AN ANALYTICAL STUDY OF GENERAL DEFENCES IN THE ABSENCE OF MENS REA IN CHANGING SOCIAL CONDITION

A

SUMMARY

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CHAPTER -1
INTRODUCTION AND METHODOLOGY

Generally, a person who commits crime then he shall be liable to be punished, but there are some circumstances in which he can be escaped from punishment by taking a plea of General Defences. Criminal law outlines different punishments for various crimes. But a person may not always be punished for a crime that he or she has committed. The law offers certain Defences that exculpate criminal liability. These Defences are based on the premise that though the person committed the offence, he cannot be held liable. This is because at the time of commission of the offence, either the prevailing circumstances were such that the act of the person was justified or his condition was such that he could not form the requisite mens rea for the crime.

That's why in the research thesis, the researcher has discussed that how these General Defences operate and apply in the cases and how the accused can take the benefits of these General Defences and what are the guidelines and principles should be followed by the court while giving the benefit of these General Defences to the accused and what are the circumstances in which there is no need of application of Mens rea in the commission of crime as because there are some offences which can’t be committed by the innocent people. Besides it, the researcher has also discussed that how the implication and importance of mens rea in the commission of crime changes with the changing social condition.

In this research , the researcher has also discussed the Crime and Mens rea and the importance of Mens rea in the commission of crime and how the crime transforms into the offence. The researcher has also discussed that what are the forms of punishment of offences prevailing in Ancient and Modern India and How the Mens rea has originated and
developed in our changing social condition. The researcher has also discussed about the importance of Mens rea in the Indian Penal Code. Besides it, the researcher has also discussed the General Defences in the absence of Mens rea under Indian Penal Code and the legal provisions relating to Excusable and Justifiable Defences and the Right of the Private Defence of a Person.

This research has been done with the following objectives or purpose as:

- To evaluate the purpose of incorporating these General Defences in Indian Penal Code.
- To analysis these General Defences is in the need of society.
- To spreading awareness among the people about General Defences and their consequences.
- To explain the importance of mens rea in changing social condition.
- To evaluate that how these General Defences have been applied by the court in the proceedings or cases before them.
- To evaluate the circumstances in which the accused are misusing these General Defences to escape from the punishment.

In short, In this research it would come to know that in what manner and how the court would apply the principles of these General Defences. And to see the lacunas of these General Defences by taking the benefit of which the accused escaped from punishment.

**METHODOLOGY FOR THE RESEARCH WORK**

Generally, the researcher has adopted the doctrinal Methodology for the research study, but in some areas of research work the researcher has the non-doctrinal method of study has also been adopted. The efficacy of criminal justice system is the well reflected in the judgment of honorable Supreme Court and different High courts regarding General Defences. The
researcher intents to undertake reliability and authenticity of existing data is a matter of concern. The broad objectives of our study follow from this major concern.

**CHAPTER -2**

**CRIME AND MENS REA**

Under this Chapter, the researcher has discussed in details about the Crime and the importance of Mens rea in the commission of crime. The word 'Crime' is derived from the latin word ‘Krimos’ which means 'to accuse'. It cover those acts which are against social order and deserve disapprobation and condemnation of the society. Crime is a social phenomenon. It arises when a state is organized, people set up rules, the breaking of which is an act called crime.

**NATURE OF CRIME**

In order to know the nature of crime, it is necessary for us to know what is law, because the crime and law are so closely related to each other. Law is the aggregate of rules set by men as politically superior or sovereign, to men as politically subject and disobedience of law may be termed as Crime. In other words, Crime means those acts which the people in society considered as worthy of serious condemnation.

**DEFINITION OF CRIME**

Under this head the researcher has discussed the various definitions of Crime which are given by different writers by which you will understand the meaning of Crime. Generally, 'Crime' means 'a sin which is prohibited and punished by the statutory provisions of law'. It means every
Crime is a Sin but every Sin is not a Crime unless and until it is prohibited and punished by the law.

According to legal definition, 'Crime' is "any form of conduct which is declared to be socially harmful in a state and as such forbidden by law under pain of some punishment."

According to Dictionary meaning, 'Crime' means “an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law.”

Besides these definitions, some other definitions of crime given by the different writers in their own style has also been discussed in the thesis.

ESSENTIAL ELEMENTS OF CRIME

There are two tests of criminality of our law which is based on English law i.e. actus reus and mens rea. But in Indian law, there are four elements that go to constitute a Crime which the researcher has discussed in details in the thesis under the following heads, by which you will understand what are the essential elements in the commission of crime. These are as follows—

(a) Human being.
(b) Mens rea.
(c) Actus Reus.
(d) Injury.

STAGES IN THE COMMISSION OF CRIME

If a person commits a crime voluntarily or after premeditation the doing of it involves four stages, which has been discussed in details in the thesis under the following heads:-
(a) Intention
(b) Preparation
(c) Attempt
(d) Accomplishment

CRIME AND OFFENCE

The word ‘Crime’ has been used from ancient period, where if the person commits an act which is not permissible as according their customs and rules, he is said to have committed a crime and for which he was punished. But as the society developed and the law has been made in written form, the word ‘offence’ has been taken place in the penal laws for which punishment has been provided. The word ‘Offence’ has been used in narrower term as it includes only legal wrong and which is formally declared as an offence. Under the Penal laws, the word 'Offence' has been used in place of word 'Crime'. Thus, the person who commits an offence shall be punished according to the Penal laws. Under this head, it has also been discussed that how the crime transforms into an offence because under Penal laws only offence is punishable.

CLASSIFICATION OF OFFENCE UNDER INDIAN PENAL CODE

The offences under Indian Penal Code have been classified into seven broad categories on statistical basis. They are as follows:–
(1) Offences against Person.
(2) Offences against Property.
(3) Offences relating to Documents.
(4) Offences affecting Mental Order.
(5) Offences against Public Tranquility.
(6) Offences against State.
(7) Offences relating to Public Servants.

The above classification of offences seems to be more rational and elaborate from the point of view of administration of Criminal law and Penal Justice, which have been discussed with a view to understand the different types of offence punishable under Indian Penal Code.

CHAPTER – 3

PUNISHMENT OF OFFENCES PREVAILING IN ANCIENT AND MODERN INDIA

Under this Chapter, the researcher has discussed about the punishment of offences and what punishment are prevailing in Ancient and Modern India, by which see how the Forms of Punishment changed from Ancient to Modern India. According to 'Dictionary meaning', the word 'Punish' means 'to make someone suffer for a crime or for a bad behavior or the imposition of penalty as retribution for an offence'. In 'Criminal law', 'Punishment' means 'any pain, penalty, suffering inflicted upon a person by the authority of law and the sentence of the court for some crime committed by him or for his omission of a duty enjoined by law'. It maintains law and order and it protects the person and the property. By the fear of punishment, a person may refrain from wrongdoing. This concept is not new and it has also been recognized in the Dharmashtra.

The object of the punishment is not only to reform the offender but also to deter him and others from committing the offences to protect the
society. Thus, it is clear that the punishment is one of the oldest method of controlling crime and criminality. There are different forms of punishments and it changes with the changing of times. As in the past the death sentence was awarded for a small-small cause but in modern times, it has been awarded only in the ‘rarest of the rare case’.

**Forms of Punishment**

To see the transformation of punishment from the Ancient India to Modern India, the researcher has divided the forms of punishment have been divided under the following two heads –

1. **Forms of Punishment prevailing in Ancient India**

   The history of penal system states that during the past, the punishment were tortuous, cruel and barbaric in nature. The object of the punishment was the deterrent and retribution. Due to this Penal system, the crimes were less in numbers. Such punishments are categorized in the following heads which the researcher has discussed in details in the thesis. These are as follows –

   a. **Capital Punishment** – According to dictionary meaning, ‘Capital Punishment’ means the ‘legally authorized killing of someone as a punishment of crime, a death penalty for a crime’. Under this head the researcher has discussed in details about the Capital Punishment and the forms of executing the death penalty in the thesis. These forms are -

      i. **Stoning.**

      ii. **Pillory.**

      iii. **Construct into wall.**

      iv. **Throw under the leg of elephant.**

   b. **Corporeal Punishment** – Generally, ‘Corporeal Punishment’ means a ‘punishment which is intended to cause physical pain on a person’. It is
also known as 'Physical Punishment'. It is a punishment for the violation of law which involves the infliction of pain on or harm to the body. Under this head the Corporeal Punishment and the forms of executing the Corporeal Punishment have been discussed in details in the thesis. These forms are -

(i) **Flogging.**
(ii) **Mutilation.**
(iii) **Branding.**
(iv) **Pressed by iron rods.**
(v) **Tied the offender on roaming wheel.**
(vi) **Bilboes.**
(vii) **Rack.**
(viii) **Imprisonment.**

(c) **Social Punishment**– 'Social Punishment' is a 'punishment in which a person is restrained to make any kind of contact from the outside world'. Social punishment is divided into two parts :-

(i) **Banishment.**
(ii) **Social Boycott.**

(d) **Financial Punishment**– It is also known as imposition of fine. It was the common mode of punishment which was not serious in nature and it was awarded specially for the breach of traffic rules, revenue laws and in the minor offence. It also includes the payment of compensation to the victims of the crime and also the payment of the costs of prosecution.

(2) **Forms of Punishment prevailing in Modern India** –

The punishment have also evolved along with the civilization and become less cruel or harsh. Now, the severity of the punishment depends on the crime. It means if the person commits the serious crime, he shall be liable to be punished with the severe forms of punishment. The following are the mode of punishments:-
(a) Death sentence (Capital Punishment).
(b) Life Imprisonment.
(c) Imprisonment.
(d) Forfeiture of Property.
(e) Fine.

Besides it, the court may order the accused to furnish security bond for good behaviour in case of offences which is not serious in nature. The provisions relating to security bond have been given under Section 106 to 110 of Cr. P.C., 1973. Although it is not a punishment but it may serve a useful purpose to restrain a person from committing a crime and to make him a law abiding citizen.

All these above modes or methods of punishment show that the methods of punishment have been changed with change of the society. Nowadays the modes of punishment become less cruel in comparison with the ancient period and the severity of punishment depends on the nature of the crime.

THEORIES OF PUNISHMENT

The following are the theories of punishment which have also been discussed in the thesis:-

(1) Retributive theory of Punishment
(2) Deterrent theory of Punishment
(3) Prevention theory of Punishment
(4) Reformative theory of Punishment
(5) Expiation theory of Punishment (Theory of Restoration)
CHAPTER- 4
MENS REA, ITS ORIGIN AND DEVELOPMENT

Under this chapter, the researcher has discussed about the Mens rea, its Origin and Development, the levels of Mens rea, Strict liability and Mens rea and when Mens rea is not essential in criminal law. But first of all, it is necessary to know what is Mens rea and about it. As it has already been discussed that there are four Fundamental Elements of Crime viz. Human being, Mens rea, Actus reus (act or Omission) and Injury. In which the Mens rea is the second and important essential of the crime.

'Mens rea' is a latin word which means 'a guilty mind, a guilty or wrongful purpose, a criminal intent, guilty knowledge and willfulness'. It means every crime requires a mental element and there can be no crime of any nature without an evil mind. That’s why Mens rea is considered a fundamental principle of penal liability.

The standard common law test of criminal liability is usually expressed in the latin phrase, “actus non facit reum nisi mens sit rea” which means “act is not culpable unless the mind is guilty”. In other words, it means intent and act must both concur to constitute a crime. It means an act to be a crime, it is necessary that it must be done with evil intent.

ORIGIN AND DEVELOPMENT

In this head, the researcher has discussed the Origin and Development of Mens rea in determining the liability of a person for the commission of crime. The doctrine of Mens rea in early primitive societies was not in existent and the liability was absolute. The accused was
responsible for his act whether he acted innocently or negligently. But this was before the period in which the Tort law and Criminal law was divided. The modern notion of Mens rea was almost non-existent until 12th Century. Even then it wasn’t completely disregarded and it was kept in view in awarding punishment. In the 13th Century, Roman law specially its conception of Dolus and Culpa influenced English Criminal law and then the guilt was started to determine according to the intention of the accused. Later on, it was established during 14th and 15th Centuries, but by the end of the 17th Century, it was fully established that the guilty intention is an essential elements of crime.

**LEVELS OF MENSREA**

Under this head, the researcher has discussed about the levels of Mens rea. Many modern penal codes have created levels of mens rea called Modes of Culpability, which depends on surrounding elements of the crime i.e., the conduct, the circumstances and the result. It is totally different from the traditional common law approach. Besides it, there are four kinds of mens rea which have been discussed in details in the thesis under the following heads. These are as follows -

1. Intent
2. Knowledge
3. Recklessness
4. Negligence

**STRICT LIABILITY AND MENSREA**

Under this head, the researcher has discussed about the effects of Mens rea in the strict liability crimes. Generally in strict liability crimes, a person is liable for his criminal act, whether he has criminal intent or not at that time. It means the strict liability is an exception to the rule that a
person is not liable for an act unless there is guilty intention. There are some offences created by the **Prevention of Food Adulteration Act, Drugs Act, Weights and Measures Act** are in terms of absolute prohibition and the offender is liable without proof of guilty knowledge or intent.

**MENS REA WHEN NOT ESSENTIAL IN CRIMINAL LAW**

Under this head, the researcher has discussed about the circumstances where the doctrine of mens rea is not essential in criminal law. Besides the strict liability crimes, there are some other exceptional cases where mens rea is not required in criminal law. These exceptional cases have been defined under the following seven heads, which have been discussed in details in the thesis:

1. **Language of the Statute and subject matter of Legislation.**
2. **Nature of the act.**
3. **Certain offences of Indian Penal Code.**
4. **Violation of Traffic Rules.**
5. **Cases of Public Nuisance.**
6. **Infringement of civil and criminal law both.**
7. **Ignorance of law is no excuse**

**CHAPTER – 5**

**MEANS REA UNDER INDIAN PENAL CODE**

Under this chapter, the researcher has discussed about the application and importance of Mens rea in the Indian Penal Code and how the doctrine of Mens rea is used in the Indian Penal Code and the effects of Mens rea in Statutory Offences. In the Indian Penal Code, every definition
states not only what the accused must have done, but also the state of mind of such person while doing the act. Such definition is complete in itself. Under Indian Penal Code, the word 'Mens rea' has been used or applied in two different ways:

(i) Some words used in the section which defining offences which indicate the actual criminal intent required for the offence. These words are **Fraudulently, Dishonestly and Voluntarily** which have been defined under the next head of this chapter.

(ii) The **Chapter IV of the Code on General Exceptions (Section 76 to 106)** which indicates the circumstances where the absence of Criminal intent may be presumed.

**WORDS DENOTING MENSREA IN INDIAN PENAL CODE**

Under this head, the researcher has discussed about the words which denoting the Mens rea in Indian Penal Code. These words the researcher has discussed in details in the thesis. These words are-

1. **Fraudulently.**
2. **Dishonestly.**
3. **Voluntarily.**

These words show the presence of mens rea in the Indian Penal Code besides of the facts that the word of mens rea has no where been defined or used in the Indian Penal Code, but still the above words show the presence of Mens rea in the different Section of the Indian Penal Code which defining the offences.

**SOME OTHER WORDS DENOTING MENS REA**

Besides the above words denoting Mens rea in the Indian Penal Code, there are some other words denoting Mens rea in the Indian Penal
Code which have simply been used in different sections. These words have been discussed in details in the thesis. These words are:-

(a) Corruptly.
(b) Malignantly.
(c) Wantonly.
(d) Rashly and Negligently.

MENS REA AND STATUTORY OFFENCES

Under this head, the researcher has discussed about the implications of Mens rea in statutory offences. The doctrine of Mens rea has not been expressly mentioned in the crime defined in the statute as an ingredient of the crime, but its concept was introduced into the statutory offences by the Judges by means of construction without any parliamentary sanction. There are two schools of thought which have been discussed in details in the thesis.

Besides it, the doctrine of Mens rea has been applied to all common law crimes in England without any reservations. The Application of this doctrine to statutory crimes is fully discussed in two leading English cases Viz. R. V/s Prince and R. V/s Tolson. These cases have also been discussed in details in the thesis.

CHAPTER – 6

GENERAL DEFENCES IN THE ABSENCE OF MENS REA
UNDER INDIAN PENAL CODE

Under this Chapter, the researcher has discussed in details about the General Defences in the absence of Mens rea under Indian Penal Code,
Effects of these Defences in changing Social Condition, Report of Lord Macaulay on General defences, Burden of Proving the case of the accused comes within the General Exceptions and Classes of General defences.

As a general rule of law, a man 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, wherein a person may be excused for a crime. In some cases, a person may be excused from the criminal responsibility by reason of the absence of requisite mens rea which is necessary for the commission of particular offence. This is based on the well known maxim “actus non facit reus nisi mens sit rea” which means “the act itself doesn’t make a person guilty unless his intention are so.”

Such circumstances have been given under **Chapter IV of the Indian Penal Code**, under the head of General Exception. These General Exceptions apply to all Penal provision under Indian Penal Code and their illustrations and also to the offences under the special or local laws.

**LORD MACAULAY’S REPORT ON GENERAL EXCEPTIONS**

Under this head the researcher has discussed about the report of Lord Macaulay on General Exceptions. The Lord Macaulay who is known as the father of the Indian Penal Code has mentioned in his report about the incorporation of General Exceptions in the Indian Penal Code. This report has been discussed in details in the thesis.

By the perusal of the said report of lord Macaulay, it has come to the conclusion that the General Exceptions have been incorporated under **Chapter IV of Indian Penal Code** with the two broad objectives, these are:–

1. To identify the exceptional circumstances by which a person can be escaped from Criminal Liability.
2. To prevent the repetition of these General exceptions for every definition of an offence, every penal provisions and their illustrations by placing them in one chapter i.e. Chapter IV of Indian Penal Code.

**EFFECTS OF GENERAL EXCEPTIONS IN CHANGING SOCIAL CONDITION**

Under this head, the researcher has discussed about the effects of General Defences in changing social condition. As all we know that law changes with the change of the society and the necessity of the society. Likewise, the effects of General defences has changed from time to time. Earlier the accused liability for his act was absolute and the punishing authority didn't considered about the circumstances under which the offence was committed and the intention or knowledge of the accused was present or not at the time of the commission of offence. But as the time goes on and due to the development of civilization, the law became much more flexible and the court has started to look every aspects behind the commission of the offence. Then, the concept of General defences came into the picture. Now, the court before punishing the accused for his criminal acts have to look the circumstances and motives behind the commission of disputed act. The effects of General defences in changing social condition have been discussed in details in the thesis.

**BURDEN OF PROVING THAT CASE OF ACCUSED COMES WITHIN GENERAL EXCEPTIONS**

Under this head, the researcher has discussed in details about the fact that on whom the burden of proving the case of accused comes within the General Exceptions. *Section 105 of Indian Evidence Act* puts the burden of proving the existence of circumstance which brings the accused
within the scope of the General Exceptions, is on the accused. It means when an accused pleads for any of the General Defences provided under Chapter IV of the code, then the burden of proving is on that accused and in such cases the court shall presume the absence of such circumstances.

**Classes of General Exceptions**

Under this head, the researcher has discussed about the classes of General Defences in the Indian Penal Code. As by the analysis of the Sections combined in Chapter IV of the Indian Penal Code, it reveals that they deal with the two broad classes of Exceptions or Defences, namely:-

1. **Excusable Defences**
2. **Justifiable Defences.**

These classes of exceptions have been explained through the aid of the chart in the thesis by which a person could easily understand which defences come within the category of Excusable Defences and which come within the category of Justifiable Defences.

**Difference between Excusable Defences and Justifiable Defences**

Under this head, the researcher has discussed in details the difference between the two broad classes of General Defences i.e. Excusable and Justifiable Defences. The distinction between them helped during law making since the success of a defence raised by the defendant was based on the manner in which the court characterized it. It is also futile to define which defence is an excuse or a Justification. This classification of defences under Justifiable and Excusable have been preferred by some scholars but this approach hasn't been favored by others, which have also been discussed in details in the thesis. Besides it, the difference between these above classes of defences have also been discussed in details.
CHAPTER – 7

LEGAL PROVISIONS RELATING TO EXCUSABLE DEFENCES

Under this Chapter, the researcher has discussed in details about the legal Provisions relating 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 Mistake of Fact, Infancy, Insanity or Intoxication, which have been discussed in details in the thesis.

Joshua Dressler mentions 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 have been discussed in details in the thesis under the following heads. These are as follows:-

(1) **Causation Theory**.
(2) **Character Theory**.
(3) **Personhood Principle**.

The Excusable Defences have been defined under the following heads, which are as follows:-

(1) **Mistake**
(2) **Accident**
(3) **Infancy**
(4) **Insanity**
(5) **Drunkenness**
MISTAKE

Under this head, the researcher has discussed about the defence of 'Mistake' and their essential elements and difference between Section 76 and Section 79. Generally, ‘Mistake’ means ‘erroneous belief about something’. The Provisions 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 means, this defence applies only on the mistake of fact and not the mistake of law.

Under this head, the difference between the Section 76 and Section 79 and their essential elements have also been discussed in details. This defence has also been discussed with the help of decided cases.

ACCIDENT

Under this head, the researcher has discussed about the defence of 'Accident' and it's essential elements. 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. The Provisions relating to it has been given under Section 80 of the code. This defence has also been discussed with the help of decided cases.

INFANCY

Under this head, the researcher has discussed about the defence of 'Infancy' and it's essential elements, 'Infancy' means 'the state or period of babyhood or early childhood'. Infancy is a deft 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. The law of Infancy is divided in two parts i.e. 'doli incapax' which has been given under Section 82 of the code and other is 'doli capax' which has been given under Section 83 of the code. Both have been discussed in thesis with the help of decided cases.

**INSANITY**

Under this head, the researcher has discussed about the defence of 'Insanity' and it's essential elements. 'Insanity' means 'senseless or 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 form 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 of the code. It is based on the following maxims-

(a) *Furiosus furor sub puniter* i.e. a mad 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-

1. Medical Insanity, and
2. legal Insanity.

The law of Insanity has also been discussed in the thesis with the help of decided cases.

**DRUNKENNESS**

Under this head, the researcher has discussed about the defence of 'Drunkenness' and it's essential elements. 'Drunkenness' means 'intoxication' i.e., the state of being drunk. The provisions related to it has
been given under Section 85 of the code. In this defence, a 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 drunkenness. The Voluntary Drunkenness is not an excuse for the commission of the crime.

Under this head, the researcher has further discussed about the presumption regarding the possession of requisite knowledge or intention in the commission of an act, which has been defined under Section 86 of the code. It provides that 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. The law of Drunkenness has also been discussed in the thesis with the help of decided cases.

CHAPTER- 8

LEGAL PROVISIONS RELATING TO JUSTIFIABLE DEFENCES

Under this head, the researcher has discussed about the legal Provisions relating to Justifiable Defences. 'Justifiable' means 'reasonable or able to be shown to be right or capable of being justified'. 'Justifiable Defences' means 'the act committed is not excused but is Justified on account of some consideration neutralizing the liability otherwise incurred'. The act although criminal but is not punishable because it otherwise meritorious.
The Joshua Dressler has given four theories of Justification, which the researcher has discussed in details in thesis. These theories are as follows-

(1) **Moral Forfeiture Theory**.
(2) **Rights Theory**.
(3) **Lesser Harm**.
(4) **Public Interest**.

These Justifiable defences have been defined under the following heads:-

(1) **Judicial and Executive Acts**.
(2) **Necessity**.
(3) **Consent**.
(4) **Good Faith (Implied Consent)**.
(5) **Compulsion or Duress**.
(6) **Triviality**.
(7) **Right of Private Defence of a Person**.

**JUDICIAL AND EXECUTIVE ACTS**

Under this head, the researcher has discussed about the defence of 'Judicial Acts' and its essential elements. The Provisions relating to it have been given under **Section 77** of the code. It grants immunity to Judges acting judicially.

It means whatever a judge does in the exercise of his power given by law shall not be liable for his act. Thus, if a Judge grants death sentence to an accused, he can’t be held liable for the offence of murder. The reason behind it is that Judges and Judicial Officers should not be under any external influence so that they can act in a fearless and just manner.

**Section 78** protects the ministerial officers for the acts done in pursuance of the judgment or order of the court.
It means if a person does any act in pursuance of the judgment or order of the court, he shall not be liable for his act. The aforesaid defences have discussed with the help of decided cases.

**NECESSITY**

Under this head, the researcher has discussed about the defence of 'Necessity' and its essential elements. 'Necessity' means 'the need for something'. It is also a form of compulsion as whenever there is necessity a man is compelled to do an unintended act. As a defence, 'Necessity' means 'unavoidable circumstances or critical situations leaving no choice in action'. The provisions relating to it have been given under **Section 81** of the code.

It provides protection in cases where an act is done voluntarily but in good faith and without any criminal intention to cause harm, for the purpose of preventing a greater evil.

Under this head, the '**Doctrine of Self Preservation**' has been discussed in details in the thesis with the help of decided cases.

**CONSENT**

Under this head, the researcher has discussed about the defence of 'Consent' and its essential elements. Generally, ‘Consent’ means ‘agreement to do something or giving permission’. It literally means “agreed to” or “expressing willingness”.

The law relating to Consent is contained in **Section 87 to 91** of the code, in which **Section 90** defines what is not a consent for the purpose of the Indian Penal Code, thus runs in negative term. Thus, a consent is given by the following persons have no value for the purpose of the Indian Penal Code -
(a) Person under fear of injury.
(b) Person under misconception of facts.
(c) Consent of Insane Person.
(d) Consent of Child under 12 years of age.

Under this head, the researcher has further discussed about the defence of 'Consent' in details under the following sub-heads with the help of the decided cases and the illustrations -

(a) **Act done by Consent. (Section 87)**
(b) **Act done by Consent in Good Faith for Person’s Benefit. (Sec. 88)**
(c) **Act done for the Benefit of Child, etc. by Guardian. (Section 89)**
(d) **Exclusions of Acts, which are Offences Independently of Harm Caused. (Section 91)**

**GOOD FAITH (IMPLIED CONSENT)**

Under this head, the researcher has discussed in details about the defence of 'Good Faith (Implied Consent)' and it's essential elements. Generally, 'Good faith' means 'honesty or sincerity of intention'. In other words, it means an act which is done with due care and caution. The provisions relating to it has been given under **Section 92 and 93** of the code, in which the **Section 92** provides for the protection of medical practitioners who for the saving of the life of a patient have to risk his life or who may have to inflict pain for relieving pain.

It means when a person does any act for the benefit of other person in good faith without the consent of that person or his guardian etc., then he shall not be liable for that act although it may cause harm to that person. **Section 93** of the code provides for the provisions relating to communication made in good faith.
In it, when a person made a communication in good faith to a person then he shall not be liable for such act even though it may cause harm to him. It means to claim the protection under this section, such communication must be made in good faith and for the benefit of person to whom it is made.

**COMPULSION OR DURESS**

Under this head, the researcher has discussed about the defence of 'Compulsion' or 'duress' and it's essential elements. Generally, 'Compulsion' means 'the action or state of forcing or being forced to do something'. In English law, it is known as duress. There is well known maxim on it is ‘Acts me invito factus non est mens actus’ which means 'an act done by me against my will is not my act’. It means an involuntary act is not an offence. The provisions relating to it have been given under Section 94 of the code.

It means when a person does any act under the compulsion i.e. threat of instant death then he shall not be liable for such act but such person didn’t of his own accord place himself in such situation and such apprehension shall not be short of instant death. But such act would not be the Murder and Offences against the State punishable with Death.

**TRIVIALITY**

Under this head, the researcher has discussed about the defence of 'Triviality' and it's essential elements. Generally, ‘Triviality’ means 'lack of seriousness or importance; insignificance'. It is based on the maxim, “ de minimis non curat lex” which means 'the law does not take notice of trifles'. The provisions relating to ‘Triviality’ have been given under Section 95 of the code.
It means when a person does any act which is so slight in nature that no person would complain about it then he shall not be liable for that act. As no man can pass through a crowded without dashing against somebody or without treading on somebody’s toes, no reasonable man would complain of such small annoyances.

**RIGHT OF PRIVATE DEFENCE OF A PERSON**

The Right of Private Defence is a right of every person to defend himself and his property against the act of the assailant. Such right is broad enough to include the right of the protection of the body and property of another person, whether the defender knows him or not. Such right is inherent in every person and it is based on the premise that the foremost duty of man is to protect himself and his property. The Right of Private Defence of a Person is one of the most controversial matter in the Indian Penal Code, that's why it has been discussed in details under the Chapter 9 under the head of the Legal Provisions relating to Private Defence of a Person.

**CHAPTER - 9**

**LEGAL PROVISIONS RELATING TO RIGHT OF PRIVATE DEFENCE OF A PERSON**

Under this Chapter, the researcher has discussed in details about the legal Provisions relating to Right of Private Defence of a Person and their position in changing social condition. In early times, it was considered that one could defend himself by the method of running to the safe place, instead of killing or injuring the assailant. It was popularly known as rule of retreat. But as the time changed, such trend has been eliminated from
the society and the victim is entitled to repel the force and exercise his Right of Private Defence. But this right has been used as shield not as a sword to take revenge from a person. Such right is inherent in every person and it is based on the premise that the foremost duty of man is to protect himself.

To justify the exercise of the Right of Private Defence, the following things are to be examined:-

(a) **The entire accident**
(b) **Injuries received by the accused**
(c) **Imminence of threat to his safety**
(d) **Injuries caused by the accused**
(e) **Circumstances whether the accused had time to recourse to public authorities.**

**RIGHT OF PRIVATE DEFENCE OF A PERSON**

Under this head, the researcher has discussed about the Right of Private Defence of a Person. The provisions relating to it have been under **Section 96** of the code.

In it, when a person does any act in the Right of Private Defence, then such act is not an offence and he is not liable for it. But this right can't be availed against the act of self-defence. It has been discussed in details in the thesis with the help of decided cases.

**RIGHT OF PRIVATE DEFENCE OF THE BODY AND OF PROPERTY**

Under this head, the researcher has discussed about the Right of Private Defence of Body and of Property of a Person and when it is available to a person. The provisions relating to it have been given under
Section 97 of the code. In it, every person has a Right to defend not only his body or property but also the body or property of other persons against the offences as mentioned in the section. But this Right is subject to the restrictions contained in Section 99.

Such right is available not only against the person capable by law of committing an offence but also against incapable person. It means one can exercise of Right of Private Defence against an infant, insane, an intoxicated person or one suffering under misconception of facts or against a person of want of maturity of understanding, as provided under Section 98 of the code.

**TYPES OR PARTS OF RIGHT OF PRIVATE DEFENCE**

From the analysis of the Section 97 of the code, it is clear that there are two types or parts of Right of Private Defence, which are as follows –

1. **Right of Private Defence of the Body** – Under this head, the researcher has discussed about the Right of Private Defence of Body of a Person. Such right is available against the offences affecting the human body but subject to the restrictions contained in Section 99 of the Code. Such right has been explained in details in the thesis under the following heads with the help of decided cases and illustrations. These are as –
   
   a. **When death may be caused.** (Section 100)
   b. **When any harm other than death may be caused.** (Section 101)
   c. **Harm to Innocent Person.** (Section 106)
   d. **Commencement and Continuance of Right of Private Defence of Body.** (Section 102)

2. **Right of Private Defence of the Property** – Under this head, the researcher has discussed about the Right of Private Defence of Property. Such right is available against the offence of the Theft, Robbery, Mischief
or Criminal Trespass or their Attempt”. But this right is subject to the
restriction provided under **Section 99 of the code**.

The Right of Private Defence of the Property has been explained in
details in the thesis under the following heads with the help of decided
cases and illustrations. These are as-

(a) **When Death may be caused.** *(Section 103)*
(b) **When any harm other than death may be caused.** *(Section 104)*
(c) **Commencement and Continuance of the Right of Private Defence of Property.** *(Section 105)*

**LIMITATIONS ON THE RIGHT OF PRIVATE DEFENCE**

Under this head, the researcher has discussed about the limitations
on the Right of Private Defence of Person. As all we know that the law
doesn’t given an absolute right to any person and it has limitations or
restrictions to put a check on it. It means a person can’t exercise the Right
of Private Defence in the following situations which the researcher has
discussed in details in the thesis. These are as follows-

(1) **Public Servant.**
(2) **Person acting under direction of Public Servant.**
(3) **Recourse to the Protection of the Public Authorities.**

But in the exercise of such right, a person can't exceed his right to
inflict more harm than it is necessary to inflict for the purpose of defence.
The Provisions relating to it has been given under **Section 99 of the Code.**
JUDICIAL OPINION ON THE RIGHT OF PRIVATE DEFENCE OF A PERSON

Under this head, the researcher has discussed about the Judicial Opinion on the Right of Private Defence of Body and Property of a Person. These Judicial Opinion have been expressed by the Hon'ble Supreme Court and High Court in the different cases, which have been discussed in details in the thesis.

GUIDELINES REGARDING THE RIGHT OF PRIVATE DEFENCE OF A PERSON

Under this head, the researcher has discussed about the Guidelines regarding the Right of Private Defence of a Person, which have been issued by the Honourable Supreme Court in the case of Darshan Singh V/s State of Punjab in the Criminal Appeal No. 1057/2002 dated 15.01.2010. These guidelines have been discussed in details in the thesis.

CHAPTER - 10
CONCLUSIONS

Under this Chapter, the researcher has discussed in details about the Conclusions and the Outcome of the thesis. Besides it, if has also been discussed about the suggestions to overcome the shortcomings, which has been found during the research. Through this thesis it has been found that the Mens rea is the Second and important essential element of the crime and 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. But in the strict liability crime, the presence of the Mens rea is not necessary in the commission of the crime. In such cases, a person shall be liable absolutely
for his act irrespective of the fact that such person had a criminal intent or not at the time of commission of an offence.

But such position is totally different from the past, where the punishing authority didn't concern about the presence of Mens rea in the commission of the crime and the person was absolutely responsible for his act.

Although, the word 'Mens rea' hasn't been used in the Penal laws but the effects and importance of Mens rea, has been found in every Penal laws through so many words which denoting the word 'Mens rea' like Fraudulently, Dishonestly and Voluntarily etc, which have been discussed in details in the thesis.

Besides it, the law makers were also concerned about the circumstances in which a person has committed an act which would be an offence otherwise, if the Chapter IV of Indian Penal Code hasn't been incorporated in the Indian Penal Code. Under this chapter there are so many Defences which are available to a person by the help of which a person can be escaped from the criminal liability. But the court must be careful before giving the benefit of these General Defences to the accused. The effects of General Defences in the absence of Mens rea have changed from time to time as per changing social condition.

**OUTCOME OF THE THESIS**

Under this head, the researcher has discussed about the outcome of this research. Such outcomes have been discussed in details in the thesis. In this head, it has been seen that the object of the research has been achieved. As this research has been done with the six ultimate objects which have been mentioned under Chapter 1 of our thesis. Besides it, In the thesis it has been found that the importance of Mens rea has changed and developed with the change of time and as the society developed due
its civilization. The Forms of Punishment and its severity have also changed from the ancient time to modern time.

**SUGGESTIONS**

Under this head, the researcher has discussed about the suggestions which has been observed to be followed to overcome the shortcomings which has been found during the research work and what principles and guidelines which should be followed by the court while giving the benefits of these General defences to the accused. The court must be more cautious in such circumstances because there is always a possibility of misusing of these defences by the accused. The court must be satisfied that the case of the accused is fit one to give him the benefits of these defences. The burden of proof of these circumstances is on the accused and the court must see that the accused has proved these circumstances beyond reasonable doubt.
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