants in criminal trials?

Most intoxication cases have been tried under Section 84, which deals with voluntary manslaughter. By this section, intoxication is not a defence to murder. Section 84 of IPC States that "Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." However, if the accused was so drunk that they did not realize their actions would result in murder, such a person can be charged for manslaughter. In the event of a charge for voluntary manslaughter under Section 84

and if the intoxication does not fall under Section 85, which states “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.” then the court will have to decide whether or not it was accidental (i.e. that the intoxication was not a direct cause of the murder).

Where it is shown that a person charged with murder was drunk at the time, then the jury may return one of two verdicts: either guilty of murder or guilty of manslaughter, but only if they are sure that he did not intend to kill.S

-Why use the defence?

The test for establishing whether a person was too drunk to form an intention is whether he knew what he was doing, whether he saw it as wrong and whether he had capacity to control himself.

The defense of intoxication is usually raised by defendants where they are charged with a criminal offence. If the jury finds that the defendant was intoxicated and uneducated, then it would be harder for him to defend he case.

In every criminal case, however, the accused does not have a right to use the intoxication defense. Perhaps as a result of this impression, only a very small percentage of murder cases ever end with an acquittal on the grounds of being too drunk to form intentions.

Case Laws

DPP v Majewski [1977] AC 443 House of Lords⁷

He engaged in combat with two other people. The appellant hit the proprietor while trying to break up the fight. He began assaulting the policeman when they came. While being transported to the police station, the appellant struck a second officer. He attacked a police inspector the following day inside his cell. He was accused of four counts of causing actual bodily harm and three counts of assaulting a police constable while he was exercising his duty. He was found guilty of all charges, but he appealed, arguing that because he was drunk when the offences

⁷ DPP v Majewski, [1976] UKHL 2

occurred, he lacked the mens rea necessary for guilt. Due to his intoxication, the appellant claimed he had no memory of the incidents.

It was laid down in the case of *Basdev vs State of Pepsu*⁸ that “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”.

It can be seen from above case laws that any unlawful act committed after voluntary intoxication is liable as if he had done that act with the same knowledge he would have if he had not been intoxicated whereas if a person was involuntarily intoxicated then it would be considered as manslaughter.

Intoxication v/s Intention

Voluntary intoxication with desire “to commit crime clearly indicates the criminal intention which is punishable under IPC.” A Motive is something that makes a guy to establish an intention to execute any deed. Knowing something helps a man become conscious of what he is doing. In some circumstances, purpose and knowledge can be assumed to signify the same thing because they are more or less interchangeable terms.

Intoxication as a Denial Under Mens Rea

“This concept of using intoxication as a defence under criminal law, is not a defence either by exculpation or by excuse.” -**Attorney General Northern Ireland vs. Gallagher**⁹.

Section 85 states that a person can be escaped from the liability of an act which is done while in the state of intoxication when he at the time of doing the act due to intoxication was “incapable of knowing; the nature of the act or that he was doing something that was either contrary or wrong to the law.”

⁸ Basdev vs State of Pepsu, 1956 AIR 488 1956 SCR 363

⁹ Attorney General Northern Ireland vs. Gallagher, [1963] AC 349

A person who committed a crime while suffering from a mental incapacity is not held criminally responsible, according to Indian Penal Code, Chapter IV, which discusses General Exceptions. It is a defence that criminal defendants may use on the grounds that alcohol impairs the defendant's ability to comprehend the nature of the conduct they are doing. It is the circumstance in which the person loses self-control and rationality.

VOLUNTARY INTOXICATION

Voluntary intoxication in India is the act of drinking alcohol or using drugs for a purpose other than for mere pleasure. Voluntary intoxication may be practiced for either therapeutic, erotic, or religious purposes. Those who use such substances not to get high but to achieve an altered state of consciousness should also be included in this category.

There are three main types of voluntary intoxication: pharmacological (through the use of drugs), ergogenic (by undertaking physical activity), and transcendental (through prayer and meditation).

There are also two major types of voluntary intoxication: passive and active. Passive intoxication is caused when alcohol or drugs do not enter the body through ingestion, injection or smoking. The latter then enters the system through inhalation or ingestion of food or drink. This type occurs when an individual is exposed to a substance which then enters their circulation.

Active intoxication is where the individual consciously and intentionally ingests a substance with the intention of becoming intoxicated. According to the perspective of British intoxication maybe still used as defence as intent is very important in a crime. Even though he was voluntarily intoxicated himself the very fact that he is unable to form the required intent works in his favor. The severity of the punishment will be reduced.

Different English jurists have expressed varying opinions regarding voluntary intoxication.

Stephen, J.- stated that although you cannot use intoxication as an excuse for crime, you may consider whether a man formed the necessary intention to constitute a crime when he was under the influence of alcohol.

According to **Bishop**, “evidence of intoxication is admissible for the purpose of establishing whether he was incapable of entertaining the precise intent charged, if such intent under the law

is an important ingredient of the particular offence alleged to have been committed.”

Dutch Courage Rule

The “Dutch courage rule” is founded on the idea that individuals drink not just for fun but also to combat sadness, forget pain, and to flee from this physical and emotional suffering. In this fantasy, he sees himself facing these challenges bravely and successfully. As a result, drinking alcohol is frequently done to boost courage. Drinking undermines the ability to see what one is doing as criminal and instils a sense of self-resistance. Prior to drinking, i.e., voluntary drunkenness, the person makes a plan for what needs to be done and develops the courage to perform it. This rule is referred to as the courage rule. Only the concept of voluntary intoxication is governed by this rule. This demonstrates that someone has the intention and prior planning to carry out the conduct.

INVOLUNTARY INTOXICATION

Involuntary intoxication has been variously defined as a spontaneous, involuntary and unexpected intoxication; or as an unconscious state of drunkenness that occurs in the absence of alcohol (Dorland's Illustrated Medical Dictionary, 29th Edition). This definition is consistent with the American Heritage Dictionary definition of intoxication which states it as “the act or condition of being intoxicated”.

Involuntary intoxication excludes mens rea:

Legal theory and practise have struggled with the issue of intoxication and criminal liability for a long time. While it has been suggested that being intoxicated lessens or eliminates criminal liability in some situations, it has also been contended that drunken criminals should be held just as legally accountable as those who are sober. However, even in legal systems that emphasize the criminal responsibility of drunken offenders, legal theory and practise face the challenge of translating such values into practical jurisprudence because many drunken offenders naturally lack mens rea, one of the essential elements of responsibility for a criminal act.

In case of “*Director of Public Prosecutions vs. Beard*”¹⁰ The defendant pleaded to being drunk while committing rape and murder of a thirteen-year-old girl. The honorable court decided that intoxication could only be invoked as a defence if the accused was unable to establish the mens

¹⁰ Director of Public Prosecutions vs. Beard, (1939) 1 MLJ 255

rea. It implies that the involuntarily intoxication, or mens rea, is not existent in involuntary intoxication.

INTOXICATION AND ITS DEFENCES

As discussed earlier, “voluntary intoxication is not a defence to general intent crime. It can only be considered as a defence for a crime of specific intent.” It is also only a partial defence and the judge must consider all relevant circumstances. Generally, voluntary intoxication cannot be used to excuse a drunk driver who had caused the death of a pedestrian, however there are some defences available in some jurisdictions under certain conditions:

- involuntary intoxication is not considered as evidence of intention, but in some jurisdictions it may be given weight when other aspects of intent are in dispute;
- provocation;
- diminished responsibility (not an excuse);
- duress or necessity.

A voluntary intoxication defence presents a potential for abuse. A prosecutor may claim that there is evidence of voluntary intoxication but the judge does not have the power to exclude it because of the potential for abuse. Consequently, the defence may not be used in the case. In Australia, intoxication has been held to be a partial defence on occasions, including criminal negligence and infanticide which refers to murder of a child below 1 year.

In *Chu Kheng Lim v Minister for Immigration*,¹¹ the High Court held the common law defence of intoxication to be inapplicable on facts. The court considered two propositions:

The first is that a person who voluntarily consumes an intoxicating substance thereby intentionally causes his own intoxication and thus renders himself incapable of forming either an intent or a state of mind essential to constitute any crime against [Criminal Code s. 5.6].

The second is that for the conduct of a person to be voluntary it is not essential that the person forms an intention. It is enough so long as he voluntarily performs the acts which give rise to his

¹¹ *Chu Kheng Lim v Minister for Immigration*, (1992) 176 CLR 1 at [39]

intoxication and hence render him incapable of forming an intent or a state of mind required for the commission of any crime against [Criminal Code s. 5.6].

In the recent case *Suraj Jagannath Jadav vs. the State of Maharashtra*,¹² the accused splashed his wife in kerosene and tried to lit a matchstick and set her ablaze as she tried to flee the house. The accused claimed in his defence that he was intoxicated and hadn't intended to kill his wife.

The court ruled that in order to establish whether the accused has the necessary intention for the crime or not, other facts must be proven as well as the proof of the accused's intoxication, which renders him incapable of forming that intention.

An alcoholic belief may be used as a defence in certain circumstances. In *Jaggard v. Dickinson [1980, 1981]*,¹³ the accused was given the opportunity to appeal their conviction for malicious or careless criminal property damage. Due to her own deliberate intoxication, the accused incorrectly but honestly believed that she was destroying a friend's property and that the friend would have approved of her actions. According to "Section 5(3) of the Criminal Damage Act of 1971",¹⁴ if the belief is honestly held, it is irrelevant whether the belief is justified or not in allowing the damage of property.

Section 85 and 86 of IPC

It is evident from a combined reading of "sections 85 and 86 of the Indian Penal Code" that provision 86 constitutes an exception to the general norm set forth in section 85. Section 86 of IPC says that "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." The laws are very explicit that even if the accused was so inebriated that "he was unable to comprehend the nature and ramifications of his act or that it was illegal, the act committed while under the effect of voluntary intoxication would still be illegal. Section 86 exclusively deals with offences requiring a specific knowledge or intention for their commission," whereas Section 85

¹² Suraj Jagannath Jadav vs. the State of Maharashtra, CrI.A. No. 1885 of 2019 SC

¹³ Jaggard v. Dickinson, 1981] 1 QB 527

¹⁴ Criminal Damage Act § 5(3), Acts of Parliament, 1971 (India)

deals with all types of offences. Section 86 of IPC says that However, both portions call for the same level of intoxication. If the accused is not sufficiently intoxicated to be unable to comprehend the nature and repercussions of his actions or that his behavior is unlawful, he will not be eligible for the benefit of the defence of intoxication.

In the case of *Shankar Jaiwara v State of West Bengal*¹⁵ it was held that the accused travelled some distance to the victim's home while hiding the weapon and wearing clothing indicated that he was aware of his actions and was capable of comprehending their nature and effects. He was therefore determined to be ineligible for the benefit of the drunkenness defence.

INTOXICATION IN DIFFERENT COUNTRIES

Below is a situation regarding intoxication. We will analyse it and compare it with the defence used in different countries.

“The defendant pled guilty and said he was intoxicated when the crime occurred. The judge reduced his sentence from murder to manslaughter.”

In **Portugal**, a defendant may plead that they were intoxicated at the time of the crime and that they should not therefore be held accountable. If the case goes to trial, then “the prosecution must prove beyond reasonable doubt that it was not a case of intoxication.”

In **Scotland**, a person cannot use intoxication as an excuse for committing a crime. However, a person can ask for their sentence to be reduced if their level of intoxication significantly reduces their culpability for an offence. This is under the ‘Diminished Responsibility’ rule.

In **England and Wales**, a defence of intoxication can be used two ways:

England and Wales law distinguishes between partial and complete defences. This means that if you are found guilty after claiming intoxication, you could still be sentenced to a prison term in addition to your fine.

In **Canada**, the defence of intoxication may be used for most criminal /undefined offences.

¹⁵ Shankar Jaiwara v State of West Bengal, (2007) 9 SCC 360

CONCLUSION

From the above analysis we can draw a conclusion that The Indian Penal Code addressed intoxication as one of the general exceptions. Numerous instances demonstrate that, even when intoxication is used as a defence, “a person cannot be freed from serious and dangerous criminal offences.” The burden of proof rests with the accuser. The main issue with determining the level of intoxication that characterizes an offender who has committed a crime is that many offenders lack mens rea, one of the essential elements of criminal guilt can be clearly understood by the case laws and judgements mentioned.

We can conclude that intoxication as a defence can only be taken to an extent. Any unlawful act committed after voluntary intoxication is liable as if he had done that “act with the same knowledge he would have if he had not been intoxicated whereas if a person was involuntarily intoxicated then it would be considered as manslaughter.”

The conversion of legal and philosophical ideas into practical jurisprudence is necessary for the judgement of legal guilt or liability. When evaluating potential “legal defences,” case law offers useful advice which is demonstrated in the above research. A functional understanding of the relationship between intoxication and intention is therefore helpful, in addition to the well-established mental state defences of insanity and reduced responsibility.

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