DAZED AND CONFUSED: ANALYSING SELF-INDUCED INTOXICATION AS A DEFENCE TO CRIME

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ABSTRACT

The defence of intoxication under Indian law, as enshrined in §23 and §24 of the Bharatiya Nyaya Sanhitha (formerly §85 and §86 of the Indian Penal Code), remains ambiguous and inconsistently applied. This paper examines the historical evolution of intoxication laws in India, tracing their roots to British precedents like *DPP v. Beard* and *DPP v. Majewski*, and critiques the Indian judiciary's reliance on *Basdev v. State of Pepsu*, which imposes a stringent burden of proof on the accused. The study highlights several notable ambiguities. These include the hazy line separating voluntary from involuntary intoxication, the disparate handling of various intoxicants, and the court's hesitancy to acquit on the grounds of intoxication due to social stigma. Ultimately, the paper advocates for a more nuanced and evidence-based approach to intoxication defences, free from moralistic prejudices, to ensure fairness in criminal liability assessments.

INTRODUCTION

Intoxication has been commonly known to cause a person to act in ways that they normally would not. As the range of intoxicants are wide, so are the actions prompted by them in human beings. From a loosening of inhibitions to intense aggravation, it leads one to momentarily forget their true selves. "I did not do that, I was too drunk at the time," comes naturally to John sober when scrutinising the actions of John drunk.[1] It is, therefore, not very surprising that intoxication has led many to commit crimes that, supposedly, they would not have committed while sober. This opens a multitude of questions and confusions regarding the moral and legal aspects of allowing intoxication, especially self-induced intoxication, as a defence to crime.

The defence of intoxication in India is enshrined in §23 and §24 of the Bharatiya Nyaya Sanhitha (previously §85 and §86 of the Indian Penal Code). §23 delineates the defence of involuntary intoxication due to lack of knowledge of the crime committed. This paper mainly focuses on §24 which deals with the need for knowledge or intent required by the intoxicated accused in committing the offence. It reads as follows:

> *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.*

At first glance, the section seems to be quite succinct and unambiguous. However, upon further reading, one would notice that although there is a mention of the need for knowledge and intention in the beginning, there is only a mention of knowledge in the latter part of the sentence. Why so? Can intention not be presumed like knowledge? If intention can't be presumed, then how should intention be inferred?

Voluntary intoxication has never been an excuse, let alone a defence, to crime. In fact, it was considered an aggravation and, in certain cases, could lead to higher punishment.[2] The primary issue regarding intoxication induced crime is that alcohol is commonly known to create excitement and eccentricity in its consumers while at the same time reducing their intent and

[1] Monrad G. Paulsen, *Intoxication as a Defense to Crime,* 1961 U. ILL. L.F. 1 (1961).
[2] Director of Pub. Prosecutions v. Beard, [1920] A.C. 479 (H.L.) (appeal taken from Eng.).

understanding of risk. This, combined with moral complications of self-induced intoxication, makes it hard for the law to agree on a holistic approach to deal with the extent of the defence. Through this paper, I argue that the law on intoxication is coloured by the existing stigma against consumers of alcohol and other drugs which leads to a strict application of the law. To this effect, I will, *first*, analyse the history on the law of intoxication and track how the law in India has grown from cases in Britain; *second*, point out various ambiguities and lacunae present in the law of intoxication; *third*, point out the various biases that come in to play when deciding the law; and *finally* highlight proposed reforms to the §23 and §24 BNS that would bring about needed clarity to the law.

SECTION I

There is a long history of criminal cases involving intoxication. In a 1748 case, a nurse became so intoxicated during a christening that she threw a baby into a fireplace mistaking it for a log of wood.[3] Although an extreme example, this shows the prevalence and absurdity of the cases produced by intoxication, even as far back as the eighteenth century.

However, the case that laid down the law on self-induced intoxication in England for a major part of the twentieth century was *DPP v. Beard*.[4] In this case, the accused had raped a minor and, while committing the crime, had pressed his hand upon her throat to prevent her from shouting. In the process, he ended up murdering her. The accused argued that he was so drunk he did not know his act would cause the death of the girl. The court held that the defence of voluntary intoxication could only be used if the accused was so drunk that they were unable to form the intent to commit it. The rule obscurely stated in Beard was later crystallised in *DPP v. Majewski*,[5] that self-induced intoxication is a defence to crimes requiring a specific intent but not those of basic intent. However, the concepts of basic and specific intent used in English law have not been incorporated here. How, then, has Indian law interpreted the defence of intoxication?

Beard was heavily relied upon in *Basdev v. State of Pepsu*,[6] which became a foundational case on intoxication in the Indian context. In *Basdev*, the accused was a retired military jamadar

[3] 18 THE GENTLEMAN'S MAGAZINE 578 (1748).
[4] Beard, [1920] A.C. 479 (H.L.).
[5] DPP v. Majewski, [1977] A.C. 443 (H.L.) (appeal taken from Eng.).
[6] AIR 1956 SC 488.

who shot a boy, while drunk, for not moving from his seat at a marriage. It was held that if a man had not gone so excessively into drinking, and from the facts his general state of mind could be inferred, then it can be assumed that the man intends the natural consequences of his act. The accused in this case was convicted for murder as the facts could not prove that he was so intoxicated that he was unable to form the intent required. The court found this to be in line with their interpretation of §86 IPC and the law of intoxication in India primarily relies on the judgement and reasoning in *Basdev*. The current law states that intention of an intoxicated individual has to be inferred from his actions.[7]

Further, in *Shankar Jaiswara vs State of West Bengal,*[8] it was held that burden of proof lies on accused to show that they could not form requisite intent. However, such an interpretation does not fully consider the situation of the accused. In *Basdev*, the court inferred that the accused was not so heavily drunk to not intend the natural consequences of his act, from testimony regarding his speech and gait.[9] There was no prior motive regarding the crime, neither did the accused know the deceased before the wedding. However, Indian law does not rely on the *Majewski* rule.[10] Therefore, it is extremely difficult to prove beyond a reasonable doubt that the accused was unaware of what he was doing. Even a momentary realisation could establish intent and therefore, prevent acquittals.[11]

DPP v. Majewski held how a crime of specific intent requires something more than contemplation of the prohibited act and foresight of the probable consequences.[12] This is an elucidation of the rather broad rule stated in *Beard* which would allow any sort of intent to be used to hold an intoxicated mind to be guilty simply through the act committed by them. However, the current Indian law heavily influenced by *Basdev* does not take these terms into consideration, enhancing the culpability of the criminal. Therefore, the Indian jurisprudence on intoxication as a defence has failed to adequately distinguish between different kinds of intent.

[7] Paul vs The State of Kerala AIR 2020 SC 966.
[8] 2007 (9) SCC 360.
[9] Basdev, AIR 1956 SC 488.
[10] Majewski, [1977] A.C. 443 (H.L.).
[11] ANDREW ASHWORTH & JEREMY HORDER, PRINCIPLES OF CRIMINAL LAW 194-196 (7th ed. 2013).
[12] Majewski, [1977] A.C. 443 (H.L.).

SECTION II

(i) INVOLUNTARY INTOXICATION

§23 of the BNS states how a crime cannot be done by an intoxicated person who, at the time of committing the crime, could not realise that what they were doing was wrong, if the intoxication was involuntary. There is, however, no sharp distinction between voluntary and involuntary.[13] It is obvious that if a person consumes a beverage without knowledge that it is alcoholic, their intoxication would be involuntary.[14] The same would apply if they were forced to consume the alcohol by some external force that they could not resist.[15] However, this is a restrictive definition. The complications with adopting such a narrow view materialises in *R v. Allen*,[16] where the accused commits a crime after consuming homemade wine which contained higher alcohol content than presumed by him. The court in this case stated that even if the accused is unaware of the strength or nature of the alcohol consumed by them, it would still be considered as voluntary intoxication. In my view, this is a harsh ruling. The fundamental premise here is that by consuming alcohol voluntarily, one is also assuming responsibility for other unknown, but potentially foreseeable risks. Using the same reasoning, one could argue that alcoholic drinks that are later 'spiked' or 'laced' without the knowledge of the drinker would not be considered involuntary intoxication.

Further, it is not only required to show that the intoxicant was administered against the will of the accused, but also that the person concerned lost all understanding of the nature of the act they committed.[17]

(ii) VARIATIONS OF DRUGS

The law around intoxication has been primarily developed upon cases involving alcohol and, understandably so, considering its prevalence and effect on the mind regarding criminal intent. Currently, there are more drugs and intoxicants available than say, in the nineteenth and

[13] ASHWORTH, *supra* note 11.
[14] R. v. Kingston, [1994] 3 W.L.R. 519 (H.L.) (appeal taken from Eng.).
[15] Jethuram v. State of Madhya Pradesh AIR 1960 MP 242.
[16] [1988] Crim. L.R. 698 (Eng.).
[17] Venkappa Kannappa Chowdari vs State of Karnataka ILR 1995 KAR 2149.

twentieth century when much of the law around intoxication was formed. Could the same principles be applied for contemporary scenarios?

The Court of Appeal in *R v. Lipman*[18] held in the affirmative, stating that alternative drugs should be given the same consideration as alcohol. This was later changed, and drugs were broadly split into two categories: if it was common knowledge that the drugs would induce aggressive behaviour in someone similar to that of alcohol, it was to be given the same treatment, and if not, to be treated differently.[19] Such an interpretation is extremely problematic. *First*, it does not properly define which drugs induce aggressive behaviour and which do not. Saying that if the accused had common knowledge that the drug would be aggressive is highly subjective and could differ upon cultural contexts. *Second*, it assumes that alcohol always elicits aggressive behaviour. While it is commonly associated with loosening inhibitions, alcohol is also said to have sedative effects on occasional drinkers.[20]

In *R v. Hardie*,[21] the accused had set fire to an apartment after having Valium, a soporific drug, to calm his nerves. The court held that since Valium is a soporific and not a dangerous drug like alcohol, the liability was one of recklessness. Even though, it is quite clear in this case that there is no proper distinction for various drugs except ones which propagate the moral and societal biases regarding alcohol.

SECTION III

One of the major apprehensions the courts in India have is that allowing more acquittals in the case of voluntary intoxication would lead to criminals abusing the defence by getting intoxicated before the commission of the crime. However, such a worry is unfounded as it overlooks the presumption that criminals in general would prefer to get away with their crimes completely rather than conjure up a defence. They do not usually prefer situations where they get caught and use the defence of intoxication to absolve themselves of liability. Even if it is true that a good portion of crimes are done by people under the influence of alcohol,[22] there is a difference between committing a crime while drunk and getting drunk to commit a crime.

[18] [1970] 1 Q.B. 152 (C.A.) (Eng.).
[19] DAVID ORMEROD ET AL., SMITH AND HOGAN'S CRIMINAL LAW 323 (15th ed. 2015).
[20] Beck A. & Heinz A., *Alcohol-Related Aggression—Social and Neurobiological Factors,* 110(42) DTSCH ARZTEBL INT 711, 712 (2013).
[21] [1985] 1 W.L.R. 64 (C.A.) (Eng.).
[22] Beck & Heinz, *supra* note 20, 713.

These views seem to reflect more of an emotional condemnation of the drunkard rather than a reasoned analysis of the effect of intoxication on the requisite mental element in a crime.[23] In *Attorney General for Northern Ireland v Gallagher*,[24] the rule on 'Dutch Courage' was laid down that a man who has already conceived an intention to commit a wrongful act cannot use intoxication as a defence to negative mens rea at the time of committing the offence. The court clearly recognises that even if alcohol is consumed for providing oneself with courage for committing a crime, it is not a defence.

In most cases, Indian courts rely on testimonies to regard whether a person was beside his mind by intoxication when committing a crime. Most of the time, this is reduced to analysing the speech and gait of the accused as stated by the witness.[25] In cases of homicide, the courts convict the person of murder stating that the very act proved that the accused possessed the requisite intention. It is extremely rare for courts to acquit persons using a defence of intoxication. In most cases, the defence of intoxication is redundant. The counsel for the accused only uses it as a last resort, as can be seen with most cases post-Basdev, and the prosecution dismisses it without fully analysing the defence regarding the nature of the act committed. In a recent Supreme Court case, where the accused pleaded the defence of intoxication, the court reduced the sentence from one of murder to culpable homicide not amounting to murder. However, such a decision was reached since the act was one done in sudden provocation, with little to no consideration given to the heavily inebriated state of the accused at the time of the crime.[26] Courts, even while allowing the defence, do not explicitly state the reasoning behind their decision.

The lack of reform in legislation is jarring considering the IPC underwent a rebranding the previous year. However, a more preferable version was proposed by the Law Commission of India in 1971. The Law Commission of India recommend in their forty second report that §85 and §86 be combined as both deal with the same subject. The proposed reform included both sections as §85 (1) and (2) of the IPC along with a new clause (3) which provided a definition for self- induced intoxication as when the person themselves causes the state of intoxication.[27] This provides clarity to the ambiguous nature of parts of §85 and §86. Having more

[23] Donald N. Synowicki, *A Review of the Defense of Drunkenness in the Criminal Law,* 2.2 OSGOODE HALL L. J. 230, 231 (1961).
[24] [1963] AC 349.
[25] Prabhunath vs State, AIR 1957 ALL 667.
[26] Dattatraya vs State of Maharashtra 2024 INSC 167.
[27] Law Commission of India, "Forty-Second Report: The Indian Penal Code", Government of India, 1971, 97.

explanations in the legislation can reduce the possibility of the defence being influenced by unwanted prejudices.

CONCLUSION

The law regarding intoxication is, confusing, to say the least. One will have to take all possible legal definitions, the public attitude, and the natural consequences of being intoxicated into the picture while considering the law. This paper does not argue for a complete defence for self-induced intoxication. Rather, it questions the mindset of the courts and judges that needlessly complicate the law due to their prejudices and incorrect understanding of the nature of drugs. To this effect, I have analysed the various problems that govern how the law on intoxication is interpreted, including lack of proper knowledge of drugs and ambiguity in legal areas that decide the culpability of an individual. Better consideration should be given to cases where the defence is argued, and it should not be simply pushed away due to stigma. Such actions would not necessarily deteriorate society's standing as assumed by courts.

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