



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Critical Analysis of Intoxication as a defence in IPC 1860

Pratik Maitra^a

^aSymbiosis Law School, Hyderabad, India

Received 17 July 2022; Accepted 09 August 2022; Published 11 August 2022

“Actus nisi mens sit rea non facit reum” which means that every wrongful act shall be accompanied with wrongful intention, this very legal maxim stands to be the bone of contention for the present defence of Intoxication under the Indian Penal Code 1860.¹ The Indian Penal Code's Chapter IV covers general exceptions, with Sections 85 and 86 highlighting the defence against criminal culpability owing to intoxication. “No individual can be held accountable for his or her illegal deed if he or she was intoxicated to the extent that he or she was incapable of grasping the nature of the deed provided he or she was intoxicated without his or her knowledge and will,”² the law adds, the following conditions must be met in order to qualify for this exception:

- 1. A person's inability to comprehend the nature of his or her actions.*
- 2. Incapable of empathising with the legal consequences of the act.*
- 3. Intoxication must be unintentional.*

Several chemicals, such as alcohol, marijuana, hallucinogens, sedatives, and other narcotic drugs, can intoxicate a person. Intoxication causes a person to lose all of their senses, as well as their mind control to distinguish between right and wrong and the ability to comprehend the repercussions of their actions. It makes a person incapable of discerning the consequences of his or her actions and of distinguishing between what is right and what is wrong. The question is whether or not an intoxicated person would be held accountable if they committed an offence. So this is where Sections 85 and 86 come into play. The article covers

¹ F. Daly, ‘Intoxication and Crime: A Comparative Approach’ (1978) 27 (2) The International and Comparative Law Quarterly, 378–412

² Indian Penal Code, 1860, ss 85 & 86

every aspect of the aforementioned topic, including its history, why it was created, and its applicability in the Indian setting, as evidenced by several recent case laws.

Keywords: *intoxication, IPC, incapacity, mental control.*

RESEARCH OBJECTIVES

The following research is being carried out in order to achieve the following goals:

- To determine whether intoxication can be termed as denial of mens rea
- Critically examining the defence of intoxication in light of applicable legal laws.
- To comprehend how the law establishes that a drunk person is incapable of empathising with the nature of his actions.
- Researching numerous case laws to determine the provision's real-life relevance.

RESEARCH METHODOLOGY

The doctrinal technique was utilised to research the jurisprudential element of the topic in light of the current scenario as analysed through case laws and commentary in order to attain the aforementioned aims. In order to create the article, all of the acquired data was subjected to a descriptive and analytical investigation. Books, journals, blogs, and research papers by famous jurists are among the sources. To study and analyse the matter, law publications and legal websites were used:

- The International Journal of Pure and Applied Mathematics, as well as the journals of the Indian Law Institutes, were used to gather knowledge on the subject.
- SSRN and JSTOR research papers, as well as many other news stories and blogs, were studied to understand the key notion of the topic. All of the sources have been properly credited.

QUESTIONS FOR RESEARCH

The following investigation is being carried out to answer the following questions:

- What are the different legal laws that govern crimes committed by people who are intoxicated?
- Can intoxication be classified as a lack of mens rea?
- What are the different elements that are considered while deciding between voluntary and involuntary intoxication?

INTRODUCTION

In the case of *Attorney General Northern Ireland v Gallagher*³, Lord Denning defined the intoxication defence provision by citing two examples. Those are as follows:

- During a Christening ceremony, an intoxicated nurse threw a baby into the fire, mistaking it for a log of wood.
- An intoxicated individual mistook his friend for a dummy and stabbed him.

In both cases, Lord Denning emphasises the possibility of a lack of *mens rea* due to drinking. Why would a nurse throw an unidentified infant into a fire, and why would a friend stab his friend for no apparent reason? All of these circumstances demonstrate a lack of *mens rea*, and *mens rea*, in addition to *actus reus*, is required to classify any conduct as a crime. However, there are certain restrictions to this. If a person knowingly uses alcohol or drugs in order to commit a crime, he or she cannot use intoxication as a defense⁴. The example of *R v Lipman*⁵, in which two drug addict friends ingested LSD, demonstrates this condition. One of them returned to his homeland after two days. The victim was later discovered dead by the landlord. The woman was beaten in the head many times and had a sheet shoved into her mouth. The other friend was arrested and charged with a crime. He stated that he had a hallucination of killing a snake.

³ *Attorney General Northern Ireland v Gallagher* [1963] AC 349

⁴ *Ibid*

⁵ *R v Lipman* [1970] 152 QB 1

The court ruled that because they used narcotics on their own, they could not claim intoxication as a defence. The simple line of differentiation is the main concern of this article.

Even though contemporaneous records show lenient treatment of insane homicide, the defence of intoxication was not given in the early common law. Although the first English court approved a death sentence for homicide committed while intoxicated,⁶ jurists argue that because it was an era when capital punishment was glorified even for minor offences, it would be unreasonable to expect consideration of a person's mental state at the time of the crime. A person who intends to commit a crime will never become intoxicated, yet potential offenders may utilise this defence to avoid prosecution. Furthermore, the defendant bears the burden of proof⁷ Throughout Anglo-American history, the defence of involuntary intoxication persisted, but there were several changes, one of which was in 1815, when Holroyd asserted in a murder case that "while voluntary drunkenness could not be a complete excuse, it should be considered in determining premeditation."

Gradually, this exculpatory notion began to take root, as evidenced by a case of attempted murder in 1838⁸. Stephan says. "*You cannot take drunkenness as an excuse for crime, yet when the crime is such that the intention of the party committing it is one of its constituent elements, you may look at the fact that a man was in drink in considering whether he formed the intention necessary to constitute the crime*"⁹. The most significant point of disagreement in such a defence is the repelling interest. It will excuse the killing of an innocent person in the name of the public good, which is ludicrous under today's criminal law. As a result, the researcher believes that current laws must have confusing norms in order to offer judges complete independence to make decisions based on their discretion by explaining the scenario proposed by Fletcher's thesis.

⁶ *Reniger v Fogossa* [1551] K. B. 75 Eng. Rep, 1

⁷ *Wilson v State* [1994] 874 P.2d 215; *See also, Gustavenson v State* [1992] 10 Wyo. 300

⁸ *Regina v Cruse* [1984] 8 C. & P. 541, 173

⁹ *Regina v Doherty* [1887]

MEN REAS PART IN THE DEFENSE AGAINST INTOXICATION

“Intoxication, whether voluntary or unintentional, is a weak defence. When a person is intoxicated by alcohol or drugs and commits a crime”, the level of intoxication may prohibit the person from generating the necessary Mens Rea.

If the accused forms the necessary mens rea while committing the offence, the defence of involuntary intoxication will be unavailable. In *R v Kingston*, it was held that if the alcohol or drug eliminates the accused's inhibitions to the point where he acts in a way he wouldn't have if he wasn't intoxicated, he would be found guilty if the requisite mental element for the offence is established.”¹⁰

The accused in *D.P.P v Beard*¹¹ was charged with raping and murdering a thirteen-year-old girl and pleaded intoxication as a defence.” The court decided that the intoxication defence could only be utilised if the accused was unable to form mens rea. In the case of *Soolkal and Francis Mansingh v The State (Trinidad and Tobago)*, the court demanded sufficient evidence of intoxication and that the defendants had no mens rea.¹² When a crime is alleged to be committed with specific intent, the accused can use their intoxicated state to argue that no mens rea was present. Even so, a drunken intention is still an intention. This occurred in the case of *R v Sheehan and Moore*,¹³ in which two defendants were charged with murdering a man by pouring gasoline on him and setting him on fire.

“In circumstances of specific purpose, it must be proven that the accused lacked mens rea at the time the crime was committed. It is the responsibility of the prosecutor to determine the accused's genuine intent while taking into account that he was intoxicated. In cases of basic intent, however, voluntary intoxication is sufficient evidence of the presence of requisite mens rea.”¹⁴

¹⁰ *R v Kingston* [1994] 3 WLR 519

¹¹ *D.P.P v Beard* [1920] AC 479

¹² *Soolkal & Francis Mansingh v The State (Trinidad And Tobago)* [1999] UKPC 37

¹³ *R v Sheehan and Moore* [1975] 60 Cr App R 308

¹⁴ R. V. Kelkar, ‘Provocation as a Defence in The Indian Penal Code’ (1963) 5 (3) *Journal of the Indian Law Institute*, 319–356

INTENTION IN INTOXICATION

Greek legislation enacted by Pittacus specifies that “*he who committed the crime, when drunk, should receive a double punishment, one for the crime itself and the other for the ebriety (state of being intoxicated) which prompted him to commit it.* From this, it can be shown that archaic jurists also used to consider the condition of intoxication while awarding sentences even though this law isn’t widespread anymore but the existence of the same can still be sensed. In today’s criminal law intention of a person plays a major role as the first stage of any crime is the intention and so it shall be determined before convicting someone as criminal.”¹⁵

Knowledge involves comprehending the repercussions of a certain act whereas intention refers to the directing force of an individual’s deed. There is a very thin boundary between knowledge and intention and one may readily apprehend the same from its definition yet it is not difficult to comprehend that they connote various things¹⁶. Even though Lord Denning’s example for the defence of intoxication *prima facie* as an advantage to the wrong-doers but some cons of its can also be seen in case laws like in *Director of Public Prosecution vs Beard* where it was stated that “*That evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proven in order to determine whether or not he had this intent*”¹⁷ which means that the defence of intoxication can only form the basis of defence if the accused can prove that he/she wasn’t having the *mens rea* required to commit the offence.

Moreover, the burden of proof of intoxication and lack of *mens rea* lies on the defendant. Mere evidence which shows the drunken state of the accused won’t be held a valid defence unless it is accompanied by evidence which shows the state of the complete blankness of the accused while committing crime and incapacity to understand the nature of the crime”¹⁸. Present mind

¹⁵ *Ibid*

¹⁶ *Regina v Dudley & Stephens* [1884] 14 QBD 273

¹⁷ *Director of Public Prosecution v Beard* [1976] 2 ALL ER 479 HL

¹⁸ *Soolkal & another v The State* [1999] 1 WLR 2011 PC

condition is vital to convict any criminal as a severely intoxicated person, it is in the same position as a briefly insane, and this stage is described as *dementia affectata*.

In *A.G Northern Ireland v Gallagher*¹⁹ facts said that the accused was a psychopath whose disease used to get amplified and make him hostile to alcohol intake. One day sober accused threatened his wife to kill her, bought a bottle of whisky became intoxicated and murdered his wife, and argued for the defence of intoxication. It was stated by the court that “Gallagher’s psychopathy was not a sickness of the mind induced by drink, but a disease of the mind which, without the drink, could not have brought the M’ Naghten Rules into play because it merely`3 reduced the accused’s power of self–control. The defence of insanity, as opposed to that of intoxication, could not be made good with the aid of whiskey, and the defence of drunkenness was not accessible because the accused had already formed the intent to kill when he took the drink”²⁰. Hence the prior intention of killing the wife surpassed the state of intoxication and the appeal for defence of intoxication and insanity was rejected.

SECTION 85 OF THE INDIAN PENAL CODE 1860, DEFINES INVOLUNTARY INTOXICATION

*“Act of a person incapable of judgment by reason of intoxication caused against his will: 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.”*²¹

To claim this defence, the accused will have to prove that the ingredients for section 85 are met, the ingredients for involuntary intoxication.

- There should be a person who performs an action.
- The individual should be unable to comprehend the nature of the deed.
- This impairment must be due to the person's intoxication.

¹⁹ A.G Northern Ireland (n 3)

²⁰ *Ibid*

²¹ Indian Penal Code, 1860, s 85

- The component that caused the person's drunkenness should be given to him against his will or without his awareness.

There should be a person who performs an action. The individual should be unable to comprehend the nature of the deed. This impairment must be due to the person's intoxication. The substance that caused the person's drunkenness should be given to him against his will or without his knowledge. There should be a person who performs an action. The individual should be unable to comprehend the nature of the deed. This impairment must be due to the person's intoxication. The substance that caused the person's drunkenness should be given to him against his will or without his knowledge.

Previously, the common law did not give any defences or exemptions for offences committed while intoxicated. *Reninger v Fogossa* was the first case in England where the court recognised the death penalty for homicides committed while severely intoxicated. This severe prohibition remained in place until the early nineteenth century, notwithstanding Coke and Blackstone's efforts to keep drunkenness as a source of aggravation. The legislation was later softened as a result of subsequent court judgements during that century. However, insanity brought on by intoxication is now regarded as a legal defence to a certain extent.²²

The House of Lords changed the conviction from manslaughter to murder in the landmark case *Director Public Prosecution v Beard*, in which the accused attempted to rape a 13-year-old girl and inadvertently murdered her. Intoxication renders an offender incapable of generating an intention; this element should be considered when determining whether the intent required to establish the relevant offence was there or not. Insanity is regarded as a defence, regardless of whether the insanity is caused by drinking. Few cases preserve the intoxication (involuntarily) defence, which establishes a state of mind in which a person is rendered incapable of establishing a specific intent. As a result, it was decided that intoxication isn't a defence to basic intent offences.²³

²² Reninger (n 6)

²³ D.P.P. (n 11)

In the case of intoxication caused by drugs, the same rule applies. The accused in the case *R v Lipman* was intoxicated by LSD (Lysergic Acid Diethylamide), and while under its influence, he killed a girl, believing he was killing snakes. He was found to have been careless and negligent. However, due to his intoxication, he was unable to form a distinct intent to murder and was thus found guilty of manslaughter.²⁴ Involuntary Drunkenness may constitute a defence, but only when a special intent is required; it does not free the accused if the offence was committed with basic intent, as intoxication cannot destroy fundamental intent. Even if the defence is utilised, the punishment will be reduced, and the accused will not be fully free of responsibility.

SECTION 86 OF THE INDIAN PENAL CODE 1860, DEFINES VOLUNTARY INTOXICATION

“Offence requiring a particular intent or knowledge committed by one who is intoxicated. – In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act voluntarily 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.”²⁵

This section deals with situations in which a person is intoxicated voluntarily and is presumed to have the same level of knowledge as if he were sober, but the same cannot be said about intent. There is a presumption in the case of knowing, but none in the case of offences that require intent to be determined. It is assumed that any rational individual would be aware of the natural consequences of his or her actions and that if the repercussions are recognised, they were most likely intended. When a person is intoxicated, however, this knowledge-to-intention relationship is absent. As a result, an individual is punished under this section if he or she has knowledge but not intent.

²⁴ R (n 5)

²⁵ D.P.P. (n 11)

In the case of *Venkappa Kannappa Chowdari v State of Karnataka*²⁶, the accused compelled his wife to withdraw money in her name that she had received as compensation for her son's death in a car accident. When she refused, the accused became enraged and burned his wife. She died as a result of her injuries²⁷, which were fatal. The accused invoked intoxication as a defence in court. However, his petition was turned down because the intoxication was voluntary.

The defence of intoxication will not be applicable if a person can predict the outcome of his conduct. In the case of *Basudev v State of Pepsu*²⁸, the accused, a retired military officer, and the deceased attended a wedding in the hamlet. When the dead refused to get up from a chair that the accused wanted to sit in, the accused, who was intoxicated, pulled out his revolver and fired a shot at the youngster. The youngster died on the scene as a result of his terrible injuries. During the trial, the accused claimed that he was intoxicated and so couldn't understand the repercussions of his conduct. The court rejected his appeal since he had lived in the house and was capable of walking, therefore he might have predicted the consequences of his actions. He was found guilty of murder.

Voluntary intoxication is not regarded as a defence because the individual is willingly ingesting alcohol despite understanding the risks, and this is viewed as reckless behaviour on his or her part. However, as seen in the examples above, Section 86 of the IPC can only be used as an excuse for crimes committed with the intent to harm others, but it cannot be used as an excuse for crimes committed with knowledge.²⁹

MISUSE OF INTOXICATION AS A DEFENCE SHOULD BE AVOIDED

The legal culpability of offenders who commit crimes while intoxicated is surrounded by many discussions and criticisms. The question that emerges, in this case, is whether the offence should be viewed from the community's objective perspective or from the offender's subjective perspective. There is also a moral issue as to whether to sympathise with the intoxicated culprit

²⁶ *Venkappa Kannappa Chowdari v State of Karnataka* (1996) Cri LJ 15 (Kant) (DB)

²⁷ A. Kilara, 'Justification and Excuse in the Criminal Law: Defences Under the Indian Penal Code' (2007) 19 (1) Student Bar Review, 12–30

²⁸ *Basudev v State of Pepsu* (1954) SC 722

²⁹ A. Kilara (n 27)

and if so, is it at the expense of the innocent victim? People who are under the influence of drugs or alcohol commit a number of dangerous crimes. People should not use the defence of intoxication as a cover for committing crimes and blaming it all on alcohol. People who are under the influence of drugs or alcohol commit a number of dangerous crimes. “You can get away with less punishment if you're intoxicated. In the case of *Rex v Pearson*, the accused used a rake shank to murder his wife in a horrible manner. His sole justification for his behaviour was that he was intoxicated.”³⁰

In light of recent developments, offenders will no longer be allowed to claim intoxication as a defence if the offence was particularly terrible and the natural consequences might be predicted. It was held in the case of *Babu Alias Mubarik Hussain v State of Rajasthan* that establishing that the accused's mind was influenced by alcohol and that he acted violently did not nullify the fact that he was unconscious of the natural consequences of his actions. As a result, the court rejected his plea because the act was so heinous.³¹

The current provision for intoxication defence is not very sound, and it has numerous loopholes. In terms of mens rea, it does not make a clear distinction between basic and particular purpose offences. Intoxication that does not entirely exclude men should not be used as a defence. It should only be used as a defence for offences that entirely eliminate the mental component, not for offences where simply the inhibitions are eliminated. “Intoxication resulting from the intentional taking of drink or drugs knowing that it is capable in sufficient quantity of having an intoxicating effect, provided that intoxication is not voluntary if it results from a fact unknown to the accused that increases his sensibility to the drink or drug,” according to the Butler Committee.

FORESEEABILITY TEST AND INTOXICATION

Foreseeability The purpose of the test is to determine whether or not an individual can be held responsible for a specific crime. It is common knowledge that drinking alcohol or using drugs

³⁰ *Rex v Pearson* [1983] 152 [CLR] 254

³¹ *Babu alias Mubarik Hussain v State of Rajasthan* (2006) 13 SCC 116

causes you to lose control.³² As a result, if a person with this information wilfully intoxicates himself with such chemicals, he is acting recklessly and negligently, knowing that loss of control is a possibility. As a result, utilising chemicals that are thought to have specific results exposes one to the liability of intent. If a person didn't want to lose control, he would have quit drinking or taking drugs, whichever was the case. Furthermore, relinquishing control is neither immediate nor symptom-free. When it comes to unintentional intoxication, however, the subject becomes rather contentious.

Individuals who continue to consume the spiked drink even after experiencing intoxication symptoms will not be able to use intoxication as a defence, as they are expected to be aware of the dangers and consequences. If the individual does not consume the spiked drink after recognising the symptoms and realising the presence of an unknown chemical in their drink, then engaging in an action that will endanger others and himself will not fall under the defence of Intoxication". In simpler terms, the policy underlying this is that the law strives to protect the public interest over the interests of a specific individual who intentionally and recklessly endangers the public and themselves.

CONCLUSION AND SUGGESTION

Intoxication can be described as a key stimulant of violence in the community. In terms of criminal law, the intention is the very first element on the basis of which a person is acquitted or convicted hence it becomes vital to discuss if intoxication may be described as a lack of sanity. If that is so then it will be detrimental to society as wrongdoers can use intoxication as a shield against prosecution. This can be determined on analysis of many case laws and commentaries that various variables such as forensic toxicology, circumstantial evidence, the intention of the accused and other mitigating factors play a key role in deciding the case.³³ Hence it becomes the obligation of the judge not to apply Sec 85 and 86 mindlessly and consider other aspects too.

³² F. Daly (n 1)

³³ *Ibid*

The defence of intoxication, which is offered in the General Exceptions of the IPC, is not a particularly strong one; even if it is employed, it may only serve as a mitigating element in sentencing, but it does not absolve an accused of culpability. Involuntary intoxication has a defence, whereas voluntary consumption does not, because intoxicated *MensRea* is still a mens rea. The intention is not exempted by voluntary intoxication, but it implies the accused has the same information as if he weren't intoxicated. The foreseeability test is used to determine whether responsibility exists and whether the effects of the acts may be predicted. Even if the drunkenness was involuntary, the accused will be held accountable in circumstances where the crime is exceedingly serious.

When Sections 85 and 86 are read together, it becomes evident that. Intoxication as a defence is a hazy and complicated defence; it may appear straightforward in theory, but it is significantly more difficult to implement in practice. To make the law clearer, the distinction between basic intent and particular intent offences relating to intoxication should be incorporated into the provision. This will make using this defence much easier. The reform should be carried out in such a way that people do not misunderstand the defence of intoxication as a free pass for the crimes they commit. It should also ensure that the public's interests are protected against drunk people's reckless and impulsive actions.