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UNIVERSITY

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**FACULTY OF JURIDICAL
SCIENCES**

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SUBJECT NAME- LAW OF CRIMES

COURSE NAME- BA LLB, Vth Sem
SUBJECT NAME- LAW OF CRIMES

SUBJECT CODE-BAL-504

LECTURE-21

Justifiable Acts

A justified act is one which would have been wrongful under normal conditions but the circumstances under which the act was committed makes it tolerable and acceptable.

I. Act of Judge and Act performed in pursuance of an order under Section 77 and 78

Section 77: Act of Judge when acting judicially. Nothing is an offence which is done by a judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

- Example: Giving Capital Punishment to Ajmal Kasab was done under the judicial powers of judges.

Section 78: Act done pursuant to the Judgement or order of the court. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the court may have no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction.

- Example: A judge passing an order of giving lifetime jail punishment, believing in good faith that the court has jurisdiction, will not be liable.

II. Necessity under 81

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 is 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.

- Example: A Captain of a ship turned the direction of the ship of 100 people in order to save their lives, but harming the life of 30 people of a small boat, without any intention or negligence or fault on his part. He will not be liable because necessity is a condition in which a person causes small harm to avoid great harm.

Case law for Section 81

In *Bishambher v. Roomal*, 1950, the complainant Bishambhara had molested a girl Nathia. Khacheru, Mansukh, and Nathu were accused related to father of the girl. The Chamars were agitated and determined to punish Bishambher. Rimal Singh, Fateh Singh, and Balwant Singh intervened and tried to bring a settlement. They collected a panchayat and the complainant's black was blackened and given shoe beating. It was found by the court that accused had intervened in good faith but the panchayat was having no authority to take such a step.

III. Consent under Section 87 – 89 and Section 92

Section 87: Act not intended and not known to be likely to cause death or grievous hurt, done by consent. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer which is likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or to be intended by the doer to cause, to any person, above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to that risk of harm.

- Example: A and E agreed to fence each other for enjoyment. This agreement implies the consent of each other to suffer harm which, in the course of such fencing, may be caused without foul play and if A while playing fairly hurts E, then A, has committed no offence.

Case law for Section 87

In *Poonai Fattemah v. Emp*, the accused who professed to be a snake charmer, induced the deceased to believe him that he the power to protect him from any harm caused by the snake bite. The deceased believed him and got bitten by the snake and died. The defence of consent was rejected.

Section 88: Act not intended to cause death, done by consent in good faith for person's benefit. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied to suffer that harm, or to take the risk of that harm.

Case law for Section 88

In *R.P Dhanda V. Bhurelal*, the appellant, a medical doctor, performed an eye operation for cataract with patient's consent. The operation resulted in the loss of eyesight. The doctor was protected under this defence as he acted in good faith.

Section 89: Act done in good faith for the benefit of a child or insane person, by or by consent of the guardian. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful

charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person

Section 92: Act done in good faith for benefit of a person without consent. Nothing is an offence by reason of any harm which it may causes to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

Section 90: Consent known to be given under fear or misconception. A consent is not such a consent as is intended by any section of this Code,

1. if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
2. Consent of insane person if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
3. Consent of children, the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Case law for Section 90

In *Jakir Ali v. State of Assam*, it was proved beyond doubt that the accused had sexual intercourse with the victim on a false promise of marriage. The Gauhati High Court held that submission of the body by a woman under fear or misconception of fact cannot be construed as consent and so conviction of the accused under sections 376 and 417 of the Indian Penal Code was proper.

Section 91: Exclusion of acts which are offences independently of harm caused. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Communication under Section 93

Communication made in good faith. No communication made in good faith is an offence by reason of any harm to the person to whom it is made if it is made for the benefit of that person.

- Example: A doctor in good faith tells the wife that her husband has cancer and his life is in danger. The wife died of shock after hearing this. The doctor will not be liable because he communicated this news in good faith.

MCQs-

i. "In every statute, mens rea is to be implied unless the contrary is shown.":

This view was expressed in-

- A. Sherras v. De Rutzen
- B. R. v. Dudley & Stephen
- C. Harding v. Price
- D. R. v. Prince

ii. Which of the following is correct for the aforesaid:

- I. The physical aspect of crime is actus reus.
 - II. The mental aspect of crime is mens rea.
 - III. The motive is the desire to commit crime
- A. I & II are correct but III is not correct
 - B. only II & III
 - C. only II & III
 - D. all the above.

iii. Section 84 of IPC provides for:

- A. medical insanity
- B. legal insanity
- C. moral insanity
- D. unsoundness of mind of any kind.

Ans. B

iv. Irresistible impulse is a defence:

- A. in India
- B. in England
- C. in India and England both
- D. neither in India nor in England.

Ans. D

v. A hangman who hangs the prisoners pursuant to the order of the court is exempt from criminal liability by virtue of:

- A. section 77 of IPC
- B. section 78 of IPC
- C. section 79 of IPC
- D. section 76 of IPC.