



**INDIAN
PENAL CODE,
1860
(GENERAL
EXCEPTIONS)**

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Indian Penal Code

Introduction

The Indian Penal Code is the official criminal code of the Republic of India. It is a complete code intended to cover all aspects of criminal law. The first draft of the Indian Penal Code was prepared by the First Law Commission, chaired by **Sir Thomas Babington Macaulay**. It received assent of the Queen on the 6th October 1860. However, it came into force on the 1st January 1862.

Structure:

The IPC in its various sections defines specific crimes and provides punishment for them. It is sub-divided into 23 chapters that comprise of 511 sections. The basic outline of the code is given in the table below:

1.	Introduction	2.	General Explanations
3.	Punishments	4.	General Exceptions
5.	Abetment	5A.	Criminal Conspiracy
6.	Offences against the State	7.	Offences against the Navy, Army, Air Force
8.	Offences against the Public Tranquility	8.	Offences by or relating to Public Servants
9A.	Offences Relating to Elections	10.	Contempt of Lawful; Authority of Public Servants
11.	False Evidence and Offence against Public Justice	12.	Offences relating to coin and Government Stamps
13.	Offences relating to Weight and Measures	14.	Offences affecting the Public Health, Safety, Convenience, Decency and Morals
15.	Offences relating to religion	16.	Offences affecting the Human Body.
17.	Offences Against Property	18.	Offences relating to Documents and Property Marks
19.	Criminal Breach of Contracts of Service	20.	Offences Relating to Marriage
20A.	Cruelty by Husband or Relatives of Husband	22.	Defamation
23.	Criminal intimidation, Insult and Annoyance	24.	Attempts to Commit Offences

General Exceptions

A person who is alleged to have committed an offence, if found guilty of the same is punishable under the Indian Penal Code. The offence is tried in a Criminal Court. The Court before declaring a person guilty of the offence and awarding punishment, gives the person an opportunity to prove/establish the absence of intention/evil mind by establishing one of the defences provided for under the Code to get exemption from criminal liability. Such provisions, available to the accused to get exemption from criminal liability are called “General Exceptions” or “General Defences”

Section 6 of the Indian Penal Code states that *“Throughout the Indian Penal Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled ‘General Exceptions’”*

Burden of proof:

- A) Prosecution has to prove its case beyond reasonable doubt against the accused.*
- B) Before the enforcement of the Indian Evidence Act 1882, the prosecution had to prove that the case does not fall under any exception, but section 105 of Evidence act shifted the burden on the claimant.*
- C) In exceptions, as per section 105 of evidence Act 1882, a claimant has to prove the existence of general exception in crimes.*

Chapter IV containing Sections 76 to 106 of the Indian Penal Code deals with general exceptions. The general exceptions acts are classified into two types: excusable acts and justifiable acts. This chapter can be divided into the following parts:

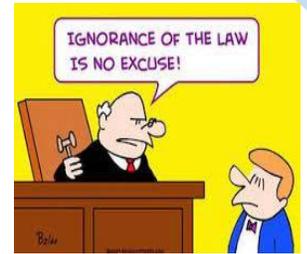
- 1. Mistake of Fact (Section 76 and 79)*
- 2. Judicial Acts or Privileged Acts (Sections 77 and 78)*
- 3. Accident (Section 80)*
- 4. Necessity (Section 81)*
- 5. Infancy (Section 82 and 83)*
- 6. Insanity (Section 84)*
- 7. Intoxication (Section 85 and 86)*
- 8. Consent (Section 87 to 93)*
- 9. Under Compulsion or Threat (Section 94)*
- 10. Triviality (Section 95)*
- 11. Right of private defence (Section 96 to 106)*



Mistake of Fact (Section 76 and Section 79)

Ignorantia facti excusat – Mistake of Fact can be excused if in circumstances, the mistake is found in reasonable belief to be an honest mistake which would make the act an innocent one.

Ignorantia juris non excusat – Mistake of Law is not excusable as it is presumed that everyone knows the laws of the Land



R vs. Tolson, 1889 Q.B.D 168

The court held that Mrs. Tolson getting remarried is under the mistake of fact. Hence, held not guilty.

R vs. Prince, 1875 2 CCR 154

The court held that though there is a mistake of fact, if the act is prohibited by the statute, there is no defence irrespective of the proof of mens rea. Hence, the court held the accused guilty.

Section 76. 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.

Illustrations: (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Gopalia Kallalay vs State (1923) Bom.

The court allowed mistake of fact as a defence and held the Police Officer not guilty of the wrongful arrest.

Section 79. 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 a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration: 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 fact, 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.

Keso Sahu v. Saligram Shah (1977) Cri.L.J 1725

In this case, the court held that the accused showed that he in good faith and believing that the offence of smuggling rice was going on in the plaintiff's house and thus he brings the cart and cartman to the police station. The said suspicion was proved to be wrong.

Judicial Acts or Privileged Acts (Sections 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.

Megh Raj vs. Zakir

The Allahabad High court held that no person acting judicially is liable for an act done or ordered to be done in the discharge of his official duty within the limits of his jurisdiction.



To invoke Section 77, the following conditions are to be satisfied:

1. The act must have been done by a judge in discharge of his official duty
2. The act must be done within his jurisdiction and
3. The act must be performed in good faith.

Section 78. Act done pursuant to the judgment or order of 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 had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.



Tis Hazari Court vs State of Gujarat, AIR 1991 SC 2176

The Supreme Court issued certain directions in respect of arrest of judicial officers in the event of their being involved in a criminal case.

Accident (Section 80)

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.

Illustration: A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence



Tunda vs. Rex AIR 1950 All. 95

In this case, A and B were wrestlers and B died of head injuries when he was thrown by A. It was held that death was caused by an accident and not result of any negligence or rash act.

To invoke a defence of accident under Section 80, the act must be done by accident or misfortune:

1. Without criminal intention or knowledge;
2. Lawful Act
 - i. Done by lawful manner
 - ii. Done by lawful means
 - iii. Done with proper care and caution

Jogeshwar vs. Emperor AIR 1924 Oudh. 228

In this case, the accused was beating a person with his fists when the latter's wife with a two month child on her shoulder interfered. The accused hit the woman but the blow fell on the baby who died as a result. The court held that the accused was not engaged in a lawful act and thus defence of accident wasn't available to him.

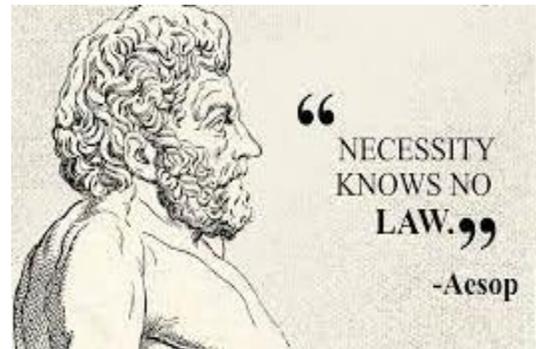
State of Orissa vs Khoraghasi 1978 Cr.LJ 105 Ori.

In this case, the accused with bonafide intention shot an arrow in the forest at an animal. But the arrow hit a person who died. The High Court allowed the defence of accident. Held, not guilty.

Necessity (Section 81)

Section 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 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 a 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.



Illustrations: (a) A, the captain of a steam vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.



(b) 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 or 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

R vs. Dudley and Stephens, 1884 14 Q.B.D 273

The two out of three seaman killed a cabin boy of 18 yrs and fed on his flesh as they were stranded on an open boat with no food for 8 days. The accused pleaded the defence of necessity. The Privy Council held the accused guilty for murder and said that no man has right to take another's life to preserve his own.

To invoke the defence of Necessity under Section 81, the following ingredients are to be satisfied:

1. *The act must have been done under good faith and*
2. *There must not be mens rea (absence of mens rea)*

R vs. Mouse (1608) 77 ER 1341

The accused threw goods of the plaintiff out of a barge in order to lighten the barge in a storm and for the safety of the passengers. Held not guilty.

Infancy (Section 82 and 83)

Section 82. Act of a child under seven years of age.— Nothing is an offence which is done by a child under seven years of age. (**Doli incapax**)

Marsh v. Loader

In this case, the defendant caught a child, while stealing a piece of wood from his premises, and gave into custody. Since the child was under the age of responsibility (i.e. 7 years) he was discharged.



Section 83. Act of a child above seven and under twelve of immature understanding.—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. (**Doli capax**)



To invoke a defence of under Section 83, the following conditions are to be satisfied:

- a. An act done by a child above 7 years but under 12 years of age;
- b. The child must not have attained sufficient maturity of understanding to judge of the nature and consequences of his conduct;
- c. Incapacity must exist at the time of commission of the act.

R vs. Mariamutha 9 Cr. L.J 392 Mad.

A girl aged about 10 years old picked up a silver button and gave it to her mother. The girl was not held liable for theft because the circumstances did not disclose that she had attained sufficient maturity of understanding to judge of the nature of her act.

Heeralal vs State of Bihar AIR 1977 SC 2236

The accused, a child of 11 years old, had threatened the deceased that he would cut him into pieces and did so accordingly. The trial court convicted the child stating that he had attained sufficient maturity of understanding to judge the wrongful act and also the consequences of his act. Supreme Court upheld the judgement.

Insanity (Section 84)

Section 84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

R vs. Mc. Naughten (1843) 4 St. Tr. (NS) 847

The accused murdered Mr. Drummond, the private secretary of Sir Robert Peel, thinking by confusion that he was the latter. The House of Lords acquitted Mc. Naughten on grounds of insanity.

Mc Naughten Rules or Mc Naughten Principles of Insanity:

1. Every man is presumed to be sane (of sound mind) unless contrary is proved.
2. At the time of committing the act, he was labouring a defect from disease of mind so that he could not know the nature, extent and consequences of the act he was doing
3. If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable.
4. The accused isn't punishable if the act is done under delusion of self-defence.
5. A medical witness cannot testify to the sanity of accused as he wasn't present when act is committed.

Ashiruddin vs State AIR 1949 Cal. 182

The accused was ordered in dream by someone in paradise to sacrifice his own son who was of 5 years of age. Supreme court said that accused can claim a defence of insanity under Section 84 because he was acting under the delusion of a dream. Although he knew the nature of act but did not know what was wrong. Held, not guilty.

Insanity or unsoundness itself is not a defence. To plead legal insanity, the following conditions are to be satisfied:

1. The accused is of unsound mind;
2. The nature of the act was not known to the accused;
3. The act was not known to him to be a wrongful act or an act contrary to the law



Intoxication (Section 85 and 86)



Section 85. Act of a person incapable of judgment by reason of intoxication caused against his will.— Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Section 86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.— 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.



The Supreme Court laid down the following points on the Law of Intoxication:

1. The absence of understanding of the nature and consequences of an act, whether produced by drunkenness or otherwise, is a defence to the crime charged;
2. The evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute a crime should be taken into consideration;
3. The evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was effected by drink so that he more readily gave way to some violent passion, doesn't rebut the presumption that a man intends the natural consequences of his acts.

Director of Public Prosecution vs Beard (1920) A.C. 479

In this case, the night watchman caught a girl of 13 years age with intention to rape her. He put a cloth in her mouth, covered her hand with mouth and she died of suffocation. Intoxication plea was rejected and held guilty.

Basudev vs State of Punjab AIR 1956 SC 488

In this case, the accused fired at a 15 yr old boy at a marriage function for refusing to give way enabling him to occupy a seat. His plea of acting under influence of intoxication was rejected and was held guilty.

Emperor vs. Sukroo Kabiraj 14 Cal. 566

In this case, the doctor operated on the patient's piles with ordinary knife. The patient died. It was held that he wasn't skilled in the Science of Surgery and is not entitled to protection under Section 88 and is liable.

Section 89. Act done in good faith for benefit of child or insane person, by or by consent of 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: Provided -



First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.— That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.— That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration: A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

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, 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 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 Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Dasrath Paswan vs State of Bihar 1958 Cr. L.J 548

In this case, the accused under utter distress wanted to put an end to his life by committing suicide. But his wife consented and insisted that he kills her first and so he did accordingly but was caught before he could commit suicide. It was held that consent of the accused's wife was a free consent within the meaning of exception 5 to Section 300.

Emperor vs Poonai Fattenah 1896 12 WR Cr 7

In this case, the accused a snake charmer compelled the deceased to allow to give consent to be bitten by a poisonous snake. The accused also induced him to believe that he had magical power to protect/prevent harm from the snake bite. Believing the words, the deceased allowed to be bitten but the accused couldn't save his life and was convicted.

Section 91. Exclusion of acts which are offences independently of harm cause.—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.

Illustration: Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence “by reason of such harm”; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

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 cause 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: Provided -



First.— That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.— That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.— That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.— That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations: (a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

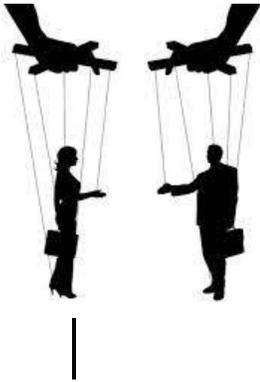
(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housestop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence. Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

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.

Illustration: A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Under Compulsion or Threat (Section 94)

Section 94. Act to which a person is compelled by threats.—Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

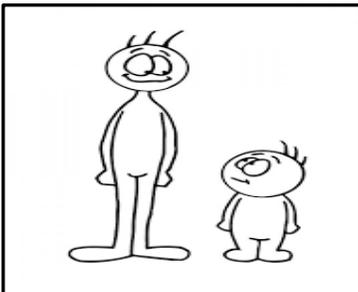
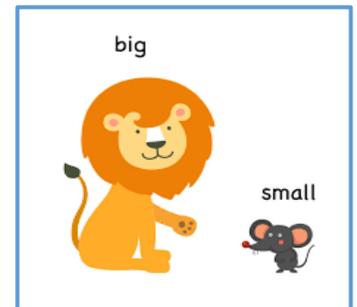


Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Triviality (Section 95)

Section 95. Act causing slight harm.—Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.



State of Maharashtra vs Taherbhai

In this case, two accused were found selling hard boiled sugar confectionary in contravention of the rules framed under the Prevention of Food Adulteration Act. Defence under section 95 was rejected. Held guilty.

Right of private defence (Section 96 to Section 106)

Section 96. Things done in private defence.— Nothing is an offence which is done in the exercise of the right of private defence.

Gurudatta Mal vs State of UP AIR 1965 SC 257

In this case, the accused and the deceased consisted a huge number of members from opposite political parties. The accused party killed members of deceased party. The Trial Court acquitted for private defence under benefit of doubt but Supreme Court reversed the decision



Section 97. Right of private defence of the body and of property.— Every person has a right, subject to the restrictions contained in section 99, to defend—



First.— His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Section 98. Right of private defence against the act of a person of unsound mind, etc.—When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations: (a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.



Section 99. Acts against which there is no right of private defence.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities. Extent to which the right may be exercised.— The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

Gopi vs King 10 Pat 821

In this case, the accused pushed a Sub-Inspector who proposed a search contrary to law. Held, accused is not guilty of offence as the Sub Inspector did not act in good faith

Section 100. *When the right of private defence of the body extends to causing death.*—The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.— Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.— Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.— An assault with the intention of committing rape;

Fourthly.— An assault with the intention of gratifying unnatural lust;

Fifthly.— An assault with the intention of kidnapping or abducting;

Sixthly.— An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly.— An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

R vs Rose 1884 15 Cox cc 540

In this case, the accused shot and killed his father, whom he believed to be cutting the throat of his mother. The accused was allowed the right of private defence to protect his mother against his father's act.

Karamat Hussain vs Emperor AIR 1938 Lah. 269

In this case, the accused, in order to save/protect his sister from merciless beating by her husband intervened and killed him. It was held that the accused was entitled to the right of private defence.

Section 101. *When such right extends to causing any harm other than death.*—If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Section 102. *Commencement and continuance of the right of private defence of the body.*—The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Section 103. *When the right of private defence of property extends to causing death.*—The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:



First.— Robbery;

Secondly.— House-breaking by night;

Thirdly.— Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.— Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Dhara Singh vs Emperor 1947 Lah.

In this case, the police entered into the accused's house at night to arrest him. He didn't recognize them as police and fired at them. It was held that the accused had a right of private defence to property.

Section 104. *When such right extends to causing any harm other than death.*—If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Section 105. *Commencement and continuance of the right of private defence of property.*— The right of private defence of property commences when a reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues till the offender has affected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered. The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues. The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief. The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Deo Narain vs State of UP

In this case, the Supreme Court held that right of private defence is a "preventive right" and not a "punitive right". If there is no apprehension of danger to body or property, continuance of right of private defence wouldn't be available.

Section 106. *Right of private defence against deadly assault when there is risk of harm to innocent person.*— If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration: A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

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