

# INTOXICATION AS DEFENCE FOR CRIMINAL LIABILITY

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## ABSTRACT

A person can be intoxicated in a number of ways, but the most common way would either be drugs or alcohol. Intoxication and drunkenness is a consequence of drinking intoxicating liquors to such an extent as to alter the normal condition of an individual and significantly reduce his capacity for rational action and conduct. It can be asserted as a defense in civil and criminal actions in which the state of mind of the defendant is an essential element to be established in order to obtain legal relief. Intoxication is considered here as a defence whether complete or in part, but it should be noted that intoxication sometimes makes the crime more serious than it otherwise would have been, as in drink-driving. Law aims to do justice for all, in this case it clearly wouldn't be justice if the drunken man is let go on the basis of mere intoxication.

This paper will highlight how intoxication is given as a defence under Section 85 and 86 but it also is said that intoxication is not a very strong defense, and even if it serves to reduce the severity of a punishment, a person cannot escape completely from liability.

## INTRODUCTION

The common law has always had difficulty dealing with intoxicated offenders. Clearly intoxication should not be an excuse or justification, nor are persons who use intoxicants exempted from meeting the demands of the criminal law or answering for their failure. Intoxication, if relevant to questions of criminal responsibility and liability, seems to be so because intoxication can affect a person's mental states. Intoxication might be relevant to the mental states of persons at the time they commit an offence, and so relevant in determining whether they had the required mens rea for the crime charged. Not surprisingly, then, the "intoxication defense" began as a common law defense in recognition of the fact that an accused person may be sufficiently intoxicated not to have the subjective mens rea for the crime charged.

### 1. DEFENSE AND MENS REA

#### Defense -

Intoxication as a ‘defense’, strictly speaking, in terms of the determination of guilt or non-guilt, intoxication is not in fact a ‘defense’ in criminal proceedings. Rather, it is ‘a factual matter which bears upon the existence or non-existence of an ingredient of the offence’. Intoxication may negate the elements of a crime if it causes a condition inconsistent with criminal responsibility. That is, at common law evidence of intoxication may be used by the defense to support a claim that: the criminal conduct was performed involuntarily; or the conducted was not intended or the accused did not have the requisite mens rea for the offence.

### **Mensrea -**

A fundamental principle of [Criminal Law](#) is that a crime consists of both a mental and a physical element. Mens rea, a person's awareness of the fact that his or her conduct is criminal, is the mental element, and *actus reus*, the act itself, is the physical element.

Today most crimes, including commonlaw crimes,are defined by statutes that usually contain a word or phrase indicatingthe mens rea requirement.A typical statute, for example, may require that a person act knowingly, purposely, or recklessly.Sometimes a statute creates criminal liability for the commission or omission of a particular act without designating a mensrea. These are called [Strict Liability](#) statutes. If such a statute is construed to purposelyomit criminal intent, a person whocommits the crime may be guilty even though he or she had acknowledge that his or her act was criminal and had nothought of committing a crime. All that isrequired under such statutes is that the act itself is voluntary, since involuntary acts are not criminal.

## **2. THE INTOXICATION RULES**

### **The State Of Intoxication Referred To In Section 85 and Section 86 of the Penal Code -**

There are of course many varying degrees of drunkenness which culminate in a state in which the person becomes incapable of knowing the nature of any act. The word “state of intoxication” In Section 86 can only mean intoxication which renders a person incapable of knowing the nature of the act in question or that he is doing what is either wrong or contrary to law when he commits the act.

Intoxication and drunkenness are two words that can be used interchangeably. A person who is under the influence of alcohol does not usually think before he says or does something. The level of alcohol the person has consumed also plays a vital role in his behavior, generally people who consume alcohol to a large extent are the ones who act in an inappropriate manner. They are similar to people of unsound mind. They do not know the consequences of the act that they engage themselves in, they might also not know that the act that they are doing is illegal and would be punished for the same. But there are also cases when the “intoxicated person” who has committed a crime would not be punished, this is when the intoxication has occurred involuntarily and the burden of proof that he was intoxicated against his will lies in the hands of the accused.

### **State Of Intoxication –**

The word ‘state of intoxication’ in sec 86 can only mean intoxication which renders a person incapable of knowing the nature of the act in question or that he is doing what is either wrong or contrary to law, when he commits it. It would be extremely dangerous to extend the protection afforded by sec 86, to persons who commit serious offences under the influence of liquor in varying stages and differentiate culpability in their favour as opposed to similar offences by sober persons. This is valid as a defense only if the intoxication was involuntary.

#### **a. Situations Where A Person Cannot Claim The Benefit Of Sec 85 Of IPC**

Intoxication is not an excuse for criminal conduct, but it may deprive an intoxicated person of the mental capacity to form the intent required by law to be convicted of certain crimes. This is a very complex area of law and standards differ from state to state.

- i. Where the intoxication is administered to the accused by stratagem or fraud of another, as when mixed with his food or drink and given to him in confidence he is excused.
- ii. On this view if friends or relatives persuade a person to drink a little more than he can reasonably digest, he cannot complain that he was made to drink a little more than he can reasonably digest, he cannot complain that he was made to drink against his will.
- iii. Where an accused takes liquor to alleviate pain, it is not a case of involuntary drunkenness and the accused is not protected by Section 85.

#### **b. Onus Of Proof ( Difficulty Of Proof )**

The onus of proof about reason of intoxication due to which the accused had become incapable of having particular knowledge in forming the particular intention was on the accused.

The burden of proof that he/she committed the crime only because of the presence of alcohol in their body and would not have done so if not for it lies in the hands of the accused. This burden of proving innocence is not an easy task. The person cannot say that he committed a mistake while

he was drunk. The consumption of the intoxicated drink itself cannot be an excuse, if a person says that he was intoxicated to a level that he got the idea of committing the crime only after the alcohol entered his body and that he would have not acted in the way he did if he were sober it will not stand as a defense.

### **3. INTOXICATION AS DEFENCE**

#### **a. Intoxication and Intention**

The demarcating line between intention and knowledge is no doubt thin but it is not difficult to perceive that they connote different things.

**i. Intoxication as a denial of mens rea:**

The concept of intoxication defense under criminal law is not considered a defense either by excuse or exculpation. It is more usually considered an aggravating factor that increases the degree of social disapproval reflected in the sentence imposed by the court.

**ii. Involuntary intoxication is not a defense if mens rea is present:**

If a drunk person causes a fatal injury to another he cannot be convicted under s.302 I.P.C as he did not have the requisite intent to kill but could still be convicted under s. 304 Part II, I.P.C., by virtue of imputed knowledge under s. 86 I.P.C. “When people say that a man must be taken to intend the natural consequences of his acts, they fall into error: there is no ‘must’ about it. It is only ‘may’.

**iii. Foreseeability Test:**

The presence or absence of liability may be said to rest on a foreseeability test. The fact that the consumption of alcohol or the ingestion of drugs may cause loss of control is universal knowledge. Thus, anyone who knowingly consumes such intoxicating substances is, at the very least, committing a rash and negligent act averse to the possibility of losing control. One therefore attracts the charge of deliberate intent by consuming substances known to lead to such consequences. Moreover, loss of control may not be instantaneous and without symptoms. However, combined with the issue of involuntary consumption, the position becomes quite contentious. Even states with a strict liability offence excluding drunkenness as a defence generally require prosecution of the person who laced the drinks without the knowledge of the person who ultimately consumed it.

#### **b. Intoxication And Concurrence**

**a. Intoxication causes automatism:**

The accused in a drunken state suffers concussion and commits an offence in a state of automatism resulting from the concussion. In *Stripp* the court decided that the accused should be acquitted on grounds of automatism since intoxication was too remote from the act. The law commission held that the case suggests the possibility that where there is a course of automatism clearly separable in time or effect from the intoxication and supported by a foundation of evidence,

then a defence of automatism may be available, but when causal factors are less easily separable it would seem that the presence of the intoxication will be on policy grounds lead to adoption of Majewski rule to exclude reliance on automatism.

b. Insanity causes intoxication or automatism:

In different times and in different societies, the response towards public drunkenness has been on a scale of diametrically opposite attitudes. While certain cultures and societies have accepted alcohol consumption or drug taking as a part of their religious or social rites, such behaviour has attracted an entirely contrary response extending to its denigration as immoral and sinful. The norms of propriety have therefore always been dynamic and modern law has therefore appropriately steered clear of reflecting these wavering standards and criminalizing intoxication per se but by adopting the more neutral standards based on whether an act arising from intoxication was voluntary or involuntary. The viability of any defense of a criminal act therefore rests on a combination of the voluntary vs. involuntary principle and the universal knowledge that consumption of intoxicants is likely to induce loss of control. The evolution of law in this area reflects a careful application of these standards.

#### 4. CONCLUSION

After analyzing the research, it can be said that intoxication is not a very strong defense, and even if it serves to reduce the severity of a punishment, a person cannot escape completely from liability. This is because common man will not have much respect for the law if a drunken man commits something against him, and the man gets away with his conduct merely because he was too intoxicated to think clearly. More often than not people commit crimes and claim that they were under the influence of alcohol to try and get the benefits of Sec 86 under the IPC. But thanks to the science and technology prevalent it is easy for the courts to analyze whether the accused was really under the influence of alcohol or other intoxicated substance if he was arrested or taken into custody immediately after the crime scene. Witness also plays a big role in these cases where the judgments are to be taken where the accused was not arrested immediately after the scene or where he claims false intoxication. In India as well, the law that has been followed till date has its foundation in the British law.

#### 5. REFERENCES

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