

18. Act done in private defence (sections 96–106).

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1. Judicial acts (section. 77, 78).
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4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

Onus of proving exception lies on accused.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.²

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.³

Applicability of General exceptions during investigation.—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.⁴ Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.⁵

[s 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.

COMMENT.—

By this section a person is excused from the consequences of any act, except (1) murder and (2) offences against the State punishable with death, done under fear of instant death; but fear of hurt or even of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

Murder committed under a threat of instant death is not excused under this section. But 'murder' does not include abetment of murder and such abetment will be excused.²⁴⁶ Abetment of murder and of the offence of causing disappearance of the evidence of murder was excused under this section when it was done under fear of instant death at the hands of the murderers.²⁴⁷

[s 94.1] Doctrine of compulsion and necessity.—

No one can plead the excuse of necessity or compulsion as a defence of an act otherwise penal, except as provided in this section. No man from a fear of consequences to himself has a right to make himself a party to committing mischief on mankind.²⁴⁸

Except where unsoundness of mind is proved or real fear of instant death is proved, the burden of proof being on the prisoner, pressure of temptation is not an excuse for breaking the law.²⁴⁹ Under the English law the defence of duress is available not only in case of fear of instant death but also in case of serious bodily harm.²⁵⁰ Furthermore, such a threat need not be always against the person of the accused.²⁵¹

This defence was not allowed to a person who voluntarily joined a criminal organisation or gang with knowledge that the gang used loaded firearms to carry out robberies on sub-post offices and also that the leader of the gang might bring pressure upon him to participate in such offences. He had accordingly to participate in a robbery under pressure in which the leader shot dead the sub-post master. His appeal against conviction for man slaughter was rejected.²⁵²

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
246. *Umadasi Dasi*, (1924) 52 Cal 112 : Karu, (1937) Nag 524. But see *R v Howe*, (1987) 1 All ER 770 HL, where it was noted that the defence of duress is not available to a person charged with murder whether as a principal in the first degree (the actual killer) or as principal in the second degree (the aider and abettor).
247. *Bachchan Lal*, 1957 Cr LJ 344 .
248. *Maganlal and Motilal*, (1889) 14 Bom 115.
249. *Devji Govindji*, (1895) 20 Bom 215, 222, 223.
250. *Director of Public Prosecutions for Northern Ireland v Lynch*, (1975) 1 All ER 913 -Per House of Lords.
251. *Hurley* (1967) VR 526.
252. *R v Sharp*, (1987) 3 All ER 103 CA. **Following** *Lynch v DPP for Northern Ireland*, (1975) 1 All ER 913 : (1975) AC 653 .

THE INDIAN PENAL CODE

CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.^{1.}

The following acts are exempted under the Code from criminal liability:—

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
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Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.³

Applicability of General exceptions during investigation.—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.⁴ Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.⁵

[s 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.

COMMENT.—

slight harm or trifles.—The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. The authors of the Code observe:

Clause 73 [this section] is intended to provide for those cases which, though, from the imperfections of language, fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the judges to except them in practice.^{253.}

The expression 'harm' has been used in this section in a wide sense including physical injury and hence, this section applies in cases of actual physical injury also. This section applies not only to acts which are accidental but also to deliberate acts which cause harm or are intended to cause harm or known to be likely to cause harm.^{254.} In a campaign by Sarvodaya workers to educate people about the evil of alcohol, liquor shops were picketed to prevent people from going there even if it was at the cost of slight harm; their prosecution under section 341 for causing wrongful restraint was quashed.^{255.} Where the accused locked the complainant inside the factory by pulling down the shutter, it was held that ingredients of the offence under section 342 (wrongful confinement) were established but as the complainant regained his freedom within a very short time and only a minimal harm was caused, the case was clearly covered by section 95.^{256.}

[s 95.1] CASES.—Acts regarded as trivial.—

This section was applied where a person was convicted for taking pods, almost valueless, from a tree standing on Government waste land;^{257.} where the accused committed theft of a cheque of no value^{258.} and where the plaintiff complained of the harm caused to his reputation by the imputation that he was travelling with a wrong ticket.^{259.} So also an offence of misbranding^{260.} and the conduct of a lawyer in using filthy language in course of cross-examination^{261.} were treated as trivial.

Where the record of the trial Court showed that the injury caused was very simple, being in the nature of a scratch, the Court said that the act was so trivial that no person of a sound common sense would regard it as an offence. The prayer of the complainant for conviction of the accused for causing simple hurt under section 323 was liable to be rejected.^{262.}

[s 95.2] Acts not regarded as trivial.—

The top most official of the State Police, indecently behaved with a senior lady IAS Officer, in the presence of gentry and in spite of her raising objections continued with such behaviour. The Supreme Court observed that if it is held, on the face of such allegations that, the ignominy and trauma to which, she was subjected to was so slight that the lady IAS Officer, as a person of ordinary sense and temper, would not complain about the same, sagacity will be the first casualty. In that view of the matter [section 95, IPC, 1860](#) cannot have any manner of application to an offence relating to modesty of woman as under no circumstances can it be trivial.^{263.} Where the Accused caused the

deceased to fall down and co-accused threw down a heavy stone on head of deceased, act attributed to accused formed part of a joint yet a murderous assault on deceased. Hence, it is not covered by exception in section 95.²⁶⁴ Where a blow was given across the chest with an umbrella by a dismissed policeman to a District Superintendent of Police because his application to reconsider his case was rejected;²⁶⁵ where the accused tore up a paper which showed a money debt due from him to the prosecutor though it was unstamped, and therefore, not a legal security;²⁶⁶ and where a respectable man was taken by the ear,²⁶⁷ it was held that this section did not apply. An offence under [Prevention of Food Adulteration Act, 1954](#) cannot be regarded as trivial.²⁶⁸

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966](#) [[LNIND 2004 SC 1370](#)] : [2004 Cr LJ 1778](#) : (2005) 9 SCC 71 [[LNIND 2004 SC 1370](#)] .
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253. The Works of Lord Macaulay- 'On the Chapter of General Exceptions', Note B, pp. 109, 110.
254. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : [AIR 1966 SC 1773](#) [[LNIND 1966 SC 107](#)] : 68 Bom LR 629.
255. *Narayanan v State of Kerala*, 1987 Cr LJ 741 Ker; **following** *Attappa Re*, [AIR 1951 Mad 759](#) [[LNIND 1950 MAD 178](#)] : 1951 (2) Cr LJ 716 , where it was observed that even if obstruction is caused, if the harm caused is slight, section 95 would apply.
256. *Anoop Krishan Sharma v State of Maharashtra*, 1992 Cr LJ 1861 (Bom).
257. *Kasyabin Ravji*, (1868) 5 BHC (Cr C) 35.
258. *Ethirajan*, 1955 Cr LJ 816 .
259. *South Indian Railway Co v Ramakrishna*, (1889) 13 Mad 34.
260. *Public Prosecutor v K Satyanarayana*, 1975 Cr LJ 1127 (AP).
261. *Bheema*, 1964 (2) Cr LJ 692 (AP).
262. *State of Karnataka v M Babu*, 2002 Cr LJ 2604 (Kant), the Court discussed the doctrine of triviality.
263. *Rupan Deol Bajaj v Kanwar Pal Singh Gill*, [AIR 1996 SC 309](#) [[LNIND 1995 SC 981](#)] : (1995) 6 SCC 194 [[LNIND 1995 SC 981](#)] : [JT 1995 \(7\) SC 299](#) [[LNIND 1995 SC 981](#)] : (1995) 5 Scale 670 : 1996 Cr LJ 381 .
264. *Athai v State of MP* 2010 Cr LJ 995 (MP).
265. *Sheo Gholam Lalla*, (1875) 24 WR (Cr) 67.
266. *Ramasami v State*, (1888) 12 Mad 148.
267. *Shoshi Bhusan Mukerjee v Walmsley*, (1897) 1 CWN.
268. *Dist Food Inspector v Kedarnath*, 1981 Cr LJ 904 (Gau.); *State of Kerala v Vasudevan Nair* (Ker) (FB) 1975 FAJ 36 : (1975 Cr LJ 97); *M/s. Razak Rice And Oil Mills v Bharat Narayan Patnaik, Food Inspector, Berhampur Municipality* 1989 Cr LJ 648 (Ori).

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Of the Right of Private Defence

[s 96] Things done in private defence.

Nothing is an offence which is done in the exercise of the right of private defence.