# IPC Section 98: Right of private defence against the act of a person of unsound mind. etc.

## Section 98 of the Indian Penal Code: Right of Private Defence against the Act of a Person of Unsound Mind, etc.  
  
Section 98 of the Indian Penal Code (IPC) addresses a specific and nuanced aspect of the right of private defence: how this right applies when facing a threat from a person of unsound mind, a minor, or a person acting under involuntary intoxication. This section recognizes that while these individuals may pose a threat, their diminished capacity or lack of control necessitates a tempered approach to self-defence. It emphasizes the need for proportionality and restraint when using force against such individuals.  
  
\*\*The exact wording of Section 98 is:\*\*  
  
"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. A may exercise the right of private defence as if Z were sane.  
  
(b) A enters by night a house which he is legally entitled to enter. Z, in consequence of a misconception on his part, believes A to be a house-breaker, and fires a pistol at A. A has the same right of private defence as if Z had not been under that misconception."  
  
\*\*Breaking down the elements of Section 98:\*\*  
  
1. \*\*"When an act, which would otherwise be a certain offence, is not that offence..."\*\*: This refers to situations where an act, if committed by a person of sound mind and understanding, would constitute an offence, but does not because of the perpetrator's youth, lack of understanding, 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 the part of that person..."\*\*: This clause lists the specific conditions that may negate the criminality of an act:  
 \* \*\*Youth:\*\* This refers to minors who are below the age of criminal responsibility.  
 \* \*\*Want of maturity of understanding:\*\* This covers individuals who, while not necessarily minors, lack the cognitive capacity to understand the nature and consequences of their actions.  
 \* \*\*Unsoundness of mind:\*\* This refers to individuals suffering from mental illnesses that impair their judgment and control.  
 \* \*\*Intoxication:\*\* This refers to involuntary intoxication where the person was not responsible for their intoxicated state.  
 \* \*\*Misconception:\*\* This covers situations where the person acts based on a genuine but mistaken belief.  
  
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 principle of Section 98. It states that even if the act is not technically an offence due to the perpetrator's condition, the right of private defence remains the same as if it were an offence.  
  
\*\*Understanding the rationale behind Section 98:\*\*  
  
The rationale behind this section is that the threat posed by a person of unsound mind, a minor, or an intoxicated person is no less real than the threat posed by a person of sound mind. The potential for harm remains the same, even if the perpetrator lacks criminal culpability. Therefore, the law allows for the exercise of private defence in such situations, ensuring the safety of those facing the threat.  
  
  
\*\*Key considerations in applying Section 98:\*\*  
  
\* \*\*Proportionality:\*\* While the right of private defence exists, it is crucial to exercise restraint and use only proportionate force. The diminished capacity of the perpetrator should be considered when determining the appropriate level of force. Excessive force could negate the defence.  
\* \*\*Reasonable apprehension of danger:\*\* The same principle of reasonable apprehension applies. The defender must genuinely believe they are facing imminent danger and that the use of force is necessary to avert that danger.  
\* \*\*Nature of the threat:\*\* The seriousness of the threat posed should be evaluated objectively, considering the specific circumstances and the capacity of the perpetrator.  
\* \*\*Availability of alternatives:\*\* If it's possible to safely avoid the threat without resorting to force, such alternatives should be explored.  
  
\*\*The illustrations in Section 98:\*\*  
  
The illustrations provided in the section offer practical examples of how the principle is applied:  
  
\* \*\*Illustration (a):\*\* Demonstrates that even if the attacker is insane, the right of private defence can be exercised as if they were sane.  
\* \*\*Illustration (b):\*\* Highlights that even if the threat is based on a misconception, the right of private defence still applies.  
  
  
\*\*Conclusion:\*\*  
  
Section 98 of the IPC addresses the complex issue of exercising private defence against individuals with diminished capacity or acting under misconceptions. It affirms that the right of private defence exists in such situations, providing legal protection for those facing threats from such individuals. However, it emphasizes the need for proportionality and restraint when using force, recognizing the unique circumstances surrounding these encounters. Understanding this section is crucial for navigating situations involving self-defence against individuals who may not be fully responsible for their actions.