

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).
3. Accident (section 80).
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 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.

COMMENT.—

Under this section a Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives him, but also in cases where he, in good faith, exceeds his jurisdiction and has no lawful powers. It protects judges from criminal process just as the [Judicial Officers Protection Act, 1850](#), saves them from civil suits. Judicial Officers' Protection Act affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done.¹¹

A Collector who exercises powers of enquiry and award under the [Land Acquisition Act, 1894](#) is not acting judicially because he is not a judge. He is not entitled to the protection of section 77.¹² Regional Provident Fund Commissioner while passing order under section 7-A of 1952 Act is entitled to get protection as envisaged under [section 77 of IPC, 1860](#) and [section 3\(1\) of Judges \(Protection\) Act, 1985](#).¹³

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).
11. *Rachapudi Subba Rao v Advocate General*, (1981) 2 SCC 577 [[LNIND 1980 SC 481](#)] : [AIR 1981 SC 755](#) [[LNIND 1980 SC 481](#)] .
12. *Surendera Kumar Bhatia v Kanhaiya Lal*, (2009) 12 SCC 184 [[LNIND 2009 SC 209](#)] : [AIR 2009 SC 1961](#) [[LNIND 2009 SC 209](#)] .
13. *E S Sanjeeva Rao v CBI*, Mumbai, 2012 Cr LJ 4053 (Bom).

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 lies 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).

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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 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.

COMMENT.—

This section is merely a corollary to section 77. It affords protection to officers acting under the authority of a judgment, or order of a Court of Justice. It differs from section 77 on the question of jurisdiction. Here, the officer is protected in carrying out an order of a Court which may have no jurisdiction at all, if he believed that the Court had jurisdiction; whereas under section 77 the Judge must be acting within his jurisdiction to be protected by it.

Mistake of law can be pleaded as a defence under this section.

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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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 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 law¹, or who by reason of a mistake of fact² and not by reason of a mistake of law³ 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.

COMMENT.—

Distinction between Sections 76 and 79.—The distinction between section 76 and this section is that in the former a person is assumed to be bound, and in the latter to be justified, by law; in other words, the distinction is between a real or supposed legal obligation and a real or supposed legal justification, in doing the particular act. Under both (these sections) there must be a *bona fide* intention to advance the law, manifested by the circumstances attending the act which is the subject of charge; and the party accused cannot allege generally that he had a good motive, but must allege specifically that he believed in good faith that he was bound by law (section 76) to do as he did, or that being empowered by law (section 79) to act in the matter, he had acted to the best of his judgment exerted in good faith.¹⁴

1. Any person who is justified by law.—Jurisprudentially viewed, an act may be an offence, definitionally speaking but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by law or is *bona fide* believed by mistake of fact to be so justified.¹⁵ It is easy to see that if the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of [section 79 of the IPC, 1860](#). Many cases may however arise wherein acting under the provisions of the [Police Act](#) or other law conferring powers on the police, the police officer or some other person may go beyond what is strictly justified in law. Though [section 79 of the IPC, 1860](#) will have no application to such cases, [section 53 of the Police Act](#) will apply. But section 53 applies to only a limited class of persons. So, it becomes the task of the Court, whenever any question whether this section applies or not arises to bestow particular care on its decision. In doing this it has to ascertain first, what act is complained of and then to examine, if there is any provision of the [Police Act](#) or other law conferring powers on the police, under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done "under" the particular provision of law.¹⁶ But unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of his office.¹⁷ In *Bhanuprasad Hariprasad Dave's case*,¹⁸ wherein the allegations against the police officer was of taking advantage of his position and attempting to coerce a person to give him a bribe. The plea of colour of duty was negatived by the Supreme Court. In *Prof. Sumer Chand v UOI*, [1994 \(1\) SCC 64 \[LNIND 1993 SC 665\]](#) Supreme Court on facts endorsed the opinion of the High Court that the act of the Police Officer complained of fell within the description of 'colour of duty'. The argument is irresistible that if the performance of the act which constitutes the offence is justified by law, i.e.,

by some other provision, then section 79 exonerates the doer because the act ceases to be an offence. Likewise, if the act were done by one 'who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it' then also, the exception operates and the *bona fide* belief, although mistaken, eliminates the culpability. If the offender can irrefutably establish that he is actually justified by law in doing the act or, alternatively, that he entertained a mistake of fact and in good faith believed that he was justified by law in committing the act, then, the weapon of section 79 demolishes the prosecution.¹⁹

2. 'Mistake of fact'.—Under this section, although an act may not be justified by law, yet if it is done under a mistake of fact, in the belief in good faith that it is justified by law it will not be an offence. Such cases are not uncommon where the Courts in the facts and circumstances of the particular case have exonerated the accused under section 79 on the ground of having acted in good faith under the belief, owing to a mistake of fact that he was justified in doing the act which constituted an offence. As laid down in [section 52 of the IPC, 1860](#), nothing is said to be done or believed in good faith which is done or believed without due care and attention. The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. 'Good faith' requires not logical infallibility but due care and attention. The question of good faith is always a question of fact to be determined in accordance with the proved facts and circumstances of each case.²⁰

'Mistake' is not mere forgetfulness.²¹ It is a slip "made, not by design, but by mischance."²² Under sections 76 and 79 a mistake must be one of fact and not of law. At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy.²³ It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence.²⁴ *Ignorantia facti doth excusat*, for such ignorance many times makes the act itself morally involuntary.²⁵ Where a man made a thrust with a sword at a place where, upon reasonable grounds, he supposed a burglar to be, and killed a person who was not a burglar, it was held that he had committed no offence.²⁶ In other words, he was in the same situation as far as regards the homicide as if he had killed a burglar. The accused while guarding his maize field shot an arrow at a moving object in the *bona fide* belief that it was a bear and in the process caused the death of a man who was hiding there. It was held that he could not be held liable for murder as his case was fully covered by section 79 as well as [section 80 IPC, 1860](#).²⁷ Similarly, where the accused while helping the police stopped a cart which they in good faith believed to be carrying smuggled rice but ultimately their suspicion proved to be incorrect, it was held that they could not be prosecuted for wrongful restraint under section 341 as their case was covered by [section 79 IPC, 1860](#).²⁸ Section 79 makes an offence a non-offence. Thus, where the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith sanctions the public exhibition of a film, the producer and the connected agencies do enter the statutory harbour and are protected from prosecution under [section 292 IPC, 1860](#), because section 79 of the Code exonerates them at least in view of their *bona fide* belief that the certificate is justificatory.²⁹

3. 'Mistake of law'.—Mistake in point of law in a criminal case is no defence. Mistake of law ordinarily means mistake as to the existence or otherwise of any law on a relevant subject as well as mistake as to what the law is.³⁰

penalty of the breach of it; because every person of the age of discretion and *compos mentis* is bound to know the law, and presumed so to do.^{31.}

If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a Court of Justice that he was ignorant of the law of the land, and no Court of Justice is at liberty to receive such a plea.^{32.}

The maxim *ignorantia juris non excusat*, in its application to criminal offences, admits of no exception, not even in the case of a foreigner who cannot reasonably be supposed in fact to know the law of the land.^{33.} The legal presumption that everyone knows the law of the land is often untrue as a matter of fact. But then why such a presumption subsists? The reason for this seems to be nothing but expediency; otherwise there is no knowing of the extent to which the excuse of ignorance of law might be carried. Indeed, it might be urged almost in every case.^{34.} This rule of expediency has been put to use even in a case where the accused could not have possibly known the law in the circumstances in which he was placed. Thus, a person who was on the high seas and as such could not have been cognizant of a recently passed law might be convicted for contravening it.^{35.}

Whenever the question of justification of an offence either due to mistake of fact or mistake of law arises, the guiding rules are: (1) that when an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence. (2) That where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge. (3) That the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence. (4) Where an act which is in itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime. (5) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute, whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.^{36.}

[s 79.1] Ignorance of statute newly passed.—

Although a person commits an act which is made an offence for the first time by a statute so recently passed as to render it impossible that any notice of the passing of the statute could have reached the place where the offence has been committed, yet his ignorance of the statute will not save him from punishment.^{37.} For an Indian law to operate and be effective in the territory where it operates namely, the territory of India, it is not necessary that it should either be published, or be made known outside the country.^{38.}

[s 79.2] Act of State.—

An act of State is an act injurious to the person or to the property of some person who is not at the time of that act a subject of the Government; which act is done by any representative of the Government's authority, civil or military, and is either previously sanctioned or subsequently ratified by the Government. The doctrine as to acts of State can apply only to acts which affect foreigners, and which are done by the orders or with the ratification of the Government. As between the State and its subjects there can be