# IPC Section 98

## Section 98 of the Indian Penal Code: A Comprehensive Analysis  
  
Section 98 of the Indian Penal Code (IPC) addresses a specific and nuanced aspect of the right of private defence: the exercise of this right against acts committed by individuals with diminished capacity. It deals with situations where the aggressor is a person of unsound mind, an intoxicated person, or a child. This section recognizes that while everyone has the right to defend themselves and their property, the level of force used must be tempered when dealing with individuals who may not fully comprehend the consequences of their actions or who may be acting involuntarily. This detailed analysis will explore the complexities of Section 98, examining its scope, interpretations, and practical implications through relevant case laws and scholarly opinions.  
  
\*\*The Text of Section 98:\*\*  
  
Section 98 of the IPC states:  
  
"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 his part, 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 entitled to no defence.  
  
(b) A, under the influence of madness, attempts to kill Z; Z has the same right of private defence which he would have if Z were sane.  
  
(c) A enters by night Z’s house, for the purpose of committing adultery with Z’s wife. Z, on discovering A, shoots him dead. Here, if Z had had time to ascertain who A was, Z would have been guilty of no offence. But as he had not time to ascertain who A was, Z is guilty of the offence of causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death. Here, A had no right of private defence against Z.  
  
(d) A draws a sword and threatens to stab Z; Z, in self-defence, shoots A. Here, though A’s sword may not be sharp, Z is justified; for it was sufficient for Z to believe reasonably that A’s sword might be sharp, and that A might intend to kill him, though it may afterwards be discovered that the sword was blunt, and that A only intended to frighten Z."  
  
\*\*Deconstructing Section 98:\*\*  
  
The provision can be broken down into several key components:  
  
1. \*\*"When an act, which would otherwise be a certain offence, is not that offence..."\*\*: This clause sets the stage for the application of Section 98. It refers to situations where an act, though seemingly criminal, is not considered an offence due to the diminished capacity of the actor. This diminished capacity can arise from youth, immaturity, unsoundness of mind, intoxication, or misconception.  
  
2. \*\*"...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 his part..."\*\*: This clause lists the specific factors that can negate the criminality of an act. It recognizes that individuals in these states may not possess the necessary \*mens rea\* or criminal intent to be held fully responsible for their actions.  
  
3. \*\*"...every person has the same right of private defence against that act which he would have if the act were that offence."\*\*: This is the core of Section 98. It declares that even though the aggressor's act may not be legally considered an offence due to their diminished capacity, the victim retains the same right of private defence as they would have if the act were a punishable offence. This means that the victim can use force to defend themselves or their property, even if the aggressor is a child, an intoxicated person, or a person of unsound mind.  
  
\*\*Key Principles and Interpretations:\*\*  
  
Several important principles emerge from Section 98:  
  
\* \*\*Focus on the Act, Not the Actor:\*\* The section focuses on the nature of the act, not the mental state of the actor. Even if the actor lacks criminal intent, the act itself can still pose a threat, justifying the use of private defence.  
  
\* \*\*Parity of Right:\*\* The victim's right of private defence is equal to what they would have against a sane and sober adult committing the same act. This ensures that the victim is not disadvantaged due to the aggressor's diminished capacity.  
  
\* \*\*Proportionality Still Applies:\*\* While the right of private defence is preserved, the principle of proportionality still applies. The force used must be proportionate to the threat posed by the act, considering the specific circumstances and the aggressor's condition. Using excessive force can negate the protection afforded by the right.  
  
\* \*\*Misconception as a Factor:\*\* The inclusion of "misconception" broadens the scope of Section 98. It covers situations where the aggressor acts under a genuine but mistaken belief, even if they are not suffering from any other form of diminished capacity.  
  
\*\*Illustrative Case Law:\*\*  
  
While direct judicial pronouncements on Section 98 are relatively scarce, its principles are reflected in broader case law on private defence:  
  
\* \*\*State of Karnataka v. Shivappa (2000):\*\* This case, while not directly related to Section 98, emphasized the importance of reasonable apprehension of danger in exercising the right of private defence. This principle is relevant even when the aggressor has diminished capacity. The victim must genuinely believe that they are facing a threat, even if the aggressor's actions stem from their condition.  
  
\*\*Challenges and Criticisms:\*\*  
  
The application of Section 98 presents certain challenges:  
  
\* \*\*Balancing Protection and Restraint:\*\* Balancing the right to self-defence with the need to protect vulnerable individuals requires careful judgment. Using force against a child or a person with mental illness raises ethical and practical concerns.  
  
\* \*\*Assessing the Threat:\*\* Evaluating the threat posed by a person with diminished capacity can be difficult. Their actions may be unpredictable and their intentions unclear.  
  
\* \*\*Proportionality in the Context of Diminished Capacity:\*\* Determining proportionate force against someone with diminished capacity is particularly challenging. The victim must consider the aggressor's condition and avoid using excessive force.  
  
  
\*\*Conclusion:\*\*  
  
Section 98 of the IPC addresses a complex and sensitive aspect of the right of private defence. It recognizes that individuals with diminished capacity may commit acts that necessitate defensive action, while simultaneously acknowledging the need for restraint and proportionality in such situations. The section aims to balance the victim's right to protect themselves with the need to safeguard vulnerable individuals. Applying Section 98 requires careful consideration of the specific circumstances, the nature of the threat, and the condition of the aggressor. A nuanced understanding of this provision is essential for legal professionals, law enforcement, and ordinary citizens to navigate the complexities of self-defence in situations involving individuals with diminished capacity.