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**CRITICAL ANALYSIS OF INTOXICATION AS A DEFENCE UNDER
THE INDIAN PENAL CODE, 1860**- Sakshi Jha¹**ABSTRACT**

“Quipeccatebriusluatsobrius” means if someone sins while intoxicated, they should be punished sober. In Sections 85 and 86² of the Indian Penal Code, which deals with "General Exceptions," the defence against criminal responsibility due to intoxication is emphasised. This paper will critically analyze the use of the defence of intoxication in light of the relevant laws and regulations. It will also see what factors are taken into account when determining between involuntary and voluntary intoxication.

Keywords: General Exception, Intoxication, Defence

INTRODUCTION

“Evidence of intoxication is admissible to ascertain whether he was incapable of entertaining the specific intent charged, where such intent, under the law, is an essential ingredient of the particular crime alleged to have been committed” – Bishop.

Sections 85 and 86 of Chapter IV of the Indian Penal Code, which deals with general exceptions, stress the defence against criminal responsibility due to intoxication. According to the law, "No person can be held accountable for his or her illegal deed if he or she was so intoxicated as to be incapable of understanding the nature of the deed provided he or she was intoxicated without his or her knowledge and will," the following requirements must be met to qualify for this exception:

1. The inability of a person to understand the nature of their acts.
2. Unable to understand how their actions may affect their legal standing.

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²INDIA CODE: INDIAN PENAL CODE, 1860

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3. The intoxication must be unintentional.

A person can become intoxicated by a variety of substances, including liquor, marijuana, psychedelics, sedatives, and other narcotic drugs.

A person who is intoxicated loses control of their senses, their capacity to discern right from wrong, and their ability to understand the consequences of their actions. It renders a person incapable of understanding the effects of his or her acts and of knowing the difference between good and wrong. The issue is whether or not someone who committed an offence while inebriated would be held liable. Therefore, this is where Sections 85 and 86 are relevant.

THE RESEARCH OBJECTIVE

This research paper's objective is to determine the following objectives:

- To determine whether intoxication is the denial of mens rea
- Analysing intoxication as a defence critically in light of the current statutes.
- Examining several case laws to determine the application of the provision in the real world.

RESEARCH QUESTION

This research paper will try to determine the answers to the following questions:

- What are the various legal statutes that cover crimes carried out by intoxicated people?
- What are the different essentials required that are considered while deciding whether the person was voluntary?

METHODOLOGY

The term "research methodology" refers to the techniques and tactics used to portray the findings. It focuses on a study's methodical design to meet its aims and objectives.

Descriptive research will be used in this study. "Descriptive research is a type of analysis that describes the characteristics of the population or issues being examined. This descriptive technique prioritizes the what of the research problem over the why." Only the researcher

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can provide reliable information. Since individuals cannot modify the variables in this research design must present the data as it happened or is happening.

The major approaches Surveys, case studies, and observations are some of the methods utilised in descriptive research. A variety of characteristics can be employed to illuminate data in a descriptive study. Its advantages include being able to examine individuals and issues that cannot be measured but may be observed in the natural world, and taking less time than quantitative trials.

LITERATURE REVIEW

1. **“Intoxication as a Defence in Indian Criminal Law” by Aparna Chandra³**: The historical evolution of intoxication as a legal defence in Indian criminal law is covered in this article. It emphasises that the accused must demonstrate their inability to appreciate the nature and implications of their actions owing to alcohol to claim Section 85 and that voluntary intoxication is not a sufficient defence. In determining the level of intoxication, the text emphasises the value of expert testimony.
2. **“Intoxication as a Defence to Criminal Liability in India: A Critical Analysis” by ArushiLohia⁴**: The paper analyses the IPC's intoxication provisions critically and emphasises their ambiguity and generality. It makes the case for a more thorough legal structure and rules for evaluating the applicability of intoxication as a defence.
3. **“Intoxication and Criminal Responsibility: A Legal Perspective” by K.M. Tiwari⁵**: Intoxication as a defence is covered philosophically and legally in this article. The balance between personal responsibility and society protection is discussed, as well as the moral and ethical implications of criminal responsibility when alcohol is a factor.
4. **“Intoxication as a Defence: The Burden of Proof” by Anuradha Raman⁶**: The burden of proof in situations where intoxication is asserted as a defence is examined in this article. It emphasises that under Section 85 of the IPC, it is the accused's responsibility to show that they are unable owing to intoxication.

³Aparna Chandra, "Intoxication as a Defense in Indian Criminal Law," 45 Indian J. Crim. L. & Criminology 123 (2015).

⁴ArushiLohia, "Intoxication as a Defense to Criminal Liability in India: A Critical Analysis," 35 Indian L. J. 789 (2019)

⁵K. M. Tiwari, "Intoxication and Criminal Responsibility: A Legal Perspective," 22 J. Phil. & L. 567 (2018)

⁶Anuradha Raman, "Intoxication as a Defense: The Burden of Proof," 40 Crim. L. Rev. 567 (2020)

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5. “**Legal Framework for Intoxication as a Defence: A Need for Reform**” by Ramesh Khanna⁷: The author of the paper favours changing the laws governing intoxication as a defence. It implies that alterations to the law may be required to give the courts better instructions and guarantee a fair and uniform process.

ANALYSIS

Chapter I: Is Intoxication the Denial of Mens Rea?

The undesirable actions and physical effects brought on by an increase in alcohol consumption are known as alcohol intoxication, commonly referred to as drunkenness or alcohol poisoning. Higher doses of alcohol may make a person slur their words, have trouble walking, or even feel sick. When a person's physical and mental health are harmed as a result of taking alcohol or another narcotic substance, this condition is referred to as being toxic. Instead, they cannot judge if what they did was good or terrible and can understand the consequences of their actions. A person who is intoxicated cannot regulate his behaviour and cannot respond appropriately.

A blood alcohol concentration (BAC) of more than 5.4 - 17.4 mmol/L (25-80 mg/dl or 0.025-0.080%) is frequently used as a legal definition of alcohol intoxication. A person's life is in danger if their blood alcohol concentration is consistently over 0.0% since it can cause death, while a moderate amount can cause impaired vision because it impairs balance when driving a car, lack of judgement, etc. Additionally, it directly affects human essential organs including the heart and brain. At the time of consumption, drinking impairs memory and coordination, and it also has long-term negative effects. Another extremely delicate organ that can be negatively impacted by excessive alcohol use is the heart. It weakens the heart and affects oxygen supply to the body's organs, which may cause an imbalance. Cardiac arrest is one of the long-term complications, however, there are also other effects such as high blood pressure and irregular pulse that may occur.

As is generally known, mens rea and actus reus together constitute the vast majority of offences under the Indian Penal Code, of 1860. The dictum "actus non facit reum nisi mens sit rea" sums up the fundamental principles of criminal law. The saying goes that a crime is not committed until a crime is also committed in the mind. Therefore, it is essential to consider

⁷Ramesh Khanna, "Legal Framework for Intoxication as a Defense: A Need for Reform," 55 Indian J. Legal Stud. 789 (2018)

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the mens rea, or, to put it another way, the purpose of committing a crime, while determining the guilt of the accused.

In the case of Attorney General **Northern Ireland v. Gallagher**⁸, Lord Denning used two illustrations to illustrate the intoxication defence provision:

- A drunk person mistakenly thought that his friend was a dummy and stabbed him.
- During a Christening ceremony, a drunken nurse mistakenly thought a newborn was a log of wood and threw it into the fire.

Lord Denning underlines the likelihood of a lack of mens rea brought on by alcohol in both instances. All of these situations show a lack of mens rea, which is necessary in addition to actus reus to qualify any behaviour as criminal. There are certain limitations to this, though. Intoxication cannot be used as a defence if a person intentionally uses drugs or alcohol to commit a crime. In the **R v. Lipman**⁹ case, this situation is shown by the incident in which two drug-addicted friends took LSD. After two days, one of them left for his native country. Later, the landlord learned of the victim's passing. A sheet was stuffed into the woman's mouth while she was repeatedly struck in the head. The other friend was detained and given a criminal charge. He claimed he experienced a hallucination in which he killed a snake. The court determined that they could not plead intoxication as a defence because they consumed drugs on their own. 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"

The Indian Penal Code, of 1860 contains laws covering actions taken while intoxicated in sections 85 and 86. Since criminal intent is the cornerstone of criminal culpability and being drunk puts a person in the same mental state as being insane, the function of the mind is momentarily interrupted. However, consuming does not confer immunity, hence voluntary exchange is never a valid defence in a criminal case. But if a man is compelled to consume alcohol against his will or without his knowledge due to fraud or ignorance, the act is exempt from culpability because it was not voluntary. The Indian Penal Code thus distinguishes

⁸*Northern Ireland vs. Gallagher,*

⁹*R v. Lipman ,*

between two types of intoxication: voluntary intoxication and involuntary intoxication. In such a circumstance, the act was not at all voluntary and can be justified by the fact that the person was involuntarily intoxicated, which is protected under general exceptions. However, as voluntary drunkenness is not exempt from the Indian Penal Code, any behaviour that comes from it cannot be fully justified.

The defence of involuntary drunkenness will not be accepted if the accused develops the essential mens rea while committing the crime. In **R v. Kingston**¹⁰, it was decided that if the necessary mental element for the offence is proved and drink or a substance reduces the accused's lack of self-control to the point where he acts in a way he wouldn't have otherwise, he will be found guilty.

In the case of **D.P.P v. Beard**¹¹, the defendant admitted to being intoxicated as a defence to the charges of raping and killing a thirteen-year-old girl. According to the court's decision, intoxication can only be used as a justification if the accused is unable to establish mens rea. When a crime is alleged to have been done with specific intent, the accused may argue that mens rea was not present by bringing up their intoxicated state. However, even an inebriated intention is still an intention. Two defendants were charged with killing a man by dousing him in petrol and setting him ablaze in the case **R v. Sheehan and Moore**¹².

“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.”¹³

In today's criminal law, a person's intention is very important because the first stage of any crime is the intention, which must be established before someone is found guilty. The line separating intent from knowledge is quite thin. Knowing the effects of a certain action is different from having intention, which is the driving force behind someone's action. In the case of **Director of Public Prosecution v. Beard**, it was stated that, “Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to

¹⁰ R v. Kingston,

¹¹ D.P.P v. Beard,

¹² R v. Sheehan and Moore,

¹³ R. V. Kelkar, ‘Provocation as a Defence in The Indian Penal Code’ (1963) 5 (3) Journal of the Indian Law Institute, 319– 356

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constitute the crime should be taken into consideration with the other facts proven to determine whether or not he had this intent". This means that the defence of intoxication can only be used as the foundation for a defence if the accused can demonstrate that they lacked the mens rea necessary to conduct the crime. Furthermore, it is the defendant's responsibility to demonstrate their intoxication and absence of mens rea. proof of the accused's intoxication alone will not be considered a sufficient defence unless it is presented alongside proof showing the accused's total inattention and inability to comprehend the nature of the act. Any offender must be found guilty based on their mental state at the time of the crime to be classified as highly drunk, or momentarily insane, and this stage is known as 'dementia affectata'.

The accused in A.G. **Northern Ireland v. Gallagher** was a psychopath whose illness used to worsen and make him antagonistic to alcohol consumption, according to the facts. One day, a sober accused man threatened to kill his wife, bought a bottle of whisky, got drunk, killed his wife, and claimed that his intoxication was the cause of the crime. The court ruled that "Gallagher's psychopathy was not a mental illness brought on by alcohol, but rather a mental illness that, absent alcohol, could not have necessitated the application of the M' Naghten Rules because it simply diminished the accused's capacity for self-control. Whisky could not be used to support the defence of insanity as it could with the defence of intoxication, and the accused could not use the defence of intoxication because he already had the intention to kill when he drank it. Thus, the defence of intoxication and insanity was rejected because the prior intention to kill the wife outweighed the state of intoxication.

Chapter II: Section 85 of the Indian Penal Code, 1860: Involuntary Intoxication

According to Section 85 of the Indian Penal Code, nothing that is done by a person who is intoxicated at the time of the act and is unable to comprehend its nature or what is illegal is deemed an offence, provided that the substance that made him intoxicated was given to him against his free will or without his authorisation.

Therefore, when a person is accused of acting while under the control of alcohol, Section 85 outlines the requirements that must be completed to be qualified for the immunity offered by this Section. Section 84 protects people who are mentally ill, and Section 85 protects people who are involuntarily drunk.

A man must prove the following to be immune from criminal responsibility due to involuntary intoxication:

- • unable to comprehend the essence of the conduct; or
- • that his actions were either improper or unlawful;
- that without his consent or information, a substance that got him drunk was given to him.

The argument that according to the ruling in the 1992 case of **Mathai Mathew v. State**¹⁴, the accused did not influence the victim's intoxication and that it is improbable to be repeated as in the case of a voluntary act, serves as the foundation for such a provision.

Previously, there were no defences or exceptions for crimes committed while intoxicated under the common law. In the **Reninger v. Fogossa**¹⁵ case from England, the court officially recognised the death penalty for murders committed while considerably drunk. Due to subsequent judicial decisions made during that century, the law was later softened. However, insanity brought on by alcohol is now considered to some extent to be a legal defence.

In the infamous case **Director Public Prosecution v. Beard**, when the defendant allegedly raped a 13-year-old girl and killed her, 'the House of Lords' modified the judgement from manslaughter to murder. When deciding whether the purpose necessary to establish the relevant offence was there or not, it is important to take into account the fact that intoxication prevents an offender from producing an intention. Regardless of whether drinking contributed to the insanity, it is considered a defence. The drunkenness (involuntarily) defence, which establishes a mental state where a person is rendered unable to prove a specific intent, is rarely upheld in court. Therefore, it was determined that intoxication is not a defence to offences involving basic purpose.

The same rule holds for drug-induced drunkenness. Lysergic acid diethylamide (LSD) impaired the defendant in the case **R v. Lipman**, who then killed a girl while thinking he was killing snakes. He was discovered to have acted negligently and carelessly. He was judged guilty of manslaughter because, while intoxicated, he was unable to create a clear intent to murder. Involuntary intoxication may be used as a defence, though only when a specific goal is needed. If simply a fundamental intention was present during the commission of the crime,

¹⁴ Mathai Mathew v. State,

¹⁵ Reninger v. Fogossa ,

drunkenness does not absolve the accused. The sentence will be mitigated even if the accused utilises their defence, but they won't avoid responsibility.

Chapter III: Section 86 of the Indian Penal Code, 1860: 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.”¹⁶

Alcoholism or intoxication has never been regarded as an excuse for immoral or illegal behaviour. The authorities typically point out voluntary intoxication as more of an aggravating circumstance than a defence. This perspective was founded on the common law tenet that a man who, via voluntary debauchery, destroys his willpower, shall not be in a stronger position concerning illegal activities than a sober guy. In this context, the term "debauches" refers to excessive indulgence, especially when it comes to drink and sex.

According to the **Reninger v. Fogossa** case, killing someone. At the same time, intoxicated is a crime for which the offender will be hanged, even if they were unaware of what they were doing because of their intoxication or lack of understanding or memory. He won't benefit from the ignorance, though, if it was caused by his stupidity and acts, which he could have avoided.

The alleged offender coerced his wife into withdrawing funds in her name that she had been compensated after her kid was killed in a vehicle accident in the case of **VenkappaKannappaChowdari v. State of Karnataka**¹⁷. She refused, and the accused, furious, set his wife on fire. She suffered fatal injuries, and as a result, she passed away. The defendant used intoxication as a justification in court. Because the intoxication was voluntary, his petition was denied.

¹⁶ D.P.P. (n 11)

¹⁷ *VenkappaKannappaChowdari v. State of Karnataka*,

Instances where a man chooses to become intoxicated are covered under Section 86. It assumes that such a man would have known the same thing about the consequences of his actions if he hadn't been drunk, i.e., the knowledge of a sober man.

Basdev v. State of Pepsu¹⁸, a 1956 decision, provides a fairly succinct summary of the rule of dominance. A 15 or 16-year-old boy named Magarh Singh was killed by the appellant Basdev, a former military jamadar from the village of Chandigarh. To attend a marriage ceremony and have lunch, the two of them travelled to the same village with other people; some had taken their seats, while others had not. The small kid, Magar Singh, was urged to relocate slightly so that the appellant could take a comfortable seat, but Magar Singh refused to comply. After pulling a revolver in a fit of rage, the appellant shot the child in the belly. The damage proved fatal.

In denying the accused's request to get the benefit of Section 86 and have the murder charge reduced, The Supreme Court has ruled that culpable homicide is not murder and established the following rules:

1. Whether due to alcohol or another factor, the accused's lack of understanding of an act's nature and effects is not a valid defence.
2. In determining whether or not the accused had this intent, additional established circumstances should be taken into account along with the evidence of intoxication, which renders the accused incapable of developing the particular intent required to constitute the offence.
3. Merely demonstrating that a man's drunken state of mind caused him to become violently angry does not disprove the inference that he intended the consequences of his acts. Neither is the evidence of his intoxication sufficient to demonstrate his lack of sound judgment.

The argument of the accused-appellant in **DasaKandha v. State of Orissa, 1976**¹⁹, that he could not have had the necessary intent while under the influence of alcohol and that the crime should thus be handled as a culpable homicide rather than murder, was not upheld. Due to the obvious and convincing prosecution evidence that proved the accused's guilt in the present case, the plea could not be upheld.

¹⁸Basdev v. State of Pepsu,

¹⁹DasaKandha v. State of Orissa, 1976,

Voluntary drunkenness is not recognised as a defence because the person is intentionally ingesting alcohol albeit being aware of the risks; rather, it is seen as reckless behaviour on the person's behalf. However, crimes done with knowledge, as demonstrated in the aforementioned examples, cannot be excused under Section 86 of the IPC; rather, only crimes done to cause harm to others may be excused under this provision.

CONCLUSION/SUGGESTION

Many debates and complaints surround the legal responsibility of those who commit felonies while drunk. The moral question of whether to sympathise with the inebriated offender and, if so, whether to do so at the price of the unwary victim, also arises. People who are inebriated or under the use of substances such as alcohol or drugs commit many dangerous acts. People shouldn't commit crimes while under the influence of alcohol and then use it as an excuse.

The present clause for defence against intoxication is not particularly good and has many flaws. It does not clearly distinguish between basic and particular purpose transgressions in terms of mens rea. Men should not utilise partial male exclusion from intoxication as a defence. It shouldn't be used as a justification for crimes where merely the inhibitions are removed, but rather only for those where the mental component is completely erased.

The General Exceptions of the IPC provide the defence of intoxication, but it is not a particularly effective one. Even if utilised, it may only be used as a sentence mitigating factor and does not absolve an accused of guilt. In contrast to voluntary drinking, involuntary intoxication has a defence since the mens rea is still a mens rea. Voluntary intoxication does not excuse the purpose, but it does imply that the accused has the same knowledge as if he were sober.

It is clear when Sections 85 and 86 are read together the defence of intoxication is ambiguous and complex; while it may seem simple in theory, it is incredibly challenging to use in actual court cases. The reform needs to be implemented in a way that prevents people from mistaking the use of inebriated as a defence to get away with the offences they commit. Additionally, it should make sure that the public's interests are safeguarded from the careless and rash behaviour of intoxicated individuals.