

# General Exceptions (IPC)

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# STRUCTURE OF I.P.C.

- **The Indian Penal Code, 1860 consists of 23 chapters, 511 sections. (V-A; IX-A and XX-A were added) The code was passed on 6<sup>th</sup>. October, 1860, but came into effect from 1-1-1862.**
- **The Charter Act of 1833 facilitated the emergence of this code under the stewardship of Lord T.B. Macaulay.**
- **This codified statute is a substantive general law of crimes in India, and is exhaustive in respect of matters covered by it.**

# IPC enunciates.....

- **1. General Principles**
- Territorial Operation of the Code (**Ch.1- Ss1 to5**)-**Intra -territorial** and **Extra –territorial**
- **General Explanations ( Ch-II)- Definitions- (Ss 6-33, 39-52A)-Joint or Constructive or Group Liability.(Ss 34-39)**
- Punishments- (Ch-III Ss 53-75)
- General Exceptions- (Ch-IV Ss 76-106)
  
- **2. Specific Offences-** divided into-
- a). Affecting the State State
- b). Affecting the Common or Public weal
- c). Affecting the Human Body
- d). Affecting Property
- e). Affecting Reputation
  
- **3. Inchoate Offences**
- Abetment – (Ch.V) Ss-107 to 120
- Criminal Conspiracy – (Ch.V-A) Ss-120-A, 120-B
- Attempts to commit offences – (Ch. XXIII) S-511.

# GENERAL EXCEPTIONS (I.P.C)

- When a person proved with the commission of an offence, and ought to have been punished by law, if he is exempted from such legal punishment under special conditions stipulated in the law, it is known as General Exception.
- Ch.IV comprising of Ss-76 to 106 deals with the General Defences in the Indian Penal Code.
- In fact, these provisions indicate the absence of mens rea element in the acts of commissions and omissions on the part of the perpetrator of the offence.
- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within the exception lies on that accused person.

# CATEGORIES OF EXCEPTIONS

can be divided into seven categories –

- i) Mistake of Fact ... Ss – 76, 79
- ii) Judicial acts .... Ss- 77,78
- iii) Accident .. S-80
- iv) Absence of criminal intent ... Ss-81-86, 92-94
- v.) Consent .... Ss 87- 91
- vi) Trifling acts ..... S – 95
- vii) Private Defence .... Ss-96 – 106

Divided into-

- 1. Excusable
- 2. Justifiable

# MISTAKE OF FACT

Act of a person –

- i) bound by Law to do it (s-76)
- li) Justified by Law to do it (s-77)
- Sec – 76 provides immunity for the acts of a person who is bound by law- done in good faith- and by reason of mistake of fact, not by mistake of law. (Excusable act)

Ex. A police firing at a rioting mob under lawful orders, did not commit any offence.

ii) Arrest by police a wrong person under mistake of fact.

In Shew Mangal's case, it was held that a subordinate officer carrying the orders of his superior, is not liable.

# Contd...

- S-79 provides exemption from criminal liability in respect of **acts of a person justified, or believing himself to be justified by law.**

Rao Bahadur Thapa's case – Gurkha killing innocent women under the impression of apparitions.

- S-79 is complimentary to Sec-76. **Sec-76** deals with a **real or supposed legal obligation** and S-79 deals with a **real or supposed legal justification.**
- **Under S-76 a person believes that he must act in a particular way and under S-79, a person thinks that he has justification for action and acts accordingly.**



# ACCIDENT

- Sec-80 provides exemption from criminal liability in respect of accidents in due performance of lawful acts.

Act is done by -

- Accident or misfortune
- Without any criminal intention or knowledge
- In a lawful manner and by lawful means
- With proper care and caution.
- Ex. A hatchet , while cutting wood, flies off and kills a person, when there was no want of caution.

Absence of Criminal Intent (ss81-86& 92-94)

# INCAPABILITY

- CLASSIFIED INTO –
- 1. INFANCY – S-82, 83
- 2. INSANITY –S-84
- 3. INTOXICATION – S-85 & 86
- Sec-82 exempts a child under 7 yrs. of age from criminal liability – Doli in capax. – **absolute immunity**.
- Sec-83 exempts act of a child above 7 yrs. and under 12 yrs. – **qualified immunity**.
- **Child should not have attained sufficient maturity of understanding to judge the nature and consequences of his conduct.**
- 9 yrs. Child picks up a necklace of Rs. 100/- from his friend's house and sells for Rs. 20/- held child having sufficient maturity to understand the consequences Of the act – no protection from S-378 theft.

# INSANITY

Sec- 84 provides exemption from criminal liability in respect of acts of a person of unsound mind. (non compos mentis)

- At the time of the act, incapable of knowing the nature of the act and
- Not capable of understanding what he was doing was either wrong or contrary to law.

Four kinds of persons with non compos mentis-

- i) An idiot – who is of non-sane memory from his birth, perpetual infirmity, without lucid intervals,
- li) illness leading to non compos mentis'
- lii) a Lunatic – afflicted by mental disorder only at certain periods and vicissitudes
- Lunacy and madness are acquired insanity and idiocy is natural insanity.
- Iv) Intoxicated persons.

# Contd....

- Insanity may be divided into **Medical Insanity** and **Legal insanity**. Indian law recognizes legal insanity.
- Established only if it is known that the cognitive faculties of the person are such that he did not know what he has done and what will follow his act.
- In re Balagopal's case – husband killed wife and son – held that the plea of insanity could well be substantiated by the statement of the doctor.
- M'Naughten Rule – Diminished Responsibility.
- - suffering from abnormality of mind either due to arrested or retarded development of mind; any inherent causes or induced by disease or injury – then mental responsibility is substantially diminished.

# INTOXICATION

- Intoxication may lead to 'dementia affectata', a state of mind equal to insanity i.e. the function of the mind is temporarily suspended.
- Ss-85 and 86 crystalize the law relating to acts committed by a person in intoxication in mitigating the rigor of law.
- **Voluntary drunkenness cannot be a cloak of immunity.**
- To claim exemption from criminal liability on the ground of involuntary drunkenness, it must be established that he was –
- **i) incapable of knowing the nature of the act, or**
- **li) that he was doing what was either wrong or contrary to law, and**
- **lii) that the thing which intoxicated him was given to him without his knowledge or against his will.**
- **Ex: A person committing an offence when made intoxicated by fraud, coercion or ignorance practiced by some one.**

# Contd....

- **S-86 says- if an act is an offence only when done with a particular intent or knowledge**, and such act is committed by an intoxicated person, he is liable unless he can show that **he was intoxicated without his knowledge and against his will.**
- **Voluntarily drunken person will be liable as if he was sober when he did it-** must be considered as an aggravation rather than a defence.
- Based on the principle – **QUI PECCAT EBRIUS, LUAT SOBRIUS** i.e. **one who sins when drunk, should be punished when he is sober.**
- **Sarathi vs. State of M.P (1976)** – Three drunken accused roughed up the deceased making him unconscious, and without ascertaining whether he was dead or alive, hanged him from the ceiling fan – state of intoxication gave the accused benefit to be convicted under Sec-304 IPC instead of under Sec-302.

# JUDICIAL ACTS (Justifiable Act)

- S-77 provides exemption for judicial acts of a judge acting judicially in exercise of his power or acting in good faith and believing that such power is given by law to him.
- The acts must have been done in discharge of official duties.
- They must be within his jurisdiction.
- Must be performed in good faith.
- Exemption is available in case of irregular exercise of power or excessive use of jurisdiction.
- This principle is to sustain the Independence of Judiciary.

# Contd....

- Sec-78 provides protection to officers acting under the authority of a judgment, or order of a court of justice.
- Act done in good faith.
- Belief in the legality of the court order.
- Protection is given even in respect of a defective or invalid order of a court.
- Ex. Police executing search warrant (Gambling Act) though the warrant is defective in law and illegal.



# NECESSITY

- **Act done to avoid other harm-s-81(inevitable Accident)**
- **QUOD NECESSITAS NON HABET LEEGEM** i.e. necessity knows no law. Breaking the words of law is not breaking the law so long as the intent of the law is not broken.
- **S-81 gives legal protection to the doctrine of salvage i.e. self-preservation. Permits a lesser evil to avert a greater evil.**
- **S-81 grants immunity to a man with respect to acts committed under compelling circumstances forced necessity. Conditions to be satisfied are**
  - i) The act must have been done without any criminal intention to cause harm;**
  - ii) The act must be done in good faith to prevent or avoid harm to other person or property**
  - iii) Harm done in order to avert a greater harm. (mother's life to be saved over a child in the womb.)**

**Ex. A captain of a vessel, without his negligence finds suddenly a small boat within a short distance, and hits it under forced circumstances to save vessel. Similarly, pulling down a house to prevent great fire spreading to other areas.**

# Contd....

- **Conflict in the application of the Doctrine of Necessity (salvage) in two areas –**
- **i) Necessity and homicide**
- **li) Necessity and Larceny. (stealing bread to avert hunger)**
- **Queen vs. Dudley and Stephens (1884) known as Mignoets' case – shipwrecked sailors killed the cabin boy for food were guilty of murder – temptation to murder should not be an absolute defense, and deliberate killing of man howsoever the temptation might be, cannot be justified by necessity.**
- **Blackstone rules that 'economic necessity is no defense of theft or larceny.'**
- **But Bacon says that stealing of food to satisfy hunger is not larceny.**
- **Involves a collusion of interests and consequential judgment of values – problems of great ethical and social difficulty.**

# DURESS

- S-94 exempts a person from criminal liability in respect **of an act committed under compulsion or duress**. Based on the principle ACTUS NE INVITO FACTUS EST NISI ACTUS i.e. **'an act done by me against my will is not my act'**.
- This defence is subject to two exceptions (i) Murder and (ii) Waging war against Govt. of India, which is punishable with death. **But English law permits a man to save his life at the expense of the state.**
- **The threat under S-94 must be of instant death to the person compelled to commit the offence.**
- In R. vs. HASAN (2005), House of Lords held that defence of duress is not admissible **when the accused voluntarily associates** with others engaged in criminal activity.
- In R vs. Hudson and R vs. Taylor, charge of giving false evidence under threat of death by the other party – Trial court convicted and Court of Appeal set aside the conviction, the act of giving false evidence was under duress and threat of life.
- R vs. BOURNE – Defence to a charge of bestiality – husband compelled his wife to have carnal knowledge of a dog which was an offence – on appeal held that wife was terrorized by husband to commit such act against her will and defence of duress exempted her from conviction.

# CONSENT

- Ss-87-89 & 92 say under what conditions **consent** may be pleaded as a defence to a criminal charge i.e. when the harm caused to the consenting individuals should not be punished in the interest of the community.
- S-87 gives immunity from criminal prosecution on the ground of consent in general.
- Ss-88, 89 and 92 extend protection in those cases only **where harm is caused in good faith for the benefit of the consenting party**. Intended to protect the interests of doctors and the like – VOLENTI NON FIT INJURIA operates.

# Contd...

- **S-87- immunity will not justify causing death or grievous bodily injury or harm likely to cause death, and which is known to the doer. The restriction is absolute and unconditional.**
- **Consenting party should be above 18 years of age.**
- **Consent may reduce the gravity of offence or mitigate the rigor of the punishment.** For Ex.Ponnei Fatimah's case (1869) – Accused Snake charmer persuaded the deceased to be bitten by a poisonous snake inducing him to believe that he had the power to protect from any harm – accused could not save the deceased – deceased's consent did not excuse the accused from criminal liability.
- **Consent may be Express or implied.**
- **BISHAMBHER vs. ROOMAL – (rape of harijan girl) Self-constituted Panchayat had the complainant parade through the village with blackened face and gave him a show-beating to save him from the attack of harijans. Held the action of the accused Panchayat is with the consent of the complainant.**
- **Tattooing a lawful activity when done with the consent of an adult – R. vs. WILSON. (1996)**

# Contd...

- **S-88 grants immunity to persons like doctors from punishments for all acts, done in good faith and for the benefit of the consenting party, which may cause any harm except causing death intentionally.**
- **Ex. A surgeon operating on a critical patient with the consent of the patient – No malice or negligence on the part of the doctor and the operation conducted for the benefit of the patient.**
- **In G.B.GHATGE vs. EMPEROR – teacher who gave 5 – 6 strokes with a cane to a boy of 15 yrs. Guilty of misconduct – no offence is committed since a teacher is a delegate of the parent to protect the interests of the student. (law is now in reverse)**

# Contd....

- S-89 authorises guardian or other persons having lawful charge of –
- i) child below the age of 12 yrs
- li) a person of unsound mind – not competent to give consent in law

to consent to inflict harm either himself or by another person, provided

- it is done in good faith and
- for the benefit of the such minor/person of unsound mind, and
- the act is not either immoral or illegal.

Sec-89 is a corollary to Sec-88 of the Code.

# Contd...

- The benefit of Sec-89 **cannot be claimed** in four situations covered under the four provisions -
- **i) Intentional causing of death or attempt to cause death – Father, in good faith, kills his own daughter from falling into the hands of dacoits** – no immunity since the act is intentional and illegal.
- **ii) consent to the doing of anything likely to cause death for a purpose other than prevention of death or grievous hurt .**
- **iii) Causing or attempting to cause grievous hurt except for preventing death or grievous hurt or infirmity. Ex. Causing grievous hurt to a child under Sec-322 of IPC.**
- **iv) Abetment to commission of any offence. Ex. Father intending monetary benefit to the child of 15 years, abets B to commit rape on the child. Neither father nor B could be within the exception.**



# Contd....

- Sec-92 deals with the acts done in good faith for the benefit of a person without consent.
- Covers the cases not covered by sec-89
- It deals with the cases of emergency and Sec-92 presumes implied consent of the party in question.
- Consent may be absolutely dispensed with when the circumstances are such as –
  - i) to render consent impossible, or
  - li) when the person is incapable of assenting, there is no one at hand whose consent can be substituted

# Contd...

- Sec-92 presumes implied consent in two categories of cases –
- i) when it is impossible to obtain consent because the person who could accord consent might not be available and the act (operation) is urgent; and
- li) when it is not articulated or expressed.

Ex. A man falls under epileptic fit, suffers haemorrhage and bleeding – not capable of giving consent – Act of doctor in good faith and to save the victim, causing bleeding commits no offence.

- Consent may be inferred from the conduct. Silence in many cases may signify consent. Ex. A modest girl signify her consent to her lover saying 'no' for a modest 'yes'.

# COMMUNICATION

- Against a criminal Sec-93 gives protection to a person from criminal liability for making a **communication to one which results in harm to him**. To claim this protection –
- i) **the communication must be made in good faith**, and
- ii) **It must be made for the benefit of the person**.
- Ex. A doctor communicates in good faith to his patient the gravity of his disease and the probability of his living. The patient died of shock. Doctor is exempted from criminal liability.
- X vs. HOSPITAL Z – Doctors disclosed to a prospective bride of the fact of HIV complaint of a proposed bridegroom. – Doctors are not subject to any liability. Bride is saved from future deadly consequences.

# TRIFLES

- **DE MINIMIS NON CURAT LEX** i.e. the law will not take care of trifles.
- **Sec-95** intends to prevent penalisation of negligible criminal wrongs, or offences of trivial nature.
- Though such acts fall within the letter of the law, they are not punishable within the spirit of law. Such acts are considered innocent.
- **Ex:** To take a sheet of paper from other's drawer
- Pressing a man and causing hurt while getting into a railway compartment.
- Calling a person a liar, though it attracts defamation.
- **KISHORI MOHAN vs. BIHAR** – fraternity of striking employees making fun of a non-striking employee – loyalist worker photographer with a garland of shoes around his neck – not shown either to the complainant or to any one - held as trifle.

# PRIVATE DEFENCE (Ss96 – 106)

- **Self-help is the first rule of criminal law.** The right of private defense is absolutely necessary for the protection of one's own life and property.
- Ss-96 to 106 state the law relating to the right of private defense of body and property. **Use of necessary force against the assailant or wrong-doer is legally permissible when immediate state aid could not be procured.**
- This right **cannot be applied as a pretense for justifying aggression for causing harm to another person, nor for causing more harm than is necessary to inflict for the purpose of defense.**
- The right is not absolute but subject to restrictions contained in Ss-97 to 105.

## Contd...

- **Sec-96** lays down general proposition that – **‘nothing is an offence which is done in the exercise of the right of private defense.’**
- **Ss-97, 98 and 99** are of a general nature and deal with both aspects right to defend body and property.
- **Ss-100, 101, 102, 106** are concerned with the defense of body.
- **Ss-103, 104 and 105** are concerned with the defense of the property.

# Contd...

- **Sec-97 provides Right to defend**

**i) one's own body, and body of others against any offence affecting human body, and**

**ii) one's own property- of others- movable and immovable- against any action of theft, robbery, mischief or criminal trespass or attempt to commit such acts.**

**This right is subjected to the restrictions under Sec-99., i.e. there is no right of private defense -**

- **i) against the acts of public servant acting in good faith;**
- **li) against the acts of those acting under their authority or direction;**
- **lii) where there is sufficient time for recourse to public authorities; and**
- **lv) the quantum of harm that may be caused shall in no case be in excess of harm that may be necessary for the purpose of defense.**

# Contd...

- Biram Singh vs. State of Bihar (1975) – Two accused having received injuries, went back home, and **fetches a sword** and inflicted fatal blows – Right of private defense rejected.
- R. vs. ROSE – Father used to beat mother on suspicion and one day took her to top of the stairs, when mother cried ‘murder, murder’ – Son, 21 yrs, shot at father and killed – held entitled to right of private defense.
- Right of private defense of trespasser against true owner – only when the trespasser has been successful in accomplishing his mission.
- **Aggressor cannot take the plea of self-defense** – Jaipal vs. Haryana (2000) – accused persons armed with deadly weapons and victims were without any arms – accused attacked the victims – No private defence.



## Contd..(98)

- S-98 provides self defence against an offence committed by a person who might be exempted from criminal liability, by reason of
  - i) being unsound mind u/s-84
  - li) want of maturity of understanding u/s-82,83,
  - lii) misconception of the part of that person u/s-76, 79.
- For ex. If, A an insane person, attempts to kill B, then B will have right of self defense against A.

# Contd....

- Defence of Body: S-100 provides that the right of private defense **extends** even to the **causing of death** or any other harm to the assailant under the following six circumstances: -
- i) **An assault causing reasonable apprehension of death.** In such a case, if the defender cannot exercise this right without causing harm to an innocent person, he may even run that risk. (S-106)
- li) An assault causing reason apprehension of **grievous hurt**
- lii) An assault with the intention of **committing rape.**
- Iv) An assault with the intention of **gratifying unnatural lust.**
- V) An assault with intention of **kidnapping or abduction.**
- Vi) An assault with the intention **of wrongfully confining** a person under circumstances that may cause him to apprehend that he will not have any recourse to public authorities for his release.

## Contd.....

- Viswanath vs. State of UP (1960) – Accused saw his sister being abducted by her estranged husband, i.e. his brother-in-law – Accused stabbed the deceased brother-in-law – Trial court acquitted – H.C convicted – S.C set aside H.C. verdict (Sec-100 – cl.(v))
- Yeswantrao vs. State of MP (1992) – Father killing the deceased when found in sexual intercourse with daughter - Trial court convicted and H.C. confirmed – S.C. held right of private defense was fully applicable.

## Contd....

- Subject to the above restrictions, the right of private defense of body extends to the causing of any harm short of death. The right of self defence does not extend to the voluntary causing of death.(s-101)
- When right of self defense available:  
S-102 and 105 fix the time when the right of private defence **commences and the time during which it continues.**  
S-102 says that the right of private defence of the body **commences as soon as a reasonable apprehension of danger to the body arises** from an attempt, 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.**

# Contd...(defence of property)

- S-103 The right of private defence of property extends to the causing of death or any other harm to the assailant under the following circumstances: -
  - i) **Robbery**
  - ii) **House-breaking by night**
  - iii) **Mischief by fire** to building, tent, or vessel, used as a human dwelling or for custody of property.
  - iv) **Theft, mischief or house trespass**, reasonably causing the apprehension of death or grievous hurt.
- S-104 says that the right of private defense of property extends to the causing of any harm short of death.

# Contd....

Defence of property: -

- Sec-105 fixes the time **when the right of private defense of property commences and when it comes to an end**. This right commences as soon as a reasonable apprehension of danger to property commences and its continuation depends upon the nature of offence. It continues, in case of –
  - i) theft – till the offender retreated, or procurement of assistance of public authorities or till the property is recovered.
  - li) robbery – as long as the offender causes or attempts to cause any person death or hurt or instant personal restraint continues.
  - lii) criminal trespass or mischief – as long as the offender continues in the commission of criminal trespass or mischief.
  - Iv) House-breaking by night – as long as such house trespass that began continues.