

## The Indian Penal Code: Differences Between Justification and Excuses and Mistakes, Necessity And Accidents As Defenses

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*This article covers the distinction between two closely related aspects of the Indian Penal code, general or affirmative defenses of, justification and excuses. In the context of the criminal law, justification and excuse are touchstones for prescribing and proscribing conduct generally and for assigning guilt or innocence in the particular case. They are of paramount importance in both establishing the parameters of criminal offenses and providing for their principled enforcement. When operating in this fashion, justification and excuse provide an exculpatory rationale for finding an actor not guilty, even if he has engaged in all the conduct, possessed the state of mind, and caused the harm otherwise necessary to constitute a crime. Four distinctions between claims of justification and of excuse, in this article, warrant emphasis, as they are of utmost important for understanding the concept of justification and excuses better.*

*The rest of the article deals with the general defenses of mistakes, necessity and accidents covered under the sections 76 and 79,81 and 80 of the Indian Penal Code of 1860, respectively. The aspects of mistake of law and mistake of fact are clearly dealt with. These defenses are covered in detail and are also explained clearly with examples of or in the light of celebrated case laws in these areas that have become the base precedents for forming a ratio in most of the cases related to these aspects, both English and Indian.*

### **Differences Between Justification and Excuses**

**JUSTIFICATION** MEANS, “THE ACT BY WHICH A PARTY ACCUSED SHOWS AND MAINTAINS A GOOD AND LEGAL REASON IN COURT, WHY HE DID THE THING HE IS CALLED UPON TO ANSWER.”

**Excuse Means**, “a reason alleged for the doing or not doing a thing.”

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of paramount importance in both establishing the parameters of criminal offenses and providing for their principled enforcement. It is not an overstatement to observe that a moral and coherent understanding and application of justification and excuse is indispensable to a moral and coherent system of criminal laws. Perhaps the clearest expression of justification and excuse within the criminal law is as general or affirmative defenses. When operating in this fashion, justification and excuse provide an exculpatory rationale for finding an actor not guilty, even if he has engaged in all the conduct, possessed the state of mind, and caused the harm otherwise necessary to constitute a crime.

#### **Four distinctions between claims of justification and of excuse warrant emphasis.**

**First**, claims of justification are universal. They extend to anyone aware of the circumstances that justify the nominal violation of the law. If the threatened victim may justifiably defend himself against unlawful aggression, then others in a position to do so may justifiably intervene on his behalf. Excuses, in contrast, are personal and limited to the specific individual caught in the maelstrom of circumstances. This limitation derives from the required element of involuntariness in excused conduct. Sometimes excuses are defined so as to permit intervention on behalf of "relatives or other people close to the actor" who are threatened with imminent harm. The actor's intervening on behalf of this limited circle of endangered people might well be sufficiently involuntary to warrant excuse. Intervention on behalf of strangers is thought to be freely chosen and therefore not subject to excuse.

**Second**, claims of justification rest, to varying degrees, on a balancing of interests and the judgment that the justified conduct furthers the greater good (or lesser evil). Excuses do not ostensibly call for a balancing of interests. Yet, indirectly, an assessment of the relation between the harm done and harm avoided might inform our judgment whether the wrongful conduct is sufficiently involuntary to be excused. Committing perjury to avoid great bodily harm would probably be excused, but committing mayhem on several people to avoid minor personal injuries would probably not be. As the gap between the conflicting interests widens, the assessment of the actor's surrendering to external pressures becomes more stringent. This covert attention to the conflicting interests elucidates the normative basis for finding conduct "involuntary."

**Third**, claims of justification and of excuse derive from different types of norms in the criminal law. Claims of justification rest on norms, directed to the public at large, that create exceptions to the prohibitions of the criminal law. Excuses are different. Excuses derive from norms directed

not to the public, but rather to legal officials, judges, and juries, who assess the accountability of those who unjustifiably violate the law. Excusing a particular violation does not alter the legal prohibition. Recognizing mistake of law as an excuse does not change the law; if the excused, mistaken party were to leave the courthouse and commit the violation again, he would clearly be guilty. Neither does recognizing insanity, involuntary intoxication, or personal necessity alter the prohibitions against the acts excused on the basis of these circumstances. If someone relies upon the expectation of an excuse in violating the law (say, his ignorance of the law or his being subject to threats), his very reliance creates a good argument against excusing him for the violation. The expectation of an excuse conflicts with the supposed involuntariness of excused conduct.

**Finally**, Justification defenses focus on the act and not the actor—they exculpate otherwise criminal conduct because it benefits society, or because the conduct is in some other way judged to be socially useful. Excuse defenses focus on the actor and not the act—they exculpate even though an actor's conduct may have harmed society because the actor, for whatever reason, is not judged to be blameworthy. Accordingly, a mother would be justified and thus be in no need of an excuse for trespassing into a store to take tools to rescue her son trapped in a house fire; she would be excused—but not justified—for robbing the store at the behest of her son's kidnapper in exchange for her son's safe return. Society has determined through its criminal justice system that a mother does not deserve to be stigmatized or punished in either circumstance.

### **Mistake As A General Exception**

**Section 76 of THE INDIAN PENAL CODE** states, “ the act done by a person bound, or by mistake of fact believing himself bound, by law”:-

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law, to do it. Example, if an officer A fires a mob by the order of his superior officer, in conformity with the commands of the law, A has not committed any crime.

**Section 79 of THE INDIAN PENAL CODE** states, “act done by a person justified, or by mistake of fact believing himself justified, by law:-

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of mistake of law in good faith, believes himself to be justified by law, in doing it.

Example, A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

The common principles of *ignorantia juris non excusat* (ignorance of law is not an excuse) and *ignorantia facti excusat* (ignorance of fact is an excuse) have been embodied in sections 76 and 79 of the IPC.

Section 76 deals with those class of cases where a person by reason of a mistake (or ignorance) of fact, in good faith, considers himself bound by law to do an act, whereas, section 79 deals with that class of cases where by reason of a mistake of fact a person considers himself justified by law to do an act in a particular way.

The purpose of this section is to provide protection from conviction to persons, who are bound by law or justified by law in doing a particular act, but due to mistake of fact, committed an offence. The mistake must be in good faith and after exercise of due diligence.

The difference between the two provisions is shown in the examples.

The justification for exemption from criminal liability on the ground of a mistake of fact is based on the principle that a man who is mistaken about the existence of a fact cannot form the necessary intention required to constitute a crime and is, therefore, not responsible in law for his deeds.

Thus, a bona fide belief in the existence of facts, if they do exist would make an act innocent. However, ignorance of law is no defence to charge of crime, howsoever genuine it might have been. In other words, all persons resident in a country, whether subjects or foreigners, are bound by the law of the land. This is because every man is assumed to know or ought to know the laws. Ignorance of law is not an excuse because then every accused could claim that he was unaware of the law and it would be impossible for the prosecution to prove that the accused was cognizant of the law. In such situations administering justice will be next to impossible.

For an accused to get protection from either of these sections, the act must be done in good faith.

**GOOD FAITH IS ONE OF THE ESSENTIAL INGREDIENTS IN THESE SECTIONS.**

Section 52 defines good faith as “*nothing is said to be done in or believed in “good faith” which is done or believed without due care and attention*”. This definition is in the negative form. Section 3(22) of the general clauses act of 1897 defines the very same in a positive manner, “*A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not*”.

The element of honesty which is prescribed in the general clause is not introduced in the definition under the code. So, if a person however honest his intention, blunders, he cannot get the protection under the code because apart from his honest intention, he is also expected to act with due care and caution.

*Some cases can be cited as examples:*

**1) Carrying out the orders of a superior in good faith believing to be bound by law is a defence under the section 76 of the IPC-acquittal confirmed-Supreme court.**

***STATE OF WEST BENGAL VS SHREW MANGAL SINGH***

***[AIR 1987 SC 1917]***

The case of the prosecution was that the deceased and his brother were shot dead by the police at a point blank range and brutally murdered. According to the defence version, the accused police officers were on patrol when they were attacked by a mob. When one of the constables got injured, orders were given by the deputy commissioner of police to open fire. The accused constables were bound by law to obey the orders of the superior officer. Both the High Court and the Supreme Court held that the situation warranted and justified the order to open fire and hence, the accused got protection under the section 76 and cannot be held guilty.

**2) Act done in good faith believing it to be justified by law a defence-IPC, section 79-conviction quashed-MP High Court.**

**CHIRANGI V STATE**

**[1952 Cr LJ 1212 MP]**

Chirangi Lohar, a widower, lived together with his unmarried daughter, only son Ghudsai and nephew Khotla. Chirangi took an axe and went with Ghudsai to a nearby hillock to gather saidi leaves. When Khotla returned home in the evening Ghudsai was not there and Chirangi was sleeping with the blood-stained axe beside him. When Chirangi woke up at midnight Khotla asked him about Ghudsai's whereabouts and he replied that he had become insane and killed his

son in Budra Meta. It occurred to him that a tiger had come to him and that he then dealt blows with the axe.

Ghudsai's corpse was found dead on the hillock and Chirangi said that he killed him thinking him to be a tiger and that two of his sons had died from insanity and he himself was insane.

The trial judge convicted him and sentenced him to transportation for life under section 302 of the IPC for Ghudsai's murder.

The evidence of Dr.Dube, a psychiatrist, who has examined him, showed clearly enough that Chirangi's state of mind was in good faith and he killed his son thinking it was a tiger. He had no intention of doing wrong or committing any offence.

### **3) Mistake of law is no excuse to crime-Supreme Court-2 to 1**

#### **State of Maharashtra V Mayer Hans George**

**[AIR 1965 SC 722]**

It was held in this case that it is not necessary for the law to be published or made known outside India. In this case the respondent Mayer Hans George, a foreign national, who left Zurich on 27 November 1962 for Manila by a Swiss plane. The plane stopped for transit in Bombay where he did not embark but sat inside the plane. Based on prior information when the officials conducted a personal search they found 34kg gold slabs which was kept inside his jacket. According to the notification of the RBI on 8<sup>th</sup> of November 1962, which was published on 24 November 1962, restrictions were placed on the transit of gold carried from a place outside India to another outside India. The transit passengers were required to make a declaration in the Manifest for transit in the cargo of the carrier. Since George had not made such a declaration, he was arrested and charged for importing gold into India in contravention of the Foreign Exchange Regulation Act. He was also sentenced to one year's rigorous imprisonment by the trial court, which was set aside by the High Court on appeal. However, the state of government filed an appeal before the Supreme Court. One of the main grounds argued was that he was not aware of the notification. But ignorance was not an excuse so the court while upholding the conviction ruled that the sentence alone be reduced for the period already undergone.

### **Accidents As General Exception**

#### **Section 80: Accident in doing a lawful act.**

“Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution”.

The protection under this section will apply only if the act is a result of an accident or a misfortune. The word ‘accident’ is derived from the Latin word ‘accidere’ signifying ‘fall upon, befall, happen, chance’.

To bring an act within the legal meaning of the term ‘accident’, an essential requirement is that the happening must be one to which human fault does not contribute.

Accident and misfortune means not just the happening of the unexpected or unintended event, but it also means that such unexpected or unintended event, but it also means that such unexpected or unintended act resulted in injury to another. Thus, even injuries in sports and games are covered in this section.

Accidents have always been recognized as a valid defence to criminal liability, provided certain other conditions are also satisfied. First, the act under question should be ‘without any criminal intention or knowledge’. Secondly, the accident should have occurred while ‘doing of a lawful act in a lawful manner by lawful means’. Thirdly, the lawful act should have been done with ‘proper care and caution’. If these three criteria are satisfied, then an act done by accident or misfortune will not be an offence.

For the application of this section, it is essential to establish that the act was done without any ‘criminal intention or knowledge’. In other words, it must be without mens rea or guilty mind. An act which was intended or known, cannot obviously be an accident.

To avail protection under this section, an act should be an accident, done without any criminal intention and such an act should also be a law. If an act is not lawful or is not done in a lawful manner by lawful means, this section will have no application. Example, an accused gave a kick to a trespasser for the purpose of turning him out of the house. trespasser died as result of the kick. The court found him guilty as ‘a kick is not justifiable mode of turning a man out of the house’. The accidental act should not only be without any criminal intention and a lawful act, but the said lawful act should also have been exercised with proper care and caution. What is expected is not the utmost care, but sufficient care that prudent and reasonable man would consider adequate, in the circumstances of the case.

### **Some cases can be cited as examples:-**

#### **1) *The Allahabad High Court in Tunda v Rex (AIR 1950 ALL 95)***

This case dealt with two friends who were found of wrestling participated in wrestling match. One of them sustained injuries which resulted in a fracture. The other person was charged under section 304-A, IPC. The court held that when both agreed to wrestle with each other, there was an implied consent on the part of each to suffer accidental injuries. In the absence of any proof or foul play, it was held that the act was accidental and not intentional and the case falls completely within sections 80 and 87 of the IPC.

#### **2) *Atmendra V State of Karnataka (AIR 1998 SC 1985)***

The accused had fired at the deceased. The accused pleaded that it was an accident as the reaper swung by the deceased at the accused struck the gun. However no reaper was found at the place of occurrence. Further, the evidence of the ballistic experts ruled out that the firing was from a short distance. There was also evidence that there was dispute between the deceased and accused. The Supreme Court held that the act was intentional and not accidental. He was convicted under the section 302 and sentenced to life imprisonment.

#### **2) *Sita Ram v State of Rajasthan (1998 cri LJ 287)***

The accused was digging the earth with a spade. The deceased came to collect the mud. The spade hit the deceased on the head and he succumbed to injuries. The accused pleaded that it was an accident but the HIGH Court of Rajasthan held that the accused was aware that other workers would come and collect mud. The accused did not take proper care and precaution and acted negligently. He was convicted under the section 304-A of the IPC.

### **Necessity As A General Exception**

SECTION 81 of the INDIAN PENAL CODE: “act likely to cause harm, but done without criminal intent, and to prevent other harm”- Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

*EXPLANATION:* It is a question of fact in such a case whether the harm to be prevented or avoided was of such nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Example, A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life and property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act. A is not guilty of the offence.

Necessity is meant by a situation where conduct promotes some value higher than the value of the literal compliance with the law. It is on the principle of expediency that the law has recognized necessity as an excuse in criminal cases. In other words, what necessity forces it justifies, namely *quod necessitas, cogit defendit*.

Section 81 stresses three conditions to claim exemptions from criminal responsibility, namely:

- 1) The act must have been committed in order to avoid other harm;
- 2) The harm to be avoided must be such as to justify the risk of doing an act likely to cause harm; and
- 3) The act must have been committed in good faith without any criminal intention to cause harm.

Section 80 and 81 are analogous sections, the former dealing with accidents and the latter with inevitable accidents. However, there is a difference as to the nature and extend of mens rea prescribed under both these sections. Section 80 stipulates the absence of criminal intention as well as criminal knowledge.

But Section 81 stipulates the absence of criminal intention alone. Thus, the term 'without criminal intention' or 'knowledge' are present in section 80, whereas, the term used in section 81 is 'without criminal intention' alone. In fact, section 81 clearly contemplates a situation where the accused has knowledge that is likely to cause harm, but it is specifically stipulated that such knowledge shall not be held against him. Thus in certain situations even though the presence of knowledge is sufficient mens rea, in this section, knowledge alone will not be sufficient if there is absence of criminal intention. Knowledge has been described as awareness of consequences of the act. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.

The immunity from criminal liability under this section will be available where an offence is committed without any criminal intention, to cause harm and in good faith and if such offence is

committed for the purpose of preventing or avoiding other harm or property. The harm caused need not be necessarily less than the harm averted, though this question would become material when judging the good faith of an act. The explanation to the section provides that the justification for the harm caused and whether the risk caused should be excused, is a question of fact to be determined in each case.

The question, whether the doctrine of necessity can be applied as a justification for killing another human being, is a very tricky question. The usual view that necessity is no defence to a charge of murder. But, killing becomes much more difficult in cases of emergency.

Killing a person in self defence may appear to be an example of necessity. While self defence may appear to be an example of necessity. While self defence may overlap necessity, the two are not the same.

Private defence operates only against aggressors. Generally, the aggressors are wrong doers, while the persons against whom action is taken by necessity, may not be aggressors or wrong doers. Unlike necessity, private defence involves no balancing of values.

#### **Some cases can be cited as examples:**

##### *1) Gopal Naidu v Emperor (AIR 1923 Mad FB 523)*

In this case, a drunken man carrying a revolver in his hand was disarmed and put under restraint by police officers, though the offence of public nuisance under section 290 was a non-cognisable offence without a warrant. Though the police officers were prima facie guilty of the offence of wrongful confinement, it was held that they could plead justification in this section. In this case the Madras High Court held that the person or property to be protected may be the person or property of the accused himself or of others. The word harm in this section means 'physical injury'.

##### *2) United States v Holmes [1842] (Federal case 360, No 15383, Circuit Court-Pennsylvania, US)*

**Necessity does not justify indiscriminate throwing of passengers overboard to save sinking boat;**

This case carries out of the sinking American vessel, “WILLIAM BROWN” of Newfoundland after hitting an iceberg.

The accused was a member of the crew of a boat after a shipwreck. Under the orders of the mate he threw out 16 male passengers on board to prevent ship from sinking. And though he wasn't convicted for murder he was convicted for manslaughter and sentenced to 6 months imprisonment. He was sentenced to 6 months imprisonment and made to pay a fine of USD 20 fine for manslaughter. However his sentence was remitted.

2) *Dudley and Stephens case (QBD 273 referred to in ibid at p 605)*

This case, the crew of the yacht ‘MIGNONNETTE’ were cast away in a storm and were compelled to put into an open boat, which had no water or food. On the twentieth day, having had nothing to eat for eight days and being 1000 miles away from land, two of the crew, Dudley and Stephens, agreed that the cabin boy should be killed with a knife so that they can feed upon his body. One of them carried out the plan. On the fourth day, they were rescued by a passing boat. The two men were charged with murder. The jury was ignorant if the prisoners were guilty and referred to court. The question was considered by 5 judges who held that the act was murder. However their sentence of death was commuted by the crown.

The crown sentenced them to 6 months imprisonment. In this case it is difficult to decide which is an act of greater harm and if the act can be justified.

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