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INTOXICATION AS A DEFENCE UNDER INDIAN PENAL CODE.

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I. ABSTRACT:

This paper deals with intoxication as a defence under IPC. Firstly, it describes what intoxication is and secondly, how intoxication affects different parts of our body. The test laid down to fix liability in the cases of intoxication is a foreseeability test which is also described in this paper. The topic of involuntary intoxication is dealt further and the cases related in which person under the involuntary intoxication are liable and the cases in which such persons are not liable. The next part is section 85 under IPC has been described along with the conditions and the cases. Section 86 has been described along with the conditions and the cases.

The topic of shifting the burden of proof is also dealt with in this paper. The condition in which the voluntary intoxication is dealt in the same way as involuntary intoxication that is delirium tremens is also dealt with in this paper. Then the famous Dutch Courage rule on which voluntary intoxication is based has been described in this paper. The latest developments in the cases dealing with intoxication in which the punishments were given even if the person was intoxicated involuntarily. Lastly, the role of the judiciary is a topic in which the landmark case of Basudev v. State of Pepsu has been described.

II. RESEARCH QUESTIONS:

- Whether involuntary intoxication is included as an exception to the criminal liability and should voluntary intoxication have taken as a mitigating factor?
- Are the provisions included in IPC are sufficient to deal with the cases related to intoxication?

III. RESEARCH METHODOLOGY:

The study is based on the secondary sources of data that is collected through journals, articles, books, cases and reports along with which certain data is collected from reliable online websites. For referring to the judgements online reliable sources like Manupatra and S.C.C. have been referred.

IV. LITERATURE REVIEW:

In the book on I.P.C. by K.D. Gaur, the writer has explained both concepts of voluntary and involuntary intoxication dealt separately along with their elements. Intoxication is covered as a separate chapter under the heading of general defences. The concept of basic and also specific intent has been dealt with, in this book which includes the explanation of the landmark cases like Majewski case.

In the Article “Justification and Excuse in the Criminal Law: Defences under Indian Penal Code”¹ by Ameya Kilara, the author has described involuntary intoxication as a defence and explained the provisions regarding it.

In the Article “Medico-legal implications of alcohol consumption” by Harish Dasari and K.H Chavali the medical and legal complications of the consumption of alcohol are described by the authors. This article describes how our various organs are affected by the consumption of alcohol which includes the effect of alcohol on our heart and brain.

V. INTRODUCTION:

Intoxication is a state by which both mental and physical condition of a person is disabled because of intake of alcohol or some narcotic substance. It is commonly known as a state of being intoxicated. In this state of Intoxication, the person is unable to understand whether what she or he is doing is right or wrong and he is unable to understand the consequences of his or her actions. He is neither able to control his actions nor he is able to react in a particular manner.

Legally, alcohol intoxication is often defined as a blood alcohol concentration (B.A.C.) of greater than 5.4-17.4 mmol/L (25–80 mg/dL or 0.025-0.080%). A constant Blood alcohol level of more than 0.80% is life-threatening as well it may result in the death of a person. A blood Alcohol content of a moderate level can result in blurred vision, anxiety, lack of balance while using Motor Vehicles, Inability of Judgement etc.

The effect of Intake of Alcohols is seen in various organs of the body that includes:²

¹ Ameya Kilara, Justification and Excuse in the Criminal Law: Defences under Indian Penal Code, Vol. 19 No.1 (2007).

BRAIN:

The brain is the most crucial organ which gets most affected by the intake of Alcohol. Drinking not only causes loss of memory and coordination at the time of intake but will also cause long-term side effects. The functioning, as well as the structure of brain changes due to the consumption of alcohol and here, is damage to cerebellum which helps in balancing due to consumption of excess alcohol.

HEART:

The heart is a highly sensitive organ and it is directly prone to the negative effects of Alcohol. Alcohol consumption leads to weakening of the heart and also there is an impact on the delivery of oxygen in the organs of our body which may result in involuntary or sudden movements of organs which may lead to imbalance or a sudden attack on the other person. Long-term effects include cardiac arrest as well.

Some of the other effects include high blood pressure and an irregular heartbeat, which can result in a number of problems as well. Long-term consequences of excessive drinking may include cardiomyopathy, stroke and sudden cardiac death. So, we can medically prove that intake of alcohol causes injury to our body as well as the functioning of our body which may result in the involuntary and unintentional actions.

VI. THE CONCEPT OF INTOXICATION UNDER THE INDIAN

PENAL CODE:

Intoxication is covered under general exceptions, i.e., chapter IV of Indian Penal Code. In general exception, a person is excluded from criminal liability due to particular reasons like intoxication, insanity, consent etc. The burden of proof shifts to the accused to prove the point of exception. Normally the burden of proof is on the prosecution to hold the accused guilty of a criminal offence. But in this case, the accused has to prove that why he should be exempted from criminal liability. This is based on the concept that an innocent man should not be made liable for an offence that is no one is guilty unless proved. Sections 85 and 86 deal with the general exception of Intoxication.

² Allaire Kirk, Does Alcohol Abuse Cause Brain Damage, November 9, 2017, accessed on November 21st, 2018, <https://www.addictioncampuses.com/blog/alcohol-abuse-cause-brain-damage/>.

a) SECTION 85, INDIAN PENAL CODE:

“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.”³

This section basically talks about the offences in which the person is involuntarily intoxicated that means the intoxicating substance is given against his/her own will or he has no knowledge of the intake of the intoxicating substance. This indicates that the substance should be forcibly given to him or else he should be either unaware that the substance given to him is an intoxicant. The person should intoxicate at the time of doing that act and not after or before the commission of such offence. He should not be aware of the consequences of such an act that the act that he is doing is wrong or contrary to law that is neither natural nor penal consequences of his act. Only after these conditions are satisfied a person can be exempted under this section.

b) SECTION 86, INDIAN PENAL CODE:

“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 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.”⁴

In the cases where there the person is though intoxicated but if the act is done with a particular knowledge or intention then he will be prosecuted for the same offence which he would have done without the intake of any intoxicating substance. In this case, knowledge and intention are taken as an important factor. If the person is capable of understanding what he has done or has caused an injury to the other person knowingly or he is in his full senses then he will be prosecuted for the offence as a normal person. This section also talks about

³ Section 85, The Indian Penal Code.

⁴ Section 86, The Indian Penal Code.

voluntary intoxication. Voluntary intoxication is not exempted in I.P.C. and the offence committed by the person who has voluntarily consumed alcohol.

c) FORESEEABILITY TEST:

This test is laid to see that if a person can be held liable for an offence. A person loses control over his actions as soon as consumes an intoxicating substance. But when a person voluntarily takes alcohol then this shows that he has been acting negligently and he wants to lose control. If the accused wanted that to be in control then he has the option to stop consumption, if he knows that further consumption will lead to the loss of control and this also evidently shows the intention of a person. But this is not so in the case of involuntary intoxication so the involuntary intoxication is taken into account as a general defence under IPC. A person will not be liable for the offence only when he is unable to understand the foreseeable events that will lead him in the commission of the offence. The actions of the person are also taken into consideration. If the intoxicated person has committed the offence of Murder and he tries to run away from that place as soon as the offence is committed then we can understand that person is able to even walk properly and he foresees that he will be held guilty of Murder then he will be held liable for the offence of murder.

d) INVOLUNTARY INTOXICATION:

Section 86 talks about the knowledge and intention of a person doing the act when the accused person is intoxicated. This Section basically talks about the state of voluntary intoxication. The defence of voluntary intoxication cannot be taken in the commission of a crime. But there are two cases where we can say that voluntary intoxication acts as at least a mitigating factor. The first one is the crime where the specific intention is required. If the accused person has consumed alcohol a lot and he is not in a position that he will have an intention to do the act then he will be exempted from the offence. Like in the case if the specific intention of a person is not there and he has done the act in the influence of alcohol; then the offence is not murder but culpable homicide not amounting to murder. But under heavy intoxication also the person is able to form intent then he will liable for murder.

Involuntarily Intoxication Excludes Mens Rea:

In the case of ***Director of Public Prosecutions v. Beard***⁵ the accused raped and murdered a 13 year old girl and took the plea of intoxication. The Court held that intoxication may only be a basis for defence if the accused was unable to form mens rea.

It means that involuntarily intoxication excludes the mental element, i.e., mens rea.

The example in the case of:

Mavari Surya Satyanarayana v. State of A.P.⁶

In this case, the accused suspected that his wife had an extramarital affair and he fought with his wife. That day he consumed alcohol in so huge quantity that he poured Kerosene on his wife and tried to set her on fire. Somehow his wife escaped but the accused caught her and poured kerosene on her again and set her on fire. She died on the account of these injuries. He took the defence of Intoxication. But the Supreme Court rejected his defence stating that he was unsuccessful in his first attempt to burn his wife and he was capable enough to run behind her and catch her to complete his heinous act. The Supreme Court held him guilty and converted his punishment from Section 304 Part II that is punishment for 10 years to Section 302 punishment of death or life imprisonment. The second one is that sometimes the mind of the accused is in a diseased state where the person is unable to take care of his actions and even think anything properly. M'Naughton rules have been relied upon in this case which states that the intent of a person has to be taken into consideration is at the time of Commission of the Crime.

This point is explained in the case of:

DPP v. Beard⁷

In this case, the accused was intoxicated and he raped a girl who was a minor. He placed his one hand on the mouth of the girl and the other on her throat. As a result, the girl died out of suffocation. He made a plea that he was unable to understand the consequences of the act. But the court held him guilty for the offence of Murder under Section 300 because this act of suffocation was different from the act of rape and he had the intention of killing the girl.

⁵ [1920] 2 All ER 479 (HL).

⁶ Mavari Surya Satyanarayana v. State of A.P, (1995) 1 CrLJ 689).

⁷ DPP v. Beard ,[1920] AC 479.

So, we can say that voluntary intoxication is a mitigating factor and, in some case, it is an aggravating factor. In the cases when the person is heavily drunk and he won't be able to form an intent for the commission of the act then voluntary intoxication may be a mitigating factor. But in most of the cases, it will be an aggravating factor because people will be encouraged to commit a crime and escape the punishment by taking the plea of voluntary intoxication. In cases of habitual offenders, intoxication is voluntary intoxication is an aggravating factor. This will also result in increased consumption of alcohol and finally increase in the crime rate.

e) INGREDIENTS OF SECTION 86 OF THE INDIAN PENAL

CODE:

The ingredients of Section 86 are

- Presence of the element of a particular intention or knowledge
- He should be influenced by the consumption of an intoxicating substance
- The intoxicating substance should be administered to him without his knowledge or against his will.

This section deals with the cases where knowledge and intention are important elements. An intoxicated person has the same level of knowledge as a sober person has. Knowledge of a person will not be affected by intoxication. Knowledge can be considered as a constant point in the case of intoxication of a person. The thing that will vary is the intention of the person. The facts of the case have to be presumed in order to determine the intention of a person. Mostly the presumption is taken when a person has knowledge then he will obviously have the intention of doing that particular act. But the intention is a complicated factor and it depends from case to case.

In the case **R v. Kingston**⁸, the facts are that the respondent was in dispute with a couple over a business matter. The couple wanted to ruin the image of the respondent. So, they employed a boy named Penn. The couple knew that the respondent has Paedophiliac tendencies, i.e., he had sexual tendencies for males. According to the plan, he called a boy in an isolated room. Penn administered some drug to the boy because of which he became unconscious. The respondent came to the room and he was given some intoxicated

⁸ R v Kingston [1994] 3 WLR 519.

substance accordingly. The respondent performed sexual acts with the boy and photographs were also taken. According to the boy, he remembers nothing after the drug has been administered to him. The court held the accused guilty with the offence of rape because he was not intoxicated to that extent that he was unable to form required intention to do that particular act, even if there was involuntary intoxication. Means Rea which was required was present in this case. The accused pleaded that it was not possible to form an intention in those circumstances but the court rejected his defence.

f) INGREDIENTS OF SECTION 85 OF INDIAN PENAL CODE:

According to section 85 of the IPC, nothing is an offence which includes:

- There should be the presence of an act of a person
- The person should be incapable of knowing the nature of the act
- The incapacity should be the result of intoxication of a person
- The intoxication should be administered without his will or even without his knowledge
- Such incapacity should be there at the time of doing the act.

From the ingredients of Section 85, we can see that an offence or an act should be committed at the time when the effect of the intoxicating substance is there on the accused person. The accused person should not have the knowledge or he should be ignorant of the fact that thing which was administered to him was an intoxicating substance or a substance which was mixed with an intoxicant. The defence of intoxication can only be taken when the person does not have the intention of doing the act. The evidence of amount and circumstances of drunkenness have to be taken into consideration while holding the accused guilty of the crime. The nature of the crime and the injury caused has also to be taken into account. The force which was implied, i.e., the extent of brutality done by the accused at the time of the commission of offence can also be considered as an important factor.

g) BURDEN OF PROOF:

This section is in I.P.C. is covered in part IV which are the general defences to the offences. The burden of proof rests on the accused person and not on the prosecution. He has to prove that the intoxication was by involuntary means and the intoxicating substance was not

consumed by his voluntarily. He has also to prove that he did not have any knowledge or intention of doing that particular act. The facts and circumstances have also to be proved by the accused person that led him to commit such an offence.

h) DELIRIUM TREMENS:

It is a condition in which there is an affection of the brain which is caused by drinking of alcohol. It produces a type of insanity where the person has no what he has done is right or wrong. The disease is realised as insanity proton, and the case is treated in the same manner as involuntary intoxication. Therefore, the act is exempted from criminal cases even it was voluntary intoxication.

i) DUTCH COURAGE RULE:

This is based on the theory that people not only consume alcohol for pleasure but also to tackle depression and forgetting hurt or pain and for escaping from this worldly pains and depression⁹. In this imagination, he imagines himself as overcoming these problems bravely. So, people often also consume alcohol to build up the courage. Drinking causes a sense of self-resistance and also takes away the capacity to think what he is doing is illegal. The person before drinking i.e. voluntary intoxication plans what he has to do and also builds up the courage to do that thing. This rule is known as Dutch courage rule. This rule only governs the principle of voluntary intoxication. This shows that a person has the intention and also earlier plan to do the act.

V. ROLE OF JUDICIARY:

- **Basudev v. State of Pepsu**¹⁰:

In this case, both the accused that is a retired military officer and the deceased went to attend a marriage ceremony in the village. The midday meal was going on. Some were sitting on the chair and some were sitting on the ground. The deceased who is a boy of 13 years, was sitting on a chair. The accused came and asked that boy to get up from his place which the boy refused. The accused, which was under the effect of intoxication, took out a pistol out from his pocket and shot the boy. The injuries were fatal and the boy died on the spot. In the court of law, the accused took a defence that he was under the influence of

⁹ Intoxication and criminal liability, accessed on 22nd November,2018, <http://e-lawresources.co.uk/Intoxication.php>.

¹⁰ Basudev v. State of Pepsu ,1954 SC 722.

heavy intoxication and was unable to understand the circumstances of his act. The court rejected his plea by stating that the accused himself came out of the house and he was able to walk so he would have had the ability to foresee the consequences of the act. The court held him guilty under Section 300 of IPC that is murder.

- **Venkappa Kannappa Chowdhari v.State of Karnataka**¹¹

In this case, the accused's son died in a Motor Vehicle Accident. There was compensation of Rs, 1,00,000 which was in the name of the wife of the accused. The accused forced his wife to withdraw the money but she refused. The accused got angry and in the influence of Intoxication, he burnt his wife by pouring Kerosene oil. She died of the injuries. The accused took his defence of intoxication. But the court rejected his plea by stating that the intoxication was a voluntary intoxication.

- **Shankar Jaiswara v. State of West Bengal**¹²

In this case, the accused was under the effect of Intoxication. The accused started abusing the victim. To control the situation the victim asked the accused to leave. At this point of time, the accused got angry and stabbed the victim seven times. The victim died because of the injuries. The accused took the defence of Intoxication. The court replied to this plea that just because a person is intoxicated, he cannot be exempted from the offence of murder.

VI. LATEST DEVELOPMENTS ON INTOXICATION:

- **Bablu alias Mubarik Hussain v. State of Rajasthan**¹³

In this case the Supreme Court examined Section 85 of IPC and held that evidence of drunkenness, the evidence which proves that the accused is incapable of forming the wrongful intent has also to be considered along with the other facts, and then it should be proved of the accused person has the intention to commit the crime.

Simply proving that his mind was affected by the intoxication that led to violent behaviour does not disapprove the fact that a man does not know the natural consequences of that act. The court rejected the plea of the accused because it was a very brutal and diabolic act.

¹¹ Venkappa Kannappa Chowdhari v.State of Karnataka ,1996 Cri LJ 15 (Kant) (DB).

¹² Shankar Jaiswara v. State of West Bengal ,006 (2) CHN 210.

¹³ Bablu alias Mubarik Hussain vs. State of Rajasthan , (2006) 13 SCC 116.

• **Bhagwan Tukaram Dange v. State of Maharashtra**¹⁴

This case was decided on 15 March, 2014 by Justice by K S Radhakrishna and Vikramajitsen. In this case, the accused burned his wife to death along with his father for dowry in the influence of intoxication. He along with his father was charge-sheeted under section 302, 498A (subjecting a married woman with cruelty read with Section 34 (subjecting a married woman to cruelty for dowry read with common intention). They both came to the house fully drunk and demanded rupees 200 from the victim which the victim refused and was beaten up to death by both. The court did not have a reason to consider the contention of the counsel that the case will fall under Section 304 Part I or Part II because the accused was under the influence of liquor. The court held that accused was correctly charge sheeted under Section 302 of IPC.

VI. CONCLUSION:

Indian Penal Code covered the topic of intoxication as a part of general exceptions. There are two sections dealing with the intoxication laws in India that is Section 85 and Section 86 of IPC. Only involuntary intoxication is taken as a defence under IPC and voluntary intoxication is not exempted. The test has been laid to see if a person is liable for the offence or not, i.e., is a foreseeability test. In the case of voluntary intoxication, the knowledge factor is taken the same as when he was not intoxicated. The Dutch Courage Rule is used to describe the manner in which the case will be dealt. The cases show the fact that a person cannot be exempted from grievous offences even if the defence of intoxication is taken. The burden of proof lies on the accused person for the commission of the offence. In some cases, intoxication can be taken as mitigating as well as an aggregating factor. The recent developments also state that even if the person is involuntarily intoxicated the gravity of the offence is very severe then he will be held liable for the offence.

¹⁴ Bhagwan Tukaram Dange vs. State of Maharashtra ,(2014) 4 SCC 270.

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