

Subject: Criminology

Production of Courseware

 - Content for Post Graduate Courses



Paper :

Fundamentals of Crime, Criminal Law and Criminal Justice

Module :

General Exceptions Part-B



 A Gateway to All



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Quadrant I- Description of the Module

| Description of Module | |
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| Subject Name | Criminology |
| Paper Name | Fundamentals of Crime, Criminal Law and Criminal Justice |
| Module Name/Title | General Defences Part-B |
| Module Id | 16 |
| Pre-requisites | A general understanding of the primary principles of criminal law is required for a proper understanding of this module. |
| Objectives | <p>To understand the excusable defences based on consent of the person being harmed or on the consent of his guardian</p> <p>To understand the meaning of the term 'consent' as used in the Indian Penal Code.</p> <p>To understand the excusable defence of doing a beneficial act without consent</p> <p>To understand the excusable defence of communication made in good faith</p> <p>To understand the excusable defence of acts done under compulsion</p> <p>To understand the excusable defence of</p> |



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| | trivial acts. |
| Key Words | Consent, benefit, good faith, de minimis no curat lex, communication, compulsion, threat |

Quadrant- II- E-Text

Introduction

As we have seen in the earlier module titled “General Exceptions Part-A”, Chapter IV of the Indian Penal Code deals with the general principles under which the criminal liability of an individual may be held to be excused or justified. In the previous module, we have discussed excusable defences like Mistake, Accident, Judicial and Executive Acts, Necessity, Immaturity, Insanity and Intoxication.

In this module, we will be dealing with the following;

1. Act Done With Consent
2. Beneficial Act Done with Consent
3. Act Done for Child/Insane person with Consent of Guardian
4. Beneficial Act Done Without Consent
5. Communication Made in Good Faith
6. Acts Done Under Compulsion
7. Trivial Acts

Meaning of Consent

As can be noticed, the idea of consent of the person to whom harm has been caused in an important principle in sections 87, 88 and 89. Thus, before we seek to analyse the import of these sections, it is important to have a better understanding of the concept of consent. What constitutes consent has not been explained or defined in the Indian Penal Code. However, section 90 provides certain prescriptive norms regarding what does not amount to consent.

According to section 90, a consent given by a person will not be considered consent as intended by any section of the Indian Penal Code under of the following circumstances;

1. When Consent is given under fear of injury or misconception of fact and if the person committing the act knows or has reason to believe that the consent has been given due to such fear or misconception
2. When consent is given by a person who due to the unsoundness of his mind is not able to understand the nature and consequences of the act for which he is giving consent
3. When the consent is given by a person who is under twelve years of age

It needs to be noted that when the consent is given under fear or misconception, to claim that the same should not qualify as consent under the Indian Penal Code, it is necessary that the person who is doing the alleged act because of the consent given is aware that the consent was given in such circumstances.¹

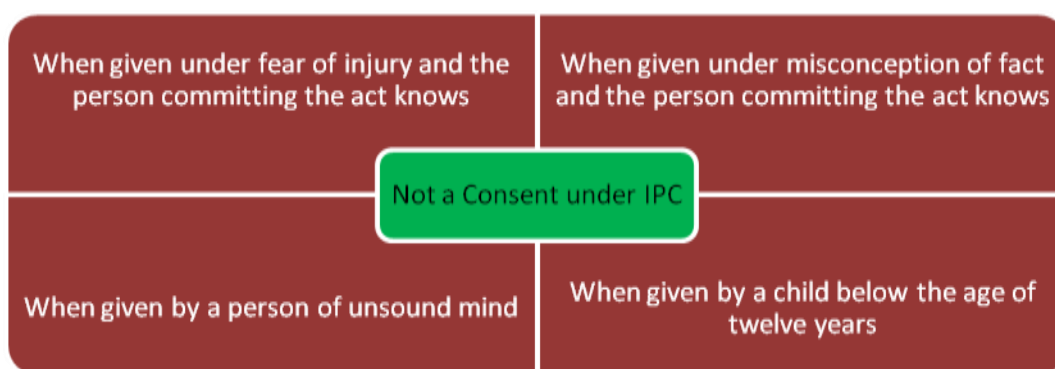
¹ Vibhute, K.I., (2011) *Criminal Law* (pp. 167-169)

Y has given his consent to X for a dangerous stunt where X will break bricks placed on the chest of Y with a hammer. X has threatened Y that he if does not agree for the stunt, X's associates will beat him up.

The consent given to X is invalid as Y gave his consent under fear.

Y has given his consent to X for a dangerous stunt where X will break bricks placed on the chest of Y with a hammer. Z has threatened Y that he if does not agree for the stunt, Z's associates will beat him up. X is not aware that Y has agreed due to the threats of Z.

Though Y gave his consent under fear, X was not aware of the same. The consent given to X will not be invalid under section 90.



Act Done with Consent

Section 87 provides exemption from criminal liability under the following circumstances;

1. X does something which causes harm to Y
2. The thing done by X is not intended to cause death or grievous hurt
3. It is not known by X that the act is likely to cause death or grievous hurt
4. Y has given consent to X for doing such work either impliedly or expressly and to suffer harm
5. Y is above the age of eighteen years

Section 87 incorporates the legal maxim of *volenti non fit injuria*² which literally means; 'to a willing person, injury is not done'. Thus, any harm suffered by a person to which he has consented does not create a criminal liability as long as there was no intention to cause death or grievous hurt or no knowledge that the act is likely to result in death or grievous hurt.

X and Y agree to practice wrestling with each other. This agreement implies consent on the part of both X and Y to suffer any harm as a result of wrestling.

²Mishra, S.N., (2004) *Indian Penal Code* (pp. 197-198)



If Y suffers any harm while wrestling, X will not be liable.

Y wants to die. He requests X to kill him. Based on the consent of Y, X shoots Y.

X is not protected under section 87 as consent given for causing death is not covered under section 87.

Beneficial Act done with Consent

In order for an act to be excused under section 88, the following ingredients need to be proved;

1. X does something which harms Y
2. The act was not done with the intention of causing death
3. The act was done in good faith for the benefit of Y
4. Y has given consent, express or implied, to suffer the harm or take the risk of the harm

Section 88 expands the situational domain in comparison to section 87 as X will be protected even if the act was done by him with the intention to cause grievous hurt.³ Under section 87, consent by Y to suffer grievous hurt is not valid. However, under section 88, consent to suffer grievous hurt is valid. The additional condition to justify this expansion is the fact that the act being done is for the benefit of Y. Under section 87, a simple consent of Y will be sufficient but for a matter to be considered under section 88, apart from the consent of Y, the act must be for the benefit of Y.

It is for this reason that section 88 allows for consent to given for more severe harm such as causing grievous hurt.

Y has a brain tumour. He consents to a surgical operation which is to be performed by X.

X is not responsible for any harm which may be caused to Y while performing the surgery.

It needs to be noted that both under section 87 and 88, Y may suffer more harm than he had anticipated. However, as long as the other requirements of section 87 and 88 are satisfied, X will not be liable.

Thus under section 87, even if death or grievous hurt is caused, X will not be liable as long as he did not commit the act with the intention of causing death/grievous or with the knowledge that death or grievous hurt may be caused. However, in such circumstances, X should not have been negligent or no foul play should have been involved.

Under section 88, the only requirement is that the act must not have been committed with the intention of causing death. Thus, even if X knew that death is likely to be caused but committed the act without the intention of causing death, he is protected as long as he has acted in good faith.

³ Mishra, S.N., (2004) *Indian Penal Code* (pp. 199-201)



Act Done for Child/Insane person with Consent of Guardian

In order for an act to be excused under section 89 of the Indian Penal Code, the following must happen;

1. X does something which causes harm to Y
2. X commits the act in good faith for the benefit Y who is;
 - a. under twelve years of age
 - or
 - b. of unsound mind
3. X is the guardian of Y or does the thing with the consent, express or implied of the guardian or other person having the lawful charge of Y.
4. X has neither intentionally caused the death of Y nor attempted to cause the death of Y
5. X has not done something which he knows is likely to cause death unless he did it to prevent the death or grievous hurt, curing of grievous disease or infirmity
6. X has not voluntarily caused grievous hurt or attempted to cause grievous hurt unless he did it to prevent the death or grievous hurt, curing of grievous disease or infirmity

In addition to the above ingredients, section 89 mandates that it will not extend to the abetment of any offence if it does not already extend to the actual commission of such offence.

Section 89 has a similar ethos to section 88 with the vital difference being that the responsibility of giving consent is transferred to the guardian. Section 88 excuses X from the harm inflicted by him on Y if Y consented to the same and the act was for the benefit of Y. Children and persons of unsound mind are not deemed capable to making a judgment regarding the nature of acts and also what is beneficial to them. Thus, that power has been given to the guardians. Thus the guardian can himself do things which may cause harm or can permit somebody else to cause harm in order to benefit the child or the person of the unsound mind.

X intentionally kills his daughter Y when his village is raided by bandits so that she is not abducted by them.

X is not entitled to the protection of section 89 as he has intentionally caused death of Y.



Y has been suffering from a prolonged illness which has completely paralysed him. despite all the efforts of various doctors, his condition has not improved. Y's father, X, permits Z, a doctor to administer an experimental drug on Y. X is aware that being a new drug, the side effects may cause the death of Y. Y dies after administration of the drug.

This situation is covered under section 89. Though X permitted the administration of drug knowing the death is likely to be caused, he did it to cure Y from paralysis.

Beneficial Act Done Without Consent

Situations may arise where something needs to be done for the benefit of a person without the opportunity to obtain his consent. In such scenarios, it would be unfair to hold a person liable who is good faith was trying to help.

Section 92 deals with such scenarios where criminal liability is excused even when an act is done without the consent of the concerned person if it is being done in good faith for his benefit.

Section 92 has the following ingredients;

1. X has done something which has caused harm to Y
2. X has committed the act in good faith for the benefit of Y
3. Y has not given his consent to X
4. X has committed the act;
 - a. In circumstances where it was not possible for Y to give his consent
 - or
 - b. Y was incapable of giving his consent and Y's guardian cannot be contacted in time for the beneficial act to be done
5. X has neither intentionally caused the death of Y nor attempted to cause the death of Y
6. X has not done something which he knows is likely to cause death unless he did it to prevent the death or grievous hurt, curing of grievous disease or infirmity
7. X has not voluntarily caused hurt or attempted to cause hurt unless he did it to prevent the death or grievous hurt, curing of grievous disease or infirmity

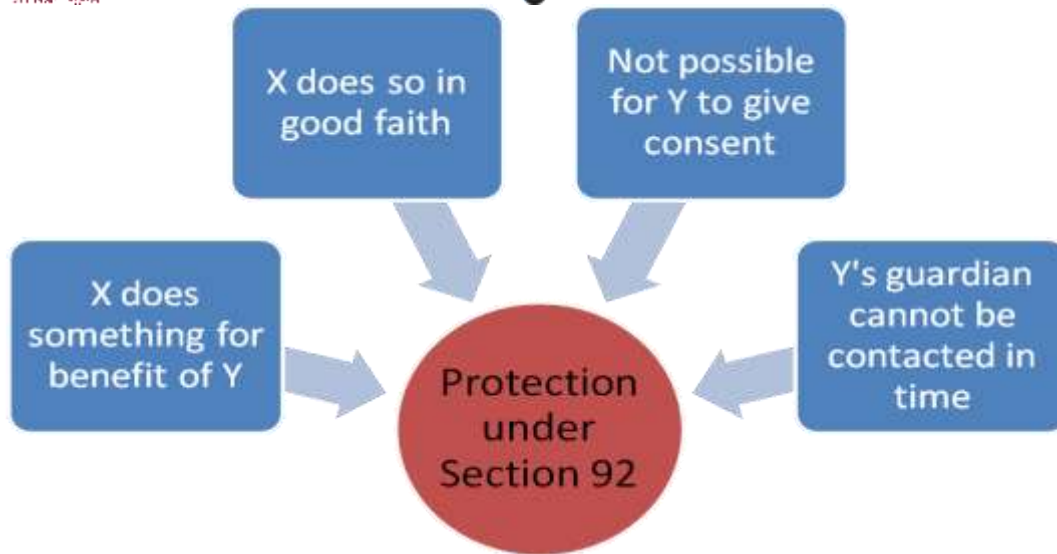
As with section 89, section 93 prescribes that it will not extend to the abetment of any offence if it does not already extend to the actual commission of such offence.

Y is being attacked by an elephant. X fires at the elephant knowing that he bullet might also hit Y. Y is severely injured by the bullet.

X is not liable for the injury caused to Y.

X, a doctor finds Y, a person of unsound mind to be suffering from a heart attack in the street. X immediately rushes him to the hospital and performs the necessary surgery to save his life. X did not take the permission from Y's guardians.

X is not liable for any harm which may be caused to Y as he did not have the time to contact the guardians.



Meaning of Benefit

The explanation to section 92 clarifies that mere pecuniary benefit is not benefit as contemplated under sections 88, 89 and 92. To qualify as benefit, it must be some tangible and personal benefit to the person who is being harmed. Also, the benefit for which the act is being done should outweigh the harm/injury being inflicted.⁴

Communication in Good Faith

When any harm is caused in reaction to a communication made in good faith, the person making the communication is not responsible for the harm so caused as long as the communication was made for the benefit of the person. Good faith refers to a state of mind where the person is taking due care and attention. When a person does something without taking due care and attention, the act is not said to have been done in good faith even if the intention was bonafide.

Y is admitted to the hospital after falling severely sick. He is diagnosed with AIDS and X, his doctor, informs him that the chances of his survival are slim. Shocked by this revelation, Y suffers a cardiac arrest and dies.

X is not responsible for the death of Y. X has made the communication in good faith and revelation of the true condition of his health is to the benefit of Y as he can then make plans for his will or may make other arrangements concerning his treatment or family.

Acts Done Under Compulsion

The foundation of criminal liability is based on a person doing something prohibited by law of his own accord. Thus, if a person commits an act because of threat, he is entitled to be considered in a different perspective.

Section 94 excuses a man acting under threat in the following circumstances;

⁴Mishra, S.N., (2004) *Indian Penal Code* (pp. 207-208)



1. X commits an offence
2. The offence is not murder or an offence against the state punishable with death
3. X commits the offence as he is compelled to do so by threats
4. The threats were of a nature which reasonably caused X to apprehend that instant death will be the consequence if he does not commit the offence
5. X has not out of his own accord, placed himself in a situation where he could be so threatened
6. X has not, under threat any other harm less than instant death, placed himself in a situation where he could be so threatened

The only fear which is recognised by section 94 as providing an exemption from criminal liability is the fear of instant death. Fear of any other bodily injury or even fear of death at some point of time in future is not an excuse under section 94. However, even when facing one's own death, a person is not permitted to kill another or commit an offence against the state which is punishable with death.

X is apprehended by a gang of dacoits. They threaten to break his leg if he does not help them in robbing Y.

X is not protected under section 94 as the threat under which he acted was not a threat of instant death.

X is apprehended by a gang of dacoits. They threaten to shoot him immediately if he does not help them in robbing Y.

X is protected under section 94.

Trivial Acts

Section 95 incorporates in the Indian Penal Code the maxim of '*de minimis non curat lex*' which means that law does not take account of trifles.⁵ Holding a person liable under criminal law is a serious affair with far reaching consequences on the person who is convicted. If life, there are many minor matters which should not consume the energy and resources of the criminal justice system.

Section 95 provides the following;

1. X does an act which causes harm to Y
2. The harm caused to Y is so slight that no person of ordinary sense and temper to complain about it.

Thus, section 95 is intended to ignore such everyday occurrences which though technically may come under the purview of criminal law are so trivial that a claim in that regard should not legitimately be maintained.⁶

X steps on the toes of Y while getting on a crowded train.

In this situation, X cannot be held liable as the harm caused to Y is so trivial and negligible that it would be waste of time for the criminal justice system to spend its resources on it.

⁵ Vibhute, K.I., (2011) *Criminal Law* (pp. 187-189)

⁶ Vibhute, K.I., (2011) *Criminal Law* (pp. 187-190)



There are many matters, issues and disputes in society so minor that they should not be dragged into to the courts.

Summary

1. Consent given by a person is not as contemplated in IPC when;
 - a. Consent is given under fear of injury and the person committing the act is aware
 - b. Consent is given under misconception of fact and the person committing the act is aware
 - c. When consent is given by a person who due to the unsoundness of his mind is not able to understand the nature and consequences of the act for which he is giving consent
 - d. When the consent is given by a person who is under twelve years of age
2. Section 87 incorporates the legal maxim of *volenti non fit injuria* which literally means; 'to a willing person, injury is not done'. Thus, any harm suffered by a person to which he has consented does not create a criminal liability as long as there was no intention to cause death or grievous hurt or no knowledge that the act is likely to result in death of grievous hurt.
3. Under section 88, any harm suffered by a person to which he has consented does not create a criminal liability as long as there was no intention to cause death and the act was done for his benefit.
4. Under section 89, any harm inflicted on Y by X or with the consent of X will not constitute an offence if Y is a minor or a person of unsound mind and the act was done in good faith for the benefit of Y and if X is the guardian of Y.
5. Under section 92, any harm inflicted on Y by X will not constitute an offence even if Y has not given consent if the act was done in good faith for the benefit of Y and it was not possible to obtain the consent of Y.
6. Any harm inflicted due to communication made in good faith for the benefit of the person is not an offence
7. Commission of any offence other than murder or an offence against the state punishable by death is excusable if person was compelled to do so under threat giving rise to apprehension of instant death.
8. It is not an offence if the harm caused is so slight and trivial that no man or ordinary temper will complain about it.