CHAPTER -1

INTRODUCTION AND METHODOLOGY

INTRODUCTION

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.

In such cases a person can be escaped from the Criminal liability by taking a plea of General Defences provided under Chapter IV of the Indian Penal Code under the head of General Exceptions. But such person himself has to prove the existence of such circumstances as Section 105 of the Evidence Act puts on the accused the Burden of proof of the circumstances provided under Chapter IV of the Indian Penal Code and the court shall presume the absence of such circumstances. It means when the prosecution has proved the guilt of the accused beyond reasonable doubt, then the burden is on the accused to prove that his case has come under any of the circumstances provided under Chapter IV of Indian Penal Code, if he wants to take a plea of these General Defences.

These General Defences have been incorporated in the Indian Penal Code with the object to provided an opportunity to an accused to get rid of
punishment for the act he has committed, but such person has to proved that he was committed the alleged act without an evil intent or he has no mens rea requisite for the commission of an offence. It means Mens rea is one of most important essential elements of the Crime. These can be no crime without an Evil Intent or Mens rea.

'Mens rea' is a latin word which means 'a guilty mind, a guilty or wrongful purpose, a criminal intent'. Every crime requires a mental element, there can be no crime of any nature without an evil mind. Even in strict or absolute liability some evil intent is required. The doctrine of Mens rea 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 guilt”. It means the intent and act must both concur to constitute a crime.

To make a person liable for a crime it is necessary that a act must be voluntary act, if the act is not voluntary, he is not liable for that act. This preposition is derived from the maxim “actus me invito facts non est mens actus” which means “an act done by me against my will is not my act". It means this maxim supports the doctrine of mens rea as that no person can be held liable for an act done under fear or compulsion.

The effects of the Mens rea have changed from time to time as in the past or may be said in the ancient period there was no concept of Mens rea or evil intent in the commission of crime, the liability of a wrongdoer was absolute and the punishing authority didn’t bother about the intention of the culprit at the time of commission of the crime. But as the time has changed and with the development of civilization the doctrine of Mens rea has taken a place in the determination of criminal liability of a person. Nowadays, a person shall not be liable for a crime unless and until he had the evil intent for the commission of a crime.

In this thesis, the researcher has also discussed about the relation of Crime and Mens rea and how the Crime transforms into an Offence. The
word ‘Crime’ is derived from the latin word ‘krimos’ which means ‘to accuse’. Crime is a social phenomenon and it cover those acts which are against social order and deserve disapprobation and condemnation of the society. ‘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. The term ‘crime’ is much broader term in comparison with the term ‘offence’ because the term ‘crime’ includes legal as well as moral wrong but the term 'offence’ includes only legal wrong. In modern society, every crime is not punishable but every offence is punishable as per the law for the time being infonce. So, the term ‘offence’ has taken the place of the term 'crime’.

Generally, a person who has committed an offence shall be liable to be punished as per the prevalent law except in the case of General Defences, that’s why the researcher has discussed about the punishment of offences prevailing in India. The word ‘Punish’ means ‘to make someone suffer for a crime or for a bad behaviour or the imposition of penalty for an offence’. The object of the punishment is not only to punish the offender but also maintains the law and order, and to protects the person and the property. By the fear of punishment, a person refrains from the commission of an offence. The concept of punishment is one of the oldest method of controlling the crime and criminality, as it has also been recognized in the Dharmashastra. Under this head it shall be found that how the Forms of Punishment transforms from Ancient India to Modern India. In the Ancient time, the punishment was so harsh, cruel and barbaric in manner but in modern time, such punishment has become less cruel and barbaric, even the offenders have the constitutional and legal rights which needs to be protected while inflicted the punishment on them.
OBJECTIVE OR PURPOSE OF THE RESEARCH

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

- To evaluate the purpose of incorporating these General Defences in Indian Panel 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.

Thus, by the close perusal of this thesis it has been found that the researcher has achieved all the above mentioned objects of the research work.

METHODOLOGY FOR THE RESEARCH WORK

Generally, the researcher has adopted the doctrinal Methodology for our research study, but in some areas of research work we have also adopted 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.