CHAPTER- 7

LEGAL PROVISION RELATED TO

EXCUSABLE DEFENCES

Excusable Defences are those Defences where the act is excused for the absence of Mens rea. In such cases, the act is not criminal because the intention was not criminal. It means the act is committed without any criminal intent.

In case of an Excusable Defences, the actor is not punished as he lacks the necessary mens rea for the offence either by reason of an honest Mistake of Fact, Infancy, Insanity or Intoxication. There must be a disability to cause the condition that excuses the conduct. As stated by Paul Robinson a conduct is punishable not because the person acted in that manner but because he chose to act in that manner.

Joshua Dressler mention that there are three non-utilitarian theories of excuses to highlight the circumstances under which a person can make use of an Excusable Defence, These theories are –

The first of these theories is the 'Causation Theory' of excuses which says that a person should not be punished for an act that was caused because of a condition over which he exercised no control. Therefore a person who is intoxicated or of unsound mind cannot be held guilty for his act.


68 Joshua Dressler (n. 3))
The second theory, called 'Character Theory' says that a person should not be punished for committing an offence unless he has a bad character. Excusable Defences are invoked when one cannot infer the bad character of a person from the act that he has committed.

The next theory is based on the 'Personhood Principle' which states that if a person lacks a sense of reason due to certain condition and does not behave as a reasonable human being would, he cannot be blamed for his acts. To consider a defence as an excuse will depend on which of the above theories is accepted.

The Excusable Defences have been defined under the following heads:-
1. Mistake
2. Accident
3. Infancy
4. Insanity
5. Drunkenness

**MISTAKE**

Generally, ‘Mistake’ means ‘erroneous belief about something’. The provision relating to it have been given under Section 76 and 79, which are based on the common law maxim, “ignorantia facti excusat’ ignorantia juris non excusat” which means Ignorance of fact is an excuse but ignorance of law is no excuse. It applies only on the mistake of fact and not the mistake of law. Section 76 provides that-

“Nothing is an offence which is done by a person who is bound by law to do it or by person of mistake of fact and not by mistake of law believes himself to be bound by law to do it.”

It means when a person who is bound by the law or by mistake of fact believes himself to be bound by the law to do an act, does such act then he shall not be liable for that act.
**For Example**: A soldier fires on a mob by the order of his superior officer, in conformity with the commands of law. He has committed no offence.

- **Case**: *State of West Bengal V/s Shiv Mangal Singh*

  In this case an Assistant commissioner of police was injured by a mob. The D.C.P. ordered the constables to open fire, they shot at some people from a point blank range. The court held that the constables were protected under **Section 76** and it subsequently acquitted them.

- **Essentials Elements of Section 76**-

  The following are the essentials elements of the **Section 76** -

  1. An act done by a person who believes himself to be bound by law in doing that.
  2. An act done by a person who is bound by law in doing that; or
  3. Such belief must be reason of a mistake of fact and not by reason of a mistake of law i.e., mistake must relate to fact and not to law.
  4. Such belief must be a bona fide belief in good faith.

  If the above conditions are fulfilled, one may successfully be pleaded a mistake in defence to any prosecution for an offence.

**For Example**: A police officer came to Bombay from up-country with a warrant to arrest a person. After reasonable inquiries and on well-founded suspicion he arrested the complainant under the warrant, believing in good faith that he was the person to be arrested. The complainant having proceeding against the police-officer for wrongful confinement, it was held that the police –officer was guilty of no offence as he was protected by this section.

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69 A.I.R. Sc of Ind. 1981

70 Gopalia Kallaiya, (1923) 26 Bom LR 138.
The above maxim has been thoroughly discussed in the following leading cases **R. v/s Prince and R. v/s Tolson.**

**Cases:-**

**R. V/s. Tolson**

In this case Mrs. Tolson was acquitted of bigamy as what she did was on a reasonable belief that her husband had died. So this act of remarriage was a mistake of fact and not a mistake of law. Mistake itself is not excusable but mistake of fact can be excused if the mind of the accused is not guilty. In other words, mistake of fact will afford no protection if the act of the accused is *mala in se* (bad in itself).

**Cases:-**

**R. V/s. Prince**

In this case, the Prince had committed an act which was *mala in se* and as such mistake of fact about the age of the girl could give no protection to him. If this defence is to be successful, the law requires that the following conditions shall be fulfilled-

(i) Firstly, the mistake must be of such a character that had the supposed circumstances been real, they would have prevented the alleged liability from attaching to the person in doing what he did. It is no defence for a burglar who breaks into No.5, to show that he mistook that house

(ii) Secondly, mistake must be reasonable one ;

(iii) Thirdly, the mistake, however reasonable, must relate to matters of facts, not to matters of law.

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71 (1889) 23 QBD 168
72 (1875) LR 2 CCR 154.
**Section 79 provides** that-

“Nothing is an offence which is done by a person who is justified by law to do it or by reason of mistake of fact and not by mistake of law believes himself to be justified by law to do it.”

It means when a person who is justified by the law or by reason by mistake of fact believes himself to be justified to do an act does such act then he shall not be liable for that act.

**For Example**: ‘A’ saw ‘B’ committing a murder of a person, he apprehended ‘B’ in order to bring him before the proper authorities in the exercise of the power given by law. ‘A’ has committed no offence.

➢ **Essentials elements of Section 79** :

The essentials elements of Section 79 are the same as are provided for Section 76 but the only difference between the both is that the word justified has been used in place by word ‘bound’.

• **Case** :- **Dukhi Singh V/s State**

In this case, a police officer in order to effect the re-arrest of thief fired at the deceased and killed him. In the prosecution, a police officer claimed the defence of Section 79. The Hon’ble Superme Court held that the police officer was not justified in law to shoot dead the suspected their in order to effect his re-arrest. It could be justified only if the deceased was the accused of an offence punishable with death or life imprisonment.

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73 AIR 1955 All 521
Case: – **Bhawoo Jiwaji V/s Mulji Dayal**

In this case, the accused, a police constable, saw the complainant early one morning, carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen, he went up to the complainant and questioned him. The complainant gave answers that were not satisfactory and refused to allow the constable to inspect the cloth and a scuffle thereupon ensued between the two. The complainant was arrested by the constable, but was released by the Inspector of Police. The complainant then prosecuted the constable for wrongful restraint and confinement, and the magistrate convicted the constable of the said offence. The High Court held that the conviction was wrongful as the constable acted under a bona fide belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant to clear up his suspicions was an indication of good faith, and he was, therefore, protected by this section.

**Distinction between Section 76 and Section 79**

By the perusal of both the sections, it would reveal that under both sections a person claims exemption from criminal liability of mistake of fact against the forbidden act. Inspite of it, there are following distinction between the both sections:-

1. **Under Section 76** a person acts under legal compulsions, while under **Section 79** he acts under a legal justification.

2. **Section 76** grants exemption to a person from Criminal Liability, when he believes himself bound by law to do a thing in a particular way although it reveals that his act to be an offence, while **Section 79** deals with cases wherein a person by reason of a mistake of fact
believes himself to be justified by law in doing an act in a particular way.

3. Under Section 76 a person acts because he believes he must act in a particular way, whereas under Section 79 a person thinks he has justification for his action and acts accordingly.

**ACCIDENT**

Generally, an ‘Accident’ means ‘an unfortunate incident’ that happens unexpectedly and unintentionally, typically resulting in damage or injury. It is an occurrence which is happened out of the ordinary course of things under certain circumstances affords complete protection in a criminal case. An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.  

Section 80 provides that-

“Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge, in the doing of a lawful manner by lawful means and with proper scare and caution”

It means an injury is said to be caused accidentally if it is caused neither willfully nor negligently.

**For Example**: ‘A’ is at work with a hatchet, the head files off and kills a man. Here, if there was no want to proper caution on the A’s part, his act is excusable and not an offence.

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75 STEPHEN’S DIGEST OF CRIMINAL LAW, 9TH Edn., Art. 316.
Essentials Elements of Section 80:– To claim the defence of accident, the following essential ingredients are to be satisfied by a person-

1. The act was done by accident or misfortune.
2. It was done without any criminal intention or knowledge.
3. It was done in a lawful manner, by lawful means.
4. It was done with proper care and caution.

This section exempts the doer of an innocent or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may ensue from accident or misfortune, if either of these elements is missing, the act is not to be excused on the ground of accident. 76

Case:– Shakhir Khan V/s Crown 77

In this case, a big party consisting of some hundred men went out for the shooting pigs. A boar rushed towards the accused who fired at her, but he missed the boar and the shot struck the leg of a party’s member. It was held that the death was caused by the accident and was not the result of rash or negligent shooting.

INFANCY

‘Infancy’, generally means ‘the state or period of babyhood or early childhood’. Infancy is a state of understanding and infants under the age of discretion ought not to be punished by the criminal prosecution whatsoever. The Section 82 and 83 deals with the law of Infancy. In which Section 82 provides that-

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77 A.I.R. 1931 Lah. 54
“Nothing is an offence which is done by a child under seven years of age.”

It means a child below the age of 7 years is considered to be ‘doli incapax’ i.e. wholly incapable and therefore can’t be held guilty for any offence and if he is prosecuted for any offence the fact of his being below 7 years of age will be sufficient defence to the prosecution.

Section 83 Provides that-

“Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion.”

It means when a child above 7 years of age but under 12 years of age and hasn’t attained sufficient maturity of understanding, does any act then he shall not be liable for that act. This Section provides for the qualified immunity. The defence of Infancy was raised for the first time before the Supreme Court in the case of Gopinath Ghosh V/s State of West Bengal.78

➢ Essential Ingredients :– The following are the ingredients of Section 83-

(a) An act done by a child above 7 years but under 12 years of age.

(b) Such child must not have attained sufficient maturity of understanding to judge of the nature and consequence of this act.

(c) Incapacity must exist at the time of commission of the act.

• Act of the child – The liability of the child for his acts could be easily understood through the following table:-

78 A.I.R. S.C. of India, 1984
**Act of the child :-**

(a) under 7 years  
   no liability

(b) between 7 and 12 years  
   (i) if attained sufficient maturity of understanding, no immunity will be granted and
   (ii) if not attained sufficient maturity of understanding, no question of liability arises.

(c) above 12 years  
   Liable in all respects

- **Case :-  Emperor V/s Wali Mohd**

  In this case, 2 boys of 8 and 5 years of age were charged and convicted by the magistrate for throwing stones at a railway train under Section 127 of the Railway Act. On appeal, it was held that the accused were entitled for the protection of Section 82 and 83 i.e. Infancy.

  Thus, from the above discussion it is clear that any act committed by a child under seven years of age is not liable for that act, he gets the absolute privilege from the Criminal liability. Where the accused is a child above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, and such not-attainment would have apparently to be specially pleaded and proved, like the incapacity of a person who, at the time of doing an act charged as an offence, was alleged to have been of unsound mind under this section it has got to be shown that the accused is not only under 12 but has not attained sufficient maturity of understanding. If no evidence or

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79 AIR 1936 Sindh 185
circumstance is brought to the notice of the Court, it will be presumed that the child accused intended to do what he really did.

**INSANITY**

Generally, ‘Insanity’ means ‘senseless of seriously mentally ill’. It is a state of mind which prevents normal behavior or social interaction. For holding a person liable for the crime, he must be capable of forming a criminal intent but when he is lack sufficient mental capacity to from it by reason of some defect of mental faculty, which is caused by some disease of mind, then he is said to be a insane. The law of Insanity has been given under **Section 84** which provides that-

“Nothing is an offence which is done by a person who, at the time of doing if, by reason of unsoundness of mind, is incapable of knowing the nature of this act, or that he is doing what is either wrong or contrary to law.”

It means when a insane person does any act in the state of his insanity then he shall not be liable for his act. It means insane person is not responsible for his criminal act. It is based on the following maxim-

(a) *Furiosus furor sub puniter* i.e. a man is punished by his madness only.

(b) *Furiosus nulle voluntas est* i.e. a mad man is like one who is absent.

There are two kinds of insanity i.e. ‘Medical insanity’ and ‘Legal insanity’. Both different from each other Medical insanity is solely depend on the medical grounds, while Legal insanity depends on the facts required to be proved in court to enable the accused to be acquitted from the charge. It means Legal Insanity furnishes a good defence from criminal liability while Mental Insanity does not so
Essential Ingredients of Section 84:

To claim the defence of insanity, a person has to satisfy the following essentials ingredients -

(a) Act must be done by a unsound mind person.
(b) Such person must be incapable by knowing-
   (i) The nature of the act,
   (ii) The act was contrary to law, or
   (iii) The act was wrong.
(c) Such incapacity must exist at the time of doing such act.
(d) Such incapacity must be because of unsoundness of mind.

Person of Unsound Mind

There are four kinds of person who may be said to be of Unsound Mind (non compos mentis)-

(a) An idiot.
(b) One made non compos by illness.
(c) A lunatic or a mad man.
(d) A person who is drunk.

(a) An idiot:

An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals: and those are said to be idiots who cannot count twenty or tell the days of the week, or who do not know their fathers or mothers, or the like.  

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(b) **One made non compos by illness**:–

A person made non compos mentis by illness is excused in criminal cases from such act as are committed while under the influence of his disorder.  

(c) **A lunatic or a mad man**:–

A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason.

Madness is permanent, Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

(d) **A person who is drunk**:–

As to persons who are drunk, it has been discussed in details under the head of Intoxication.

- **Case**:–  
  **R. V/s M’ Naghten**

In 1843, M’ Naghten had killed Mr. Drummond, the P.S. of Sir Robert peel, the then P.M. of England M’ Naghten was under insane delusion that sir peel had injured him and again was going to injure him. So one day, mistaking Drummond for sir peel he shot and killed him. During his trial, his counsel pleaded that due to insanity the accused wasn’t able to know that he was violating the settled laws. In support, the medical report was produced which showed that the accused was labouring under a morbid delusion which carried him away beyond the power of self control. The accused was ultimately acquitted on the ground of insanity.

81 1 Hale P.C. 30.


83 4 state Tr NS. 847: 8 ER 718: (1843 – 60) All ER Rep. 2229: 10 CI and F 200
• Case:- State of M.P. V/s. Ahmadulla

In this case, the Supreme Court said that the fact that the person has had an attack on insanity before the occurrence and another one in jail before the opening of the trial does not mean that he committed the offence due to insanity.

(a) that, the accused because of unsoundness of mind is unable to know the act he is doing;

(b) that if the accused knows the nature of the act, then he must not know that what he is doing is either wrong or contrary to law.

DRUNKENNESS

Generally, ‘Drunkenness’ means ‘intoxication’ i.e., the state of being drunk. The provisions related to it has been given under Section 85 which provides that-

“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.”

It means when a intoxicated person does any act in the state of his intoxication then he shall not be liable for his act but voluntary drunkenness is not on excuse for the commission of the crime.

➢ Essential Ingredients of Section 85 :- In order to claim exemption form criminal liability under Section 85, a person has to satisfied the following essentials:-
(a) Act must be done by an intoxicated person.
(b) Such person must be incapable of knowing.
   (i) The nature of the act.
   (ii) The act was contrary to law or
   (iii) The act was wrong.
(c) Such incapacity must exist at the time of doing such act.
(d) Such incapacity must be by reason of intoxication.
(e) The thing which intoxication him was administered to him without his knowledge or against his will.

• **Case:** R V/s Mead

In this case, the accused gave a severe blow to his wife due to which she died on the prosecution, he advanced the defence of drunkenness. It was held that if the man was so drunk as didn’t know the nature of his act or his act is dangerous, then the drunkenness can be accepted as a defence in reducing the punishment only i.e., murder to man slaughter. It is the first time when such defence was accepted in reducing the punishment only.

Now, it is the rule that if the man were so drunk as to be incapable to knowing the nature to act, this would rebut the presumption that he intended the natural consequences of his act.

• **Case:** Bablu V/S. State of Rajasthan

In this case, the Court stated three propositions as to the scope of the section :-

1. The insanity whether produced by drunkenness or otherwise is a defence to the crime charged;

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85 (1909) 1 KB 895

(2) 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

(3) The evidence of drunkenness falling short of a proved incapacity in the accused to from 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.

**Presumption Regarding the Possession of Requisite Knowledge or Intention**

Section 86 provides for the presumption regarding the possession of requisite knowledge or intention in the commission of an act. This provides 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 means when a person wants to claim the defence of intoxication then he has to prove that the intoxicated thing was administered to him without his knowledge or against his will otherwise he has been dealt with in the same manner as the unintoxicated person.
• **Case:** Jetharam V/s State of M.P

In this case it was held that drinking liquor at the request of his father to alleviate the pain can’t be protected under **Section 85.** Involuntary drunkenness i.e. drunkenness caused by medicines or fraud or compulsion can be excused if the accused due to such intoxication is incapable of differentiating right and wrong or knowing the nature of the act.

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87 AIR 1960 MP242