BLOGS

General Exceptions Under Indian Penal Code

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IPC provides for general exceptions because in certain acts mens rea is missing. The act occurred due to the independent compelling circumstance. The general rule is that the person is presumed to know the nature and consequence of the act. He is thus made responsible for his actions in law. If he is able to prove any one of the general exceptions mentioned in IPC, a complete defense is given.

Section 6 of IPC declares that all the offenses in IPC are to read with subject to general exceptions. Section 105 of the Indian Evidence Act states that the burden of proof to prove general exceptions of IPC lies in the accused.



The Balancing of interest is done by providing a defense of general exception.

He has to prove the existence of special circumstances. The burden of proof on the accused is that of civil proceedings. Accused establishes his defense on a preponderance of probabilities.

Even if the accused is not able to prove completely the general exceptions but creates a doubt about the mens rea. The accused will get the benefit of the doubt. As the prosecution will fail to prove the guilt of the accused beyond a reasonable doubt.

The following defenses can be taken by the accused:

Mistake of Fact and Law

Section 76 IPC states, “nothing is an offense which is done by a person who is, or who because of a mistake of fact and not because of a mistake of law in good faith believes himself to be, bound by law to do it”.

Section 79 IPC states, “nothing is an offense which is done by any person who is justified by law, or who because of a mistake of fact and not because of a mistake of law in good faith, believes himself to be justified by law, in doing it”.

The mistake admits as a defense if:

- The state of things believed to exist would if true would have justified the act done
- The mistake must be reasonable
- Mistake relates to the fact and not a law

Essential ingredients of Mistake

1. ‘Ignorantia facti doth excusat’- Mistake of fact is excusable

Section 76 excuses a person from criminal liability who, into good faith, commits an act. Provided he believes he is bound to do so under law, due to mistake of fact.

The legal presumption is that everyone knows the law of the land. An act will not be an offense if it is committed in a manner by a person who by mistake of fact believes to be bound by law or who bound by law. However, mistake of law per se is not excusable.

Accident

Section 80 of IPC states, “nothing is an offense which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution”.

Essential ingredients of Accident

1. The act done should be by accident or misfortune. It happens ‘out of the ordinary course of things’ and is unexpected.
2. Without any criminal intention or knowledge. Acts that are criminal but without the criminal intent, lacking men’s rea, are not penalized. “Mens rea” is one of the necessary ingredients to make an individual liable for his acts.
3. While legally doing a lawful act by lawful means. The original act should be lawful.
4. The person should exercise due care and caution. If any harm is caused without it no defense shall be given.

Even if the accident takes place while performing an unlawful act, Sec. 80 would be available if there is no causal connection between the resultant harm and act in question.

In the case of ***State of Orissa v. Khora Ghasi (1978)***, the accused killed the victim by shooting an arrow with the bona fide belief that he was shooting a bear that entered into the fields to destroy his crops, the death was said to be an accident

In the case of ***Jogeshwar V. Emperor,*** the accused was giving the first blow to the victim but accidentally hit his wife who was holding her 2-month-old child, the blow hit the head of the child which resulted in his death. It was held that even though the child was hit by accident, the act was not lawful.

In the case of **Tunda v. Rex** 1950, the accused and the deceased were friends who were wrestling fans and were engaged in a wrestling bout. While the wrestling head accidentally came in contact with a concrete platform resulting in injuries to the skull and eventual death. The accused was tried under section 304. Court held that there was an implied consent on each part to suffer any accidental injuries so the injury was accidental and there was no foul play on part of the accused.

Necessity

Section 81, IPC states, “nothing is an offense merely because of its being done with the knowledge that it is likely to cause harm if it is done without any criminal intention to cause harm, and in good faith to prevent or avoid other harm to person or property.”

Essential ingredients of Necessity

1. Knowledge of harm should exist but the act should be without any criminal intention. It is necessary for this exception that the absence of any criminal intention. Any intentional action cannot be justified.
2. The purpose of the act is to prevent or avoid harm which is to person or property. Even if the wrongful act is committed with the knowledge of it being so. Also, the act committed is to prevent harm to a person or a property, the act would be covered under this section. It will not be an offense.
3. It must be in good faith. Good faith is circumstantial i.e. the act should be done in an imminent situation.

Types of necessity

1. Public Necessity- Public necessity pertains to action taken by public authorities or private individuals to avert a public calamity.

2. Private Necessity- Private necessity arises from self-interest rather than from a community at large. It takes place when the defendant wants to protect his interest.

The defense of necessity is based on the following principles:

- Jus Necessitas- justification of necessity
- Quad Necessitas Non-Habet Legam- necessity knows no law
- Necessitas Vincit Legam- necessity overcomes the law

In the case of **Gopal Naidu v Emperor,** a drunken man with a revolver in his hand was disarmed and subjected to restraint by police officers. Although police officers were prima facie guilty of the wrongful confinement offense, Court held that “the person or property to be protected may be the person or property of the accused himself or others”.

In the case of ***R v. Dudley and Stephens (1884)*** three adults and one minor were cast adrift in a ship following a shipwreck without food and water. Their food ran out 7 days before the storm and

they had no water for 5 days. Dudley suggested sacrificing the minor boy as he was too weak so without the consent of Brooks killed the boy, all three fed on the boy and were rescued four days later. In this case, the defense of necessity was not held valid and they were convicted for murder.

The above-mentioned general exceptions if proved give the accused benefit of the doubt. The accused is acquitted on these grounds.

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