CONCLUSION

As the Mens rea is the second and the most important essential element of the crime. So, there can be no crime of any nature without an evil intent. In other words, it means that in every crime there must be a Mens rea. That’s why, the researcher has discussed the relation between the Crime and Mens rea. The word ‘Crime’ is derived from the latin word ‘Krimos’ which means ‘to accuse’. Generally, ‘Crime’ means ‘a sin which is prohibited and punished by the statutory provisions of law’. In other words, it means every crime is not punishable unless and until it is prohibited and punished by the law. The Mens rea besides the Human being, Actus reus and Injury is the essential element of the crime. It means to constitute a crime there must be a Human being because the animals and other living creatures can’t be punished for their act that’s why only a human being can be held liable for his act. Such human being must have the evil intent behind the doing of such Criminal act and such act includes illegal omission also and by which any injury must be caused to the other person.

An act to be a crime must have gone through the following four stages as that a person must have the intention of doing an act then he has made necessary preparation for the doing of it then if he succeeds in his act, such person is liable for the offence and if he fails to succeed in it, he shall be liable for the attempt of such offence an act. Generally, Intention and Preparation alone are not punishable because it is very hard to establish the intention or preparation of a criminal act but if such person surpass such stage and has done some act in pursuance of such preparations although it falls short of success, he shall be liable for the attempt of such act as because such attempt may cause an alarm to the other person.
During the ancient period, if the person commits an act which is prohibited by the customs and rules, he is said to have committed a crime. The word ‘Crime’ is much broader than the word ‘Offence’ as it includes both moral as well as legal wrong, but as the society has developed, only legal wrong has become punishable and the term ‘offence’ has taken the place of the word ‘crime’ in all the penal laws. Thus, an ‘offence’ means any act or omission made punishable by any law for the time being in force.

Generally, if the person commits an offence, he shall be liable for the punishment as per the prevailing laws. The word ‘Punishment’ generally means ‘any pain or penalty imposed upon a person by the authority of law for the offence committed by him’. The object of the punishment is not only to maintains the law and order but also to protects the person and property of others. The forms or the methods of punishment have been changed from the Ancient Period to Modern Period. Previously, the modes of punishment were very cruel, tortuous and barbaric in nature in comparison with the Modern Period. Because at that time, the punishing authority didn’t consider about the human rights of the accused but in Modern India, the accused has the same rights as the normal human being which can’t be taken away from him although he has himself violated the rights of the other person. Even the terrorists, dacoits, robbers etc. shall have the same human rights, which a general person has.

So, it may be said that the Punishment is the oldest method of controlling the offence. The concept of the Punishment can be traced in the Dharmashastra. The punishment has been awarded not only to reform the offender but also to deter him and others from committing the offences and also to protect the society.

As it has been discussed earlier in this thesis that the ‘Mens rea’ means ‘the guilty mind, criminal intent, guilty knowledge and wilfulness’. The ‘Mens rea’ is one of the most important essential elements of the crime.
There can be no crime of any nature without an evil mind. It means every crime requires some mental element ‘actus non facit reum nisi mens sit rea’ which means “act is not culpable unless the mind is guilty”. It means intent and act must both concur to constitute a crime. Thus, the crime is the combination of both act and intent.

In early primitive society, the doctrine of Mens rea was not in existent and the liability was absolute irrespective of the fact that he had acted innocent or intentionally. It was the ‘Coke’ who had for the first time traced the origin of the maxim ‘actus non facit reum nisi mens sit rea’. But the notion of Mens rea was fully established during 14th and 15th centuries and by the end of the 17th century it had been settled that the Mens rea is the essential element of crime.

The concept of Mens rea in the commission of crime is not applicable in cases of the Strict Liability Crimes because in the strict liability crimes, the liability of the accused was absolute and the court doesn’t bother about the guilty or innocent intention of the accused. If such person commits the crime, he shall be guilty for his act even though he had no knowledge or intention for the doing of it. So, it may be said that the strict liability crimes are the exceptions of the doctrine of Mens rea.

The word ‘Mens rea’ hasn’t been used and defined in the Indian Penal Code but it has been used in the code through the words like Fraudulently, Dishonestly, Voluntarily, Corruptly, Malignantly, Wantonly, and Rashly and Negligently etc., which shows that the offences defined under the code had the required criminal intent for the offence. Besides it, the code also contains a separate chapter i.e. Chapter IV on General Exceptions from Section 76 to Section 106 which indicates the circumstances where the criminal intent may be presumed. It has been shown that the Mens rea is very useful for the commission of the crime.
Generally, a person is presumed to know the nature and consequences of his act and is held liable for his act. But there are some exceptions to this rule, where in a person may be excused for a crime by reason of the absence of the requisite Mens rea which is necessary for the commission of the particular offence. The “Absence of Mens rea” means “an act which is done with due care and caution and without dishonest intention”. Such circumstances have been provided under Chapter IV of the Code, under the head of General Exception.

It is one of the most unique concept introduced in the Code because under this Chapter an accused has got an opportunity to escape from punishment by taking a plea of General Defences. But the Burden of Proving the circumstances mentioned under the Chapter IV of the Code is on the accused and the court shall presume the absence of such circumstances. It means the court shall draw against the accused an inference or presumption of the requisite Mens rea behind the commission of an act and the accused has the burden of not only to prove the absence of the Mens rea but also to prove the presence of the circumstances mentioned under that Chapter. It means the accused has to prove his plea beyond reasonable doubt.

By the analysis of the Chapter IV of the Code, it reveals that they deal with the two broads of the General Exceptions or Defences as Excusable Defences and Justifiable Defences. Excusable Defences are those Defences where the act is excused for the absence of Mens rea. In these cases, the act is not criminal because the intention was not criminal. In these Defences, the actor is not punished as he lacks the necessary mens rea for the offence. The Excusable Defences have been defined under the following five heads as Mistake, Accident, Infancy, Insanity, and Drukenness.

Generally, ‘Mistake’ means ‘erroneous belief about something’. The provisions relating to it have been given under Section 76 and 79. It depends upon 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 means, it applies only on the mistake of fact and not on the mistake of law. Such mistake must be bonafide and in good faith. It means if any person commits an act under the mistake of fact, he may be excused from the criminal liability by reason of the absence of Mens rea.

Generally, ‘Accident’ means an ‘unfortunate incident’ that happens unintentionally which resulting in damage or injury. It is an act which is caused by misfortune and without any criminal intention or knowledge and such act must be done in lawful manner by lawful means and without proper case and caution. It means the alleged act must be an unfortunate incident without the fault of any person.

Generally, ‘Infancy’ means ‘the state of babyhood or early childhood.’ It is that stage of the age which is a deft of understanding of the consequences of the act at the time of doing it. The law of Infancy is divided into two parts i.e., ‘doli incapax’ and ‘doli capax’. The 1st part of Infancy gives absolute immunity from the criminal liability but the main condition is that the age of such child shall not be more than 7 years but if the age of such child is more than 7 years but less than 12 years, than his liability for the alleged act is entitled for the qualified immunity as such child doesn’t have sufficient maturity of understanding of the consequences of the act at the time of doing such act, it is also known as ‘doli capax’. It means the age of the child must be considered for the determination of the Criminal liability.

Generally, ‘Insanity’ means ‘senseless or seriously mentally ill.’ It is that state of mind which prevents normal behavior and in such condition such person is excused from the criminal liability for an act as he is lack sufficient mental capacity to form it by reason of some defect of mental element. Such person by reason of such unsoundness of mind must be incapable of knowing the nature of act at the time of commission of an act. Such Insanity must be a
legal insanity as because the Legal insanity is a good defence in comparison with the Medical Insanity.

‘Drunkenness’ generally means ‘intoxication i.e. the state of being drunk. It means, an intoxicated person does any act in the state of his intoxication then he shall not be liable for his act but such intoxication must be involuntary. The voluntary drunkenness is not an excused from the criminal liability. It means the intoxicated thing must be administered to such person without his knowledge or against his will. In such cases, the presumption has been made against such person that such person has possessed the requisite knowledge or intention unless and until he has proved that the intoxicated thing has been administered to him without his knowledge or against his will. It means in such defence, a person has to prove not only the plea of that General Defence but also that the intoxication administered to him was involuntary.

‘Justifiable Defences’ means ‘the act committed is not excused but is justified on account of some consideration neturalizing the liability otherwise incurred.’ A Justified act is one which under normal conditions would have been wrongful but the circumstances under which the act was committed make it tolerable and acceptable. If the person fulfills all the necessary conditions of the offence but his conduct is held to be right under the privileged circumstances. The Justifiable Defences have been defined under the following heads as Judicial and Executive acts, Necessity, Consent, Good faith (Implied Consent), Compulsion, Triviality and the Right of the Private Defence of a Person.

Under Judicial and Executive acts, a judge is entitled to get the immunity from the punishment for an act done by him in the exercise of his power which is given to him by any law and such act has been done by him in his judicial capacity. It means whatever a Judge does in his official capacity in discharge of his duties shall not be liable for that act. The reason
behind it to give them a fearless and just atmosphere for the due discharge of his duty. Similarly, when any person does any act in pursuance of Judgment or Order of the court, then he shall not liable for his act. It means when any person while compliance of the Order or Judgment of the court does any act then he shall not liable for it although it may cause harm to other person but such act must be done in good faith and in believing of the legality of the order of the court. This immunity has been given to effectively exercise the official duty imparted to them.

Generally, ‘Necessity’ means ‘the need for something’. It is an unavoidable circumstances leaving no choice in action. It is like a form of compulsion in which a person is compelled to do an unintended act by reason of the necessity. It provides the protection although a person has done an act voluntarily but it has been done in good faith and without any criminal intention to cause harm and for the purpose of preventing a greater evil. But a person can’t take the life of another person for the preservation of his own life. It means there is no necessity that justifies homicide.

The term ‘Consent’ means ‘agreement to do something or giving permission.’ It means where any person does any act with the consent of the other person which doesn’t cause death or grievous hurt, then he shall not be liable for his act, but such person must be a major person. In such cases, the maxim “volunti non fit in juria” will apply. Where any person does any act in good faith with the consent of the other person, then he shall not be liable for that act even though it may cause harm to such person but it shall not extent to cause death. Such kind of defence is available to the Surgeons and Doctors so that they can efficiently does his work.

Where any person does any act in good faith for the benefit of an infant under 12 years of age or of unsound mind by or by the consent of the guardian, then he shall not be liable for that act. But such act must be done for the benefit of such person and it shall not cause the death or grievous hurt
to such person. The object behind these defences is to provide an opportunity
to a person to do any act for the benefit of other person and for the sake of
saving the life of the other person.

The above consent must be free consent and without any fear or
compulsion or misconception of the fact and it must be of the person who
shall not be less than 12 years of age, insane or intoxicated person otherwise
their consent having no value in the eyes of the law.

In the cases, where there is no person to give consent on behalf of such
infant or insane person or when such person himself is unable to give his
consent and any other person has done something for the benefit of such
person then he shall not be liable for that act but his intention must be
bonafide and his act must be in good faith. This kind of defence has usually
applies in cases of accident’s patient who has no one to give consent for his
treatment then the Doctor for the sake of his life can start treatment and by
virtue of this defence, he is protected against any kind of criminal liability.
Similarly, any person has made any communication in good faith to the other
person, then he shall not be liable for such act although it may cause harm to
him but such communication must be in good faith and for the benefit of the
person to whom it is made.

The term ‘Compulsion’ generally means ‘the action or state of
forcing to do something’. In English law, it is also known as ‘duress’. This
concept can be traced from the well known maxim ‘Actus me invito factus
non est mens actus’ which means ‘an act done by me against my will is
not my act.’ It means when any person on the fear of death has compelled to
do any act then he shall not be liable for that act but such fear shall not be the
short of the instant death and such person himself didn’t place himself in such
a situation. But such person can’t cause the Murder or Offences against the
State Punishable with Death i.e. Mutiny etc, for the sake of saving his own
life.
The Right of Private Defence has been given to a person to protect himself and his property. In early times, there is no such right which is available to a person but as the time goes on, this right has taken his place under the prevailing laws. In modern times, a person can defend himself against the assault of the aggressor. But such right must be exercised as a shield not as a sword. It means a person can claim this right as a defence only. The law makers have made this right is broad enough to include the exercising the right of the Private Defence for the protection of the body and of the property of any other person also. It means a person can not only protect his body and property but also the body and the property of the other person also. Such right has not been by any statute but it is a right which is inherent in every person and it is based on the premise that it is the foremost duty of the man is to protect himself. In this right a defender can inflict such harm to the assailant which is sufficient for his defence but if he exceeds his right, he shall be liable for that act and shall be punished as the prevailing laws. Such right can be exercised only in case of instant assault of fear or attack but if there is a time to have recourse of the public authorities, he can’t get the benefit of such right.

Such right is not an absolute right. It has their own limitations, which puts check on the exercise of it. A person can’t exercise such right against the public servant or against the person acting under the directions of the public servant. In the exercising of such right, a defender can cause the death of the assailant but it must be only in the cases provided in the Section 100 and 103 of the Indian Penal Code. Only in those circumstances, a defender can cause the death of the assailant and get immunity form the punishment. These rights have been given to a person just to live his life without any fear and to protect themselves against the assault of the other person.

These General Defences have been provided to a person to get rid of punishment when such person has committed any act under the privileged
circumstances mentioned under Chapter IV of Indian Penal Code, because in such circumstance there is no Mens rea on the part of the wrongdoer and the circumstances were such that the person was compelled to do such act at that relevant time.

In early times, there is no concept like the General Defences and the person was liable for his act absolutely although such person had committed an act under any of the privileged circumstances provided under Chapter IV of the code. But as the development of civilization and society has made there are so many changes have been made in the laws, one of it is the incorporation of Chapter –IV in the code. It gives an extensive meaning to the right of a person to live their life in good and safe atmosphere. From the close persual of the thesis, it has been found that how the law and its concept have been changed from the ancient period to modern period, it may be the forms of punishment, transformation of crime into offence, importance of Mens rea in the commission of crime, and the effects of General Defences in the Changing Social Condition.

The concept of Mens rea and the General Defences have been changed and improved with the change of time and as the time goes on, their effects and importance shall always be changed as per the circumstances prevailed at that time. But these defences should be strictly applied and the court must be very cautions while dealing with these General Defences in the cases or proceedings before him, because there is always a possibility of being misused by the accused for his own benefit to get rid of punishment. These rights have been granted to protect an innocent person who has committed an alleged act under those circumstances which are privileged from the criminal liability.
OUTCOME OF THE THESIS

By the Perusal of the thesis the researcher have come to know that the researcher have achieved the objectives of the research work. The researcher have started the research work by keeping in view the objectives mentioned in chapter 1 of the thesis. All such objectives have been explained one by one as –

a) **Purpose of Incorporation of General Defences in Indian Penal Code** :-

The purpose of incorporating these General Defences under Chapter IV of the Indian Penal Code is to provide an opportunity to a person to escape from the Punishment who has committed an act under those circumstances which have been mentioned under Chapter IV of the Indian Penal Code. Because for the determination of the Criminal liability of a person, it is necessary that such act must be committed by evil intent. When a person does any criminal act without an evil intent and under some privileged circumstances, then he should be entitled to get the benefit of such Defences and can be escaped from the punishment. It is depend upon the premise that “Let hundred people be escaped from criminal liability but one innocent shouldn’t be convicted”, that’s why these General Defences have been incorporated in the Chapter IV of the Indian Penal Code.

b) **General Defences in the needs of Society** :-

The incorporation of these General Defences in the Indian Penal Code is in the need of the society as some times people have committed an act innocently under the privileged circumstances so they are entitle to get the benefit of such circumstances.
For Example- If any person has attacked on other person, such others person to protect himself can exercise his Right of the Private Defence and may cause harm or injury to that assailant. In such case, if he would be punished for his act, than what will he do? because if he didn’t exercise such Right of Private Defence, the assailant would cause him serious injury and if he exercise such right, he would be punished for it, in both such cases, the ultimate loss is of the defender without any reason and no one can protect himself against any other person and it also violates the Right of Livelihood as guaranteed by our Constitution under Article 21. That’s why the incorporation of these General Defences in the Indian Penal Code is in the need of society for the sake of the living better and a safe life.

c) Spreading awareness among the People :-

As we all know that generally, the people are not aware about the laws and their benefits and the consequences of its breach. That’s why it is necessary that every person should know about the benefits of the General Defences provided in the Indian Penal Code because sometimes the people have committed an act under those circumstances which have been mentioned under that Chapter-IV, but he doesn’t know about his right of taking the plea of the General Defences and gets the punishments for such act, which wouldn’t be proper in the eyes of the law. So, for the proper implementation of such rights, the people should know about it. So that, the innocent person can be escaped from criminal liability. Besides it, such person should also know that the burden of proving of such circumstances is on him and he has to prove his plea beyond reasonable doubt otherwise the taking of such plea would amounts to a confession. So, by the help of this research work one can easily be understood such rights and their consequences.
d) **Importance of Mens rea in Changing Social Condition** :-

As the importance of Mens rea in changing social condition has been discussed in details earlier in the thesis. So, it needs not to be discussed again in details. That's why it has been discussed in brief as the researcher have come to know that earlier there is no concept like Mens rea and the person is liable for his act absolutely no matter whatever his intentions are. But as the development of civilization and the thinking of the society and their people have changed, the importance of Mens rea have taken a place in the determination of criminal liability of a person. Nowadays, the Mens rea is one of most important ingredients for the commission of crime and the person shall not liable for his act unless and until he has committed an act with the evil intent except in the cases of the strict liability crimes. The concept of determination of criminal liability of a Person has been changed as there is no crime without an evil intent.

e) **Application of the General Defences by the Court in the proceedings before them** :-

The court before giving the benefit of these General Defences to the accused must be very cautious and aware that the accused hadn’t been misused such rights for their benefits and to get rid of punishment. If the court finds that the accused are misusing such rights, the court should consider that facts at the time of determining the criminal liability of the accused. Besides it, the court must see that the accused has discharged his burden of proving the circumstances mentioned under Chapter IV, beyond reasonable doubt, otherwise the accused's plea would amounts to a confession. That’s why the court must be very cautious at the time of accused taking the plea of General Defences, so that the misuse of it could be prevented.
f) **Misusing of General Defences by the Accused**

Sometimes, the accused of criminal mind may have misused the benefits of these General Defences to get rid of punishment by taking the plea of Intoxication, Insanity, Mistake of Fact, or the Right of Private Defence etc. The prosecution doesn’t have the strong evidence to prove the guilt of the accused and also to rebute the defence evidence of the accused, then the accused shall get the benefits of such lacunas of the prosecutions. But in cases of these General Defences, the accused has the Burden of Proving that his case would come in any of the circumstances provided under **Chapter IV of the code** and the prosecution has to prove that the accused is misusing such rights to escape from punishment, which should be prevented by the court at his earlier stage.

By the persual of the above thesis, it has come to know that the researcher has achieved the objective or purpose of the research work. This research work would be helpful for the students and the people who wants to know about any of the concept mentioned in the thesis. The object behind this research work is to compile the whole material relating to Mens rea and the General Defences at one place. To know about the General Defences in the absence of Mens rea, a person should know about the Crime and Punishment because without it the concept of Mens rea is not a complete in itself. That’s why in this research those concepts have also been discussed in details. So that any person could easily understood the whole concept behind the General Defences Provided under **Chapter IV of the code**. This research work will provided a help to the students and other persons to get the knowledge about the General Defences in the absence of Mens rea and its effects in changing social condition.
SUGGESTIONS

During this research work, the researcher have found that there are so lacunas and flaws in the laws relating to General Defences provided under Chapter IV of the Indian Penal Code and there is a possibility of being misused of these General Defences by the accused for his benefits. The accused to get rid of punishment is misusing these defences is on the accused and the accused for it can go to any extent and the prosecution also doesn’t bother to rebut the defence evidence and to prove that the accused is misusing these defences. So, it is the duty of the Court to see that such rights shall not be misused by the accused.

The Court before giving the benefit of these Defences to the accused must see that whether the case of the accused is fit one to give the benefit of these defences to the accused or not. The court must see that the circumstances claimed by the accused, must exists at the time of commission of an act, whether it remains continued till the trial of the case or not, but such alleged circumstances must exist at the time of doing such alleged act.

Besides it, the Court must also see that person has committed such act under the influence of that circumstances. In other words, it means that if such circumstances wouldn’t arise then he didn’t commit such alleged act. At the same time, the court must also be very cautious that the accused shall not misused such rights or defences.

In such cases, the Burden of Proving the circumstances claimed by the accused is upon him and the presumption has been made against the accused that there is absence of such circumstances. It means in such cases, the accused has to prove his plea or defence beyond reasonable doubt. In such cases, the Burden of Proof is on the accused in place of prosecution. It means the accused has taken the place of prosecution to prove his claim or privilege etc. and the prosecution has the opportunity to rebute the accused’s evidence or plea of General Defences by proving the absence of such circumstances or
by proving that the accused wants to take an undue advantage of these General Defences to get rid of punishment.

The Court must always be aware and more cautious in the cases where the accused has taken the plea of these General Defences as there is always a possibility of being misused by him. The court must give such benefits to accused only in the cases where the accused has proved such plea beyond reasonable doubt otherwise his plea may be treated as confession and can be used against him by the court.

**For Example:** When the accused is charged for causing injury or harm to any person and he took the plea of Private Defence, in such case if he fails to establish that his act is in the exercise of Right of Private Defence, he shall be liable to be punished for such act.

The Court must also see that all the necessary ingredients of the defence claimed by the accused have been fulfilled. If any of the condition was not satisfied, that person is not entitled to get the benefit of such Defence and then the Court may deal that accused in the regular manner as it may deal in case of any other accused.

The Court must also see that the accused has discharged his burden of proving the alleged circumstances beyond the reasonable doubt, otherwise the presumption has already been there against him and the court may punished the offender with the punishment provided under the law for the time being in force.

So, it is the duty of the court to see that these General Defences would be applicable in the cases or proceedings before him or not and the accused is bonafidely claiming such defences, otherwise the court must refuse to give such benefits to the accused and dealt with him as per the prescribed provisions of the relevant law.