Critical Analysis of Intoxication as a defence in IPC, 1860

Abstract

The Indian Penal Code, 1860 deals with crimes and the provision for punitive measures for those crimes. It also covers defences, in which an individual might not be liable for the crime committed and that is covered in Chapter IV under General Exceptions from Section 76 to 106. The defence of Intoxication provided in Section 85 and 86 is a controversial defence. Hence, the researcher has chosen this topic for research. This paper covers what kind of substances cause intoxication, what will be the mental condition of an individual after intoxication and on whom the burden of proof falls on. It covers defence for involuntary intoxication and with some of the landmark cases it explains how this defence applies to crimes of basic intent and specific intent. It also covers if voluntary intoxication is considered as a defence or not and what role knowledge and intent plays in the cases of voluntary intoxication. This paper sheds light on role of mens rea.
in the cases of intoxication. This paper also explains the foreseeability test laid down to check the liability of an individual in the crimes committed under the influence of intoxication. With some landmark cases it helps to understand how the defence of intoxication is applied and differs based on the gravity of the crime/violence. The paper is concluded with some suggestions to solidify the defence of intoxication to prevent it from being misused.

Introduction

Criminal law includes numerous punishments that differ from one case to another. Along with punishments several defences are also present. The Indian Penal Code of 1860 contains several defences in Chapter IV under ‘General Exceptions’ from Section 76 to Section 106, these defences are based on the premise that even though an individual committed an offence, he/she can’t be held liable. The reason behind this is whether at the time the offence was committed, if the offender was justified of the acts done by him/her, or if there was no mens rea. Intoxication is one of the defences provided in general exceptions in Section 85 and Section of 86 of IPC, 1860.

Almost 50 percent of crimes and property offenses are done under the influence of alcohol or drugs, and while it may not be directly related to the crime, sometimes there is a close correlation between the two.

A person can be intoxicated by several substances like alcohol, marijuana, hallucinogens, sedatives, and other narcotic drugs etc. Intoxication results in a condition in which an individual loses all their sense along with mental control to differentiate between right and wrong and the capacity to understand the consequences of their actions. It renders a person incapable of judging the consequence of his/her act and also incapable to differentiate between what is good and what is contrary to law. The question that arises is when an intoxicated person commits an offence, would be held liable or not? So, this when Section 85 and Section 86 comes into picture.

Usually the burden of proof lies on the prosecutor to prove that the accused is guilty of the offence or the crime he has committed. In the general defence for intoxication, the burden of proof always lies on the accused & not on the prosecutor. The accused will have to prove that the intoxication was involuntary or against his/her will. He will also have to prove that he had no knowledge or intention to do the act.

In several instances, intoxication could be considered as a mitigating factor. But in the latest developments, if the magnitude of the crime or offence is quite high, even if the person is intoxicated without his knowledge, he can be held liable, this is done to prevent people from using these sections as loopholes to commit offences and get away with lesser magnitude of punishment.

Scope of the Study
The study focuses only on the defence provided for intoxication in ‘General Exceptions’ under Indian Penal Code, 1860. Intoxication can happen from innumerable substances, but this study will consider only those substances as mentioned in the Narcotic Drugs and Psychotropic Substances Act, 1985 to cause Intoxication and nothing over the purview of that. This study will not consider the drugs prescribed by a medical practitioner to be taken in a prescribed amount as an intoxicating substance.

**Research Objectives**

Some of the research objectives of the research paper are:

- To understand in depth about the defence and ingredients provided for intoxication in Section 85 and 86 of Indian Penal Code, 1860.
- To analyse and learn the importance of intent and knowledge in the defence of intoxication
- To learn applicability of intoxication as defence in grievous crime or offense.
- To look into some of the landmark cases to understand how the defence of intoxication is applied and differs based on the gravity of the violence.

**Research Questions**

- Is the defence for voluntary intoxication and involuntary intoxication same under ‘General Exceptions’ provided in Indian Penal Code, 1860?
- What is the role of *mens rea* in the defence of Intoxication?
- What is foreseeability test in relevance of voluntary & involuntary intoxication?
- How the present law prevents the misuse of intoxication as a defence to escape the punishment or for a lesser sentence?

**Research Methodology**

The methodology employed in this research paper to conduct research is Doctrinal Research. It inspects law as a collection of principle that can be interpreted & examined through legal sources only. It is a source-based study & does not consist quantitative/qualitative research. Analytical study method has been employed to gather existing information & analyse them for a critical evaluation. The data collected for this research is secondary data, collected from judgements, case laws, legal articles, law journals, internet sources etc

**Literature Review**

- The article “Defence of Intoxication Under Indian Penal Code, 1860” was written by Himanshu Arora in the year 2010. The writer states that intoxication is a voluntary kind of insanity that is in the
control of an individual to refrain and if he doesn’t, he will be held responsible for it. But when an individual is intoxicated against his will or without his knowledge or by fraud, then in such case the involuntary intoxication will be treated like unsoundness of mind.¹

➢ In the article “A Theory of the Intoxication Defence” the writer focuses on the criticizing the disparity between specific & basic intent crimes, and the principle that a reasonable extent of involuntary intoxication can eliminate the former’s required mental element but not the latter. He is of the opinion that there can be no adequate clarity on how the distinction works.²

➢ Amit Pratap Shaunak in his article “Intoxication – No Ground for Dilution of Murder Case” argues that intoxication cannot be a basis for dilution of charges against someone who is charged with murder. Cases in which the accused is not a regular drinker, intoxication can be regarded as a mitigating factor, if not, then it must be regarded as aggravating factor.³

Involuntary and Voluntary Intoxication under Indian Penal Code 1860

2.1 Involuntary Intoxication – Section 85 of Indian Penal Code, 1860

“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.”⁴

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 an act done by a person.
➢ The person should be incapable of knowing the nature of act.
➢ Such incapacity must be by reason of intoxication of the person.
➢ The ingredient that resulted in the intoxication of the person should be administered to him against his will or without his knowledge.

In simpler words, this section deals with the offences committed by a person who is intoxicated against his will by coercion or without his knowledge i.e., either unaware of the presence of intoxicating substance while consumption or unaware that a particular substance is intoxicant in nature. The person should be under

¹Himanshu Arora, Defence of Intoxication Under Indian Penal Code, 1860, SSRN, 2019
³Amit Pratap Shaunak, Intoxication – No Ground for Dilution of Murder Case, MONDAQ (2014)
⁴S. 85, The Indian Penal Code, 1860
the influence of intoxication while committing the offence and should be incapable of analysing the possible consequences of his act and the particular act is unacceptable and is contrary to, prohibited by or defiant of law. Only when these conditions are met, the person can avail the defence of involuntary intoxication.  

Earlier, the common law did not provide any defence or exemptions for the crimes committed under the influence of intoxication. The very first case in England where the court accepted death penalty where a homicide was committed under severe intoxication is “Reninger v. Fogossa” Until the early 19th century, this strict rule persisted, though Coke & Blackstone’s attempts to retain drunkenness as an aggravation were successful. In subsequent court rulings during that century, the legislation was eventually relaxed. But now insanity developed by drunkenness is considered to be a defence to the exact degree from criminal prosecution as though it had resulted from numerous different causes.

In England, the general rule seems to be “merely to show, that a man’s mind was so affected by drink that he more readily gave way to a violent passion is no defence.” There are 2 exceptions to this rule:

i. Habitual drinking can sometimes lead to lasting alteration in the brain, which can be sometimes result in insanity, for example: a) Alcoholic Dementia – People who are heavy drinkers for over a long period of time, develop nutritional issues because of alcohol intake & unhealthy eating habits. This results in alcoholic dementia. Alcoholic dementia is very similar to Alzheimer’s with gradual loss in cognitive performance & memory. b) Delirium Tremens – It’s a most serious form of ethanol/alcohol withdrawal which manifests as altered mental status, which is resulted after 2-5 days of last alcohol intake.

ii. Intoxication which is involuntary is a defence. The exemption can be justified on the grounds that the defence of involuntary intoxication isn’t subject to abuse when compared to voluntary intoxication & there’s less possibility of the offence being repeated.

In the landmark case Director Public Prosecution v. Beard, accused attempted to commit rape of a 13-year-old girl and in the process unintentionally killed her, and the House of Lords altered the conviction from manslaughter to murder on the basis: Specific intent is a crucial factor in several offences; intoxication renders an offender incapable of developing an intention, this aspect should be considered while assessing if the intent required to establish the relevant crime was actually there or not. Insanity is considered to be a defence; it doesn’t matter if the insanity is resulted by intoxication. The defence of drunkenness (involuntarily), that creates a state of mind where a person is rendered incapable of developing a specific

\[ ^{5}\text{Nishtha Sinha, Involuntary Intoxication as a Defence under Indian Penal Code, LAW AUDIENCE JOURNAL, vol.1, no.2 (2018)} \]
\[ ^{6}\text{Reninger v. Fogossa (1551) K. B. 75 Eng. Rep. 1} \]
\[ ^{7}\text{D.P.P. v. Beard, (1920) A.C. 479} \]
\[ ^{8}\text{Alcoholic Dementia – Can Alcohol Abuse Cause Dementia?, VERTAVA HEALTH EDITORIAL TEAM (Oct.2, 2020, 12:50 PM)} \]
\[ ^{9}\text{Beard (1920) A.C 479} \]
intent, is retained in few cases. Hence, it was held that intoxication isn’t a defence to crimes of basic intent but is a defence to crimes of specific intent.\(^\text{10}\)

The same rule is applied in the case of intoxication which is caused by drugs. In the case \textit{R v Lipman}, the accused was intoxicated by LSD (Lysergic Acid Diethylamide) and under its influence he killed a girl, thinking that he was actually killing snakes. It was found that he had been negligent & reckless. But under the influence of his intoxication, he was incapable of developing a specific intent for murder, & thus was convicted for manslaughter.\(^\text{11}\)

Involuntary Intoxication may provide a defence, but it can be applied only in cases where a specific intent is needed, it doesn’t exempt the accused if the crime was of basic intent, because intoxication cannot eliminate basic intent. Even if the defence is applied it will only lessen the punishment and the accused isn’t completely off the hook.

2.2 Voluntary Intoxication – Section 86 of Indian Penal Code, 1860

“\textit{Offence requiring a particular intent or knowledge committed by one who is intoxicated}.—\textit{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.}”\(^\text{12}\)

This section covers cases where an individual is intoxicated voluntarily and is assumed to have the exact knowledge as he would have if he were sober, but the same cannot be said about intention. As far as for knowledge there is certainly a presumption, whereas no presumption for crimes that need intent to determine them. It is presumed that any sane person would know the natural consequences of his/her action, & if the consequences are known, it is most likely that they were intended. However, this knowledge-to-intention relation won’t be present when the person is intoxicated. Therefore, under this section an individual is punished on the grounds of knowledge, but not intention.\(^\text{13}\)

In \textit{Venkappa Kannappa Chowdari v. State of Karnataka}, the accused forced his wife to withdraw the money in her name, which she had received as compensation for her son’s death in a motor vehicle accident, when she refused to withdraw the money, the accused who was intoxicated, got angry & burnt his wife. She died

\(^{10}\) D. P. P. v. Beard, (1920) A.C. 479
\(^{11}\) R. v. Lipman (1970) 1 QB 152
\(^{12}\) S. 86, The Indian Penal Code, 1860
\(^{13}\) Consent Not Exonerating From The Criminal Liability (Type-Two), SHODHGANGA (Oct.3, 2020, 12:00 AM)
as the injuries were fatal. In the court, the accused raised the defence of intoxication. But his plea was rejected as the intoxication was voluntary.\textsuperscript{14}

In the case of \textit{A.G of Northern Ireland v. Gallagher}, the accused was a psychopath and his condition would worsen by alcohol, which would result in him losing his self-control. But even before his intoxication, the accused had shown the intention to kill his wife. The defence of intoxication wouldn’t be applicable as the intention to kill was formed by the accused even before he was intoxicated.\textsuperscript{15}

If a person can foresee the outcome of his actions, defence of intoxication won’t be available. In the case of \textit{Basudev v. State of Pepsu}, the accused who was a retired military officer went to a wedding in the village along with the deceased. The accused wanted to sit on a chair that was occupied by the deceased, when the deceased refused to get up, the accused who was intoxicated, took out his pistol & took a shot at the boy. The fatal injuries led to spot death of the boy. During the proceedings, the accused took the defence of intoxication & hence couldn’t comprehend the consequences of his actions. His plea was rejected by the court, as he had had existed the house and was capable of walking, he could have foreseen the consequences of his actions. He was convicted for murder.\textsuperscript{16}

Voluntary Intoxication is not considered as a defence as the individual is voluntarily consuming alcohol, even while knowing its consequences, & this is seen as recklessness on the part of the individual. However, as seen in the above cases, Section 86 of IPC can be merely an excuse for intention, but is not an excuse when it comes to crimes which are based on knowledge.

\textbf{Role of \textit{Mens Rea} in the defence of Intoxication}

Intoxication isn’t a very strong defence, be it may voluntary or involuntary. However, when an individual is intoxicated either by alcohol or drugs & commits a crime, the extent of intoxication could prevent an individual from developing the requisite mens rea.

\textsuperscript{14}Venkappa Kannappa Chowdari v. State of Karnataka, 1996 Cri LJ 15 (Kant) (DB)
\textsuperscript{15}A.G. for Northern Ireland v. Gallagher (1963) A.C. 349
\textsuperscript{16}Basudev v. State of Pepsu, 1954 SC 722
The defence of involuntary intoxication will not be available if the accused forms the requisite mens rea while committing the crime. In *R v. Kingston*, it was held that when the alcohol or drug removes the inhibitions of the accused to such an extent that he acts in a way that he wouldn’t have if he wasn’t intoxicated, even then he’ll be held guilty if the necessary mental element required for the crime is formed.\(^{17}\)

In the case of *D.P.P v. Beard*\(^{18}\), the accused was charged with raping & murdering a thirteen-year-old girl & pleaded defence of intoxication. It was held by the court that defence of intoxication could be availed only if the accused was incapable of forming mens rea. Significant developments can be seen in the criminal law in the case of *Soolkal & Francis Mansingh. v. The State (Trinidad And Tobago)*, the court demanded to see solid evidence regarding intoxication and that the accused has no mens rea.\(^{19}\)

When a crime is said to be that of specific intent, the accused can rely on their intoxicated state to show that there was no presence of mens rea. Nevertheless, a drunk intent is still an intent. This was held in “*R v Sheehan and Moore*”, where 2 accused had killed a man by pouring petrol on him and set him on fire.\(^{20}\)

*In the cases of specific intent, it should be proved that when the crime was committed, the accused lacked mens rea. It is on the prosecutor to ascertain the true intent of the accused, while taking into consideration that he was under the influence of intoxication. Whereas in cases of basic intent, voluntary intoxication is enough of a fact for the presence of necessary mens rea.*

**Foreseeability Test in the defence of intoxication**

Foreseeability Test is designed to decide if an individual can be held liable for a certain crime or not. It is a common knowledge that consumption of alcohol & ingestion of drugs leads to losing control. Hence, if a person with this knowledge willingly intoxicates oneself with such substances, then he is acting in a reckless and negligent manner, knowing that there is a possibility of loss of control. Therefore, one invites the liability of intent by using substances believed to have certain consequences. If an individual didn’t want to lose control then he would have stopped the consumption of alcohol or ingestion of drugs, whichever the case is. In addition, losing control is neither immediate nor without any symptoms. However, the issue becomes quite controversial when the topic of involuntary intoxication comes up.

\(^{17}\)R v. Kingston (1994) 3 WLR 519  
\(^{18}\)(1920) A.C. 479  
\(^{19}\)Soolkal & Francis Mansingh. v. The State (Trinidad And Tobago) (1999) UKPC 37  
\(^{20}\)*R v. Sheehan and Moore (1975)* 60 Cr App R 308
In the cases of drunk driving, the level of alcohol in the blood for commission of crimes when intoxicated is set at a very minimal level so that individuals could reach the limit without even noticing that there’s sufficient amount of intoxication for that to happen. In several legal systems, drunk driving is an offence that comes under strict liability with defence of intoxication being excluded, generally the person who has added the intoxicating substance to the drink of the drinker without his knowledge needs to be prosecuted instead of the driver.\footnote{P.S.A. PILLAI, PSA PILLAI’S CRIMINAL LAW (9 ed. Butterworths India 2000)}

The Modal Penal Code of the United States has a provision of “pathological intoxication”, it is a medical condition in which the person who is intoxicated cannot foresee the consequences of his actions, by a certain quantity of alcohol which leads to disproportionate intoxication.\footnote{Criminal Law: Intoxication, NATIONAL PARALEGAL COLLEGE (Oct.5, 2020, 2:36 AM) https://lawshelf.com/courseware/entry/intoxication/}

The defence of intoxication will not be available to individuals who continue drinking the spiked drink even after they start realising the symptoms of intoxication, as they are expected to be aware of the risks and impacts. If after recognising the symptoms, the individual does not consume the spiked drink realising the presence of some unknown substance in their drink, then carrying on an activity which would cause harm to others and himself will not fall under the defence of intoxication. In simpler words, the policy underlying this is that law aims to safeguard the interest of public over the interest of a certain individual, who wilfully and negligently puts public and themselves in danger.

**Prevention of misuse of Intoxication as a defence**

The defence of intoxication is surrounded with a lot of arguments and criticisms regarding the legal responsibility of the offenders who commits offence when intoxicated. The dilemma that arises regarding this kind of offence is whether the offence should be seen from the community’s objective viewpoint or from the from the offender’s subjective viewpoint\footnote{Constructive Murder – Drunkenness in Relation to Mens Rea, 34 HARV. L. REV (1920)}. There is also a moral dilemma as to whether sympathise with the offender who was intoxicated & if yes, is it at the expense of the victim who is innocent?

Several serious crimes are committed by people who are intoxicated by either drugs or alcohol. People shouldn’t think the defence of intoxication as a doorway for them to commit crime and blame it all on the
intoxication & get away with lesser punishment. In the case of *Rex v. Pearson*\(^{24}\), the accused murdered his wife in a gruesome way by a rake shank. His only defence for his actions was that he was drunk.

In the recent developments, offenders will not be granted the defence of intoxication if the crime was extremely heinous and the natural consequences can be foreseen. In the case of *Babu alias Mubarik Hussain v. State of Rajasthan*, it was held that just by proving that the accused mind was affected because of intoxication which resulted in in him acting violently will not negate the fact that he unaware of the natural consequences of his actions. Therefore, his plea was rejected by the court as the crime was extremely brutal.\(^{25}\)

The present provision for defence for intoxication isn’t very sound-proof, it has many loopholes. It does not provide clear distinction between basic intent crimes and specific intent crimes regarding to mens rea. Intoxication that completely does not exclude mens rea shouldn’t be a defence. It should be a defence only to offences that completely negates the mental element & not when only the inhibitions are lost. Voluntary intoxication should be defined as suggested by the Butler Committee “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.”\(^{26}\)

**Conclusion and Suggestions**

The defence of intoxication which is provided in General Exceptions of IPC, isn’t a very powerful defence, even if it is applied it might just act as a mitigating factor while giving sentence, but does not relieve an accused from liability. Intoxication which is involuntary has a defence, whereas defence isn’t available when the consumption is voluntary, because drunken mens rea is still a mens rea. Voluntary intoxication exempts intent, but it assumes the accused to have the same knowledge as if he wasn’t intoxicated. The foreseeability test helps in determining if there is presence of liability and to test if the consequences of the acts can be foreseen. In cases where the magnitude of the crime is extremely serious, then the accused will be held liable even if the intoxication is involuntary.

If Sec.85 and Sec. 86 are read consecutively, it makes it clear that Sec. 86-Voluntary Intoxication is actually an exception to Sec.85-Involuntary Intoxication. Defence of intoxication is an unclear and complex defence; it might seem simple in theory but it is far more difficult to apply it practically in the real world. The Indian Penal Code which is given to us by the British is 160 years old, with the advancement of society, crime rate

---

\(^{24}\)(1983) 152 CLR 254  
has increased and our society has witnesses different kind of crimes, the defence of intoxication is very feeble for the gruesome crimes that happen under the influence of alcohol and drugs; hence, it is in dire need of amendment or reform. The difference between basic intent & specific intent crimes regarding intoxication should be included in the provision to make the law clearer, which will make the application of this defence much easier. The reform should be done in such a way that people shouldn’t think the defence of intoxication as a free pass for the crimes that they commit and misuse it. It should also make sure to safeguard the interests of the public from reckless and rash acts of intoxicated people.

References

- Alcoholic Dementia – Can Alcohol Abuse Cause Dementia?, VERTAVA HEALTH EDITORIAL TEAM (Oct.2, 2020, 12:50 PM)
- Amit Pratap Shaunak, Intoxication – No Ground for Dilution of Murder Case, MONDAQ (2014)
- Consent Not Exonerating From The Criminal Liability (Type-Two), SHODHGANGA (Oct.3, 2020, 12:00 AM)
- Constructive Murder – Drunkenness in Relation to Mens Rea, 34 HARV. L. REV (1920)
- Himanshu Arora, Defence of Intoxication Under Indian Penal Code, 1860, SSRN, 2019
- Nishtha Sinha, Intoxication as a Defence under Indian Penal Code, LAW AUDIENCE JOURNAL, vol.1, no.2 (2018)
- P.S.A. PILLAI, PSA PILLAI’S CRIMINAL LAW (9 ed. Butterworths India 2000)

List of Cases

- Basdev vs The State Of Pepsu A.I.R. 1956 SC 488
- D.P.P. v. Beard, (1920) A.C. 479
- Reninger v. Fogossa (1551) K. B. 75 Eng. Rep, 1
- R v. Lipman (1970) 1 QB 152
➢ R v. Kingston (1994) 3 WLR 519
➢ R v. Sheehan and Moore (1975) 60 Cr App R 308
➢ Soolkal & Francis Mansingh. v. The State (Trinidad And Tobago) (1999) UKPC 37
➢ Venkappa Kannappa Chowdari v. State of Karnataka, 1996 Cri LJ 15 (Kant) (DB)

**Legal Databases**

➢ Hein Online – [https://home.heinonline.org/](https://home.heinonline.org/)
➢ Manupatra – [https://www.manupatrafast.com/](https://www.manupatrafast.com/)
➢ SCC Online – [https://www.scconline.com/](https://www.scconline.com/)
➢ Lexis Nexis – [https://www.lexisnexis.com/](https://www.lexisnexis.com/)

JSTOR - [https://www.jstor.org/](https://www.jstor.org/).