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## Intoxication as a General defence (Section 85 and 86 of IPC)

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*The article SC and ST Prevention of Atrocities Act 1989 was created to prevent crimes against members of Scheduled Castes and Scheduled Tribal Groups. It also aims to provide special courts to try persons involved in such crimes and to assist victims of such crimes and related matters. This article examines the results that led to the enactment of this law and provides a bird's eye view of its provisions. This article examines the parliament's intent to pass the SC/ST (POA) Act 1989 (including the 2018 Amendment Act) and the SC/ST (POA) Regulations 1995 and other investigations and seeks to support the provisions of that Act. Dalits (legally recognized as Scheduled Castes) and tribes (legally recognized as Scheduled Tribes) are among the most marginalized groups in Indian society. The SC/ST (Prevention of Cruelty) Act of 1989 protects against discrimination and cruelty to the above segments of the population. According to India's Supreme Court, SC/ST Law has become a tool of 'blackmail' and is being used by some to exact 'revenge' and satisfy their interests.*

**Keywords:** *intoxication, IPC, defence.*

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### INTRODUCTION

The term Intoxication means the person is incapable of doing things mentally as well as physically because of the consumption of alcohol or other narcotic substance. It is commonly known as a condition of addiction. In this drunken state, the person cannot understand

whether what they are doing is right or wrong, and they cannot understand the consequences of their actions. He has no control over his actions or reacts in any particular way.

Alcohol intoxication is often legally defined as blood alcohol levels above 5.4 to 17.4 nmol / l. Constant blood alcohol levels above 0.80% are life-threatening and can be fatal. Now the question that arises in our mind is whether when a person is intoxicated and if he commits any crime then he will be liable or not. So to overcome these questions there are some general principles or general defence in law. It is presumed that men know the nature and consequences of their behaviour and are responsible for them. However, there are certain exceptions to the general rule that an individual may be exempt.

### **THE CONCEPT OF INTOXICATION AS DEFENCE IN IPC**

Intoxication is a general exception that is given in Chapter IV of the IPC which includes sections 76-106<sup>1</sup>. People are usually exempt from criminal liability for certain reasons, such as drunkenness, madness, or consent. The accused has the responsibility to prove the exceptional case. The burden of proof usually lies with the prosecutor who convicts the criminal defendant. However, in this case, the accused must prove why he should be exempt from criminal liability. This is based on the notion that an innocent person should not be held liable for a crime that is guilty only if not proven. IPC sections 85 and 86<sup>2</sup> deal with the general exception to drunkenness or intoxication<sup>3</sup>. These two sections are divided as involuntarily and voluntarily intoxication.

### **INVOLUNTARILY INTOXICATION (SECTION 85)**

Section 85<sup>4</sup> of the IPC states that 'Nothing is an offence which is done by a person who, at the time of doing it, is, because 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

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<sup>1</sup> Indian Penal Code, 1860, ss 76-106

<sup>2</sup> Indian Penal Code, 1860, ss 85 and 86

<sup>3</sup> Shivangi Desai, 'Intoxication as a Defence under IPC' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-6628-intoxication-as-a-defence-under-ipc.html>> accessed 16 July 2022

<sup>4</sup> Indian Penal Code, 1860, s 85

him was administered to him without his knowledge or against his will'<sup>5</sup>. So according to this section, if something is done by a person who could not understand the nature of the act or the illegality of his actions due to addiction at the time the crime was committed, that person is against the crime then he shall not be responsible. But anything that intoxicates the criminal must be administered to him without his knowledge or against his will.

The act is exempt from normative criminal liability because the act shows the absence of mens rea (guilty mind). And for committing any crime the two important elements are Actus reus and mens rea. There is a case law *Director of Public Prosecutions v Beard*<sup>6</sup> in this case the prisoner raped a 13-year-old girl, in support of the rape, putting her hand on her mouth to prevent her from screaming and at the same time suffocating her thumb against her neck. So the sole defence was a plea of drunkenness. It was held that drunkenness was not a defence unless it could be established that the accused at the time of committing rape was so drunk that he was incapable of forming the intent to commit it. The rape and the act of violence caused suffocation which could not be regarded independently of each other and the accused was guilty of murder<sup>7</sup>.

#### ESSENTIAL ELEMENTS OF SECTION 85

- If the criminal was drunk against his will or without his knowledge then he can take a defence under section 85, that the criminal was intoxicated without his knowledge or with his will or consent, on the contrary, it must be shown that he was administered or given.
- Such a person could not know the nature of the act or what he was doing was wrong or illegal because of the sickness when the crime was committed: one person had the crime suppose you know or understand it when it's done, it shouldn't be done, or it's against the law, and he's still doing it. In this case, he cannot protect himself and will be held liable for the crime he committed.

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<sup>5</sup> Ratanlal & Dhirajlal, *The Indian Penal Code* (36<sup>th</sup> Edition, Lexis Nexis Publication 2019) 125

<sup>6</sup> *Director of Public Prosecutions v Beard* (1920) AC 479

<sup>7</sup> Rekha Khandelwal, 'Absence of Criminal Intent- Intoxication (section 85&86)' (*Happy Healthy Society*) <<https://www.happyhealthysociety.com/notes-indian-penal-code-section-85-86/>> accessed 18 July 2022

- The disability must be the result of addiction to a person.

### **VOLUNTARILY INTOXICATION (SECTION 86)**

Section 86<sup>8</sup> of the IPC states, 'In cases where an act done is not an offence unless done with a particular knowledge or intent a person who acts intoxicated must be treated as having the same knowledge as if he had not been intoxicated, except that he was intoxicated. He was administered to him without his knowledge or against his will<sup>9</sup>. According to this section, the person knows about the crime that he committed when he was intoxicated. Then the court assumes that he has the same knowledge as if he were not drunk. However, keep in mind that this section is not intended and shows the knowledge that a drunk person has. As criminal law says, human reason is a spiritual element and cannot be inferred. It is understood that if a person commits a crime, a deliberately drunk person may be held liable only based on knowledge, not on a specific intention.

In the case, of *Basudev v State of Pepsu*,<sup>10</sup> a retired military officer was charged with the murder of a 15- or 16-year-old boy. Two people from the same village and another attended the wedding. Everyone went to the bride's house to attend lunch. Some people settled down in their seats, while others didn't. A very drunk soldier asked the boy to set aside a little so that he could get to the right seat. But when he didn't move, a military officer pulled out a pistol and shot him in the abdomen and the injury turned out to be fatal. Evidence showed that defendant's speech was sometimes fluctuating and sometimes inconsistent. However, he found that he was able to move independently and speak consistently. Evidence proved that he came to the bride's house alone, chose his seat after injuring his deceased, then tried to escape and was secured a short distance from the scene. Once secured, he understood what he had done and asked for forgiveness.

In the Supreme Court's view, all these facts prove that the defendant could not intend to cause enough physical harm to cause death in the normal natural process. He could not prove this

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<sup>8</sup> Indian Penal Code, 1860, s 86

<sup>9</sup> Ratanlal & Dhirajlal (n 5) 127

<sup>10</sup> *Basdev v State of Pepsu* (1956), AIR 488

incompetence, so the law presumed that he intended the natural consequences of his actions. In other words, he intended to cause physical harm to the deceased, and such intended physical harm was sufficient to cause death in the normal course of nature. The defendant was found guilty of murder<sup>11</sup>. So according to this case law, we can conclude that the person himself intends the natural consequences of his acts and if he did anything voluntarily in an intoxicated state then he/she is liable.

### **ESSENTIAL ELEMENTS OF SECTION 86**

- Section 86 includes the term mens rea (guilty mind) because in this section intention or knowledge is always there for committing any crime.
- If a person commits any crime or acts in the state of intoxication then that action must be an offence because it is presumed that the defendant knows about the crime unless the person proves that he was involuntarily drunk.

### **WHEN VOLUNTARY INTOXICATION IS AN EXCUSE**

It is a factor that needs to be considered in at least two types of cases.

1. A particular intent is an essential element of the alleged crime, and evidence shows that the defendant's intoxication is such that the facts of the case cannot form the material of the particular intent. If there is any crime is committed for example, in the context of India, the intention is to kill according to clauses 1, 2, and 3 of Section 300<sup>12</sup>. However, in such cases, section 86<sup>13</sup> of IPC belongs, even if the defendant did not commit a particular intent. The knowledge of responsibility he needs, and therefore he is responsible for the responsible murder, which is not murder but not murder. Voluntary intoxication in the sense of not being able to form the specific intent needed is a limited excuse to reduce murder<sup>14</sup> to culpable

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<sup>11</sup> Prashant Abhilekh, 'Voluntarily Intoxication' (*Legal Service India*)

<[https://www.legalserviceindia.com/articles/v\\_t.htm](https://www.legalserviceindia.com/articles/v_t.htm)> accessed 18 July 2022

<sup>12</sup> Indian Penal Code, 1860, s 300(1), (2), and (3)

<sup>13</sup> Indian Penal Code, 1860, s 86

<sup>14</sup> Indian Penal Code, 1860, s 302

homicide not amounting to murder,<sup>15</sup> but this is always a matter of fact. In the case of Mathai Mathew, the death certificate burned the woman to reveal that her husband was consuming alcohol, verbally abused her, and lit her after pouring Kerosene on her. She fought the fire and tried to escape, but her defendant grabbed her again, anointed her again, and set her on fire. These situations showed that the accused's mental abilities were not impaired to the extent that he was prevented from forming the will needed to die. He was sentenced under section 302 instead of section 304.<sup>16</sup>

2. The habitual drunkenness has led to the madness that the defendant does not recognize the nature of the act, does something wrong, or violates the law. The most common example of such alcohol disorders is "delirium tremens." This is caused by prolonged habitual heavy drinking, leading to mental loss or serious reasoning errors. In other words, madness is a defence against indicted crimes, whether caused by addiction or not. There is a case Mavari Surya Sathya Narayan in which the defendant and the deceased had been married for 11 years. He was an alcoholic and often argued with her. One day he went home drunk and asked her to sign her blank slate. When she refused, he pulled her hair and dragged it into her room, trying to light her. The deceased extinguished the flames and tried to escape. The accused pulled them again, poured kerosene, and set them on fire. The deceased died of burns. The Supreme Court of Andhra Pradesh cites the SC's ruling in *Basudev v Pepsu*, and given the facts, it cannot be said that the defendant suffers a complete loss of mental capacity, so the provisions of section 85 will not apply.<sup>17</sup>

## **BASIC DIFFERENCES BETWEEN SECTIONS 85 AND 86**

Section 85 deals with crimes committed under the influence of drugs or alcohol and caused by fraud or coercion. While Section 86 deals with self-induced addiction. It can be concluded that Section 85 contains the general exception that a person who is unwillingly drunk when committing a criminal offence will not be held liable. However, Section 86 includes the exceptions stipulated in section 85 of the IPC, and a voluntarily drunk person will be held

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<sup>15</sup> Indian Penal Code, 1860, s 304

<sup>16</sup> *Mathai Mathew* (1952) Cr LJ 1304 (TC)

<sup>17</sup> *Mavari Surya Sathya Naryan v State of AP* (1952), AIR 1953 All 385

liable for criminal offences unless special knowledge is proved. There is a case law *Bablu alias Mubarik Hussain v State of Rajasthan*<sup>18</sup>, in this case, the SC investigates Section 85 of the IPC, taking into account evidence of addiction, and evidence that the defendant cannot form tort with other facts. Found to have been, and the accused should be proven to have a criminal purpose. These paragraphs do not protect the voluntary consumption of addicts, as one loses mental capacity through consensual behaviour, that is, self-induced addiction.<sup>19</sup>

## CONCLUSION

As we see in today's youth who are dependent upon drugs, tobacco, alcohol, and any other kinds of intoxicants for them it is the source to overcome any situations like depression. They do not even think once just taking those toxic substances and committing the crime so from all of those things we can conclude that INTOXICATION is a major problem that affects the whole of society. Human guilt or mens rea plays an important role in determining whether a person has committed a crime. In the case of involuntary intoxication, the court intends to commit such a crime against the will of the accused, if he is unaware of the addiction or if he knows about the offence. However, in the case of voluntary intoxication, the court assumes that the defendant is aware of alcohol consumption and can infer the intent from the circumstances and evidence presented to the court.

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<sup>18</sup> *Bablu alias Mubarik Hussain v State of Rajasthan* (2010), AIR 832

<sup>19</sup> Kiranpreet Kaur, 'General Criminal Defences : Insanity, Infancy, and Intoxication Part-I' (Mondaq, 26 December 2019) <<https://www.mondaq.com/india/crime/878294/general-criminal-defences-insanity-infancy-and-intoxication-part-1#:~:text=Section%2085%20deals%20with%20offences,intoxication%20which%20is%20self%2Dinduced.>> accessed 19 July 2022