

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

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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.<sup>2</sup>

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.<sup>3</sup>

**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.<sup>4</sup> 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.<sup>5</sup>

**[s 91] Exclusion of acts which are offences independently of harm caused.**

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 an 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.

## COMMENT.—

The section serves as a corollary to sections 87, 88 and 89. It says in explicit terms that consent will only condone the act causing harm to the person giving the consent which will otherwise be an offence. Acts which are offences independently of any harm which they may cause will not be covered by consent given under sections 87, 88 and 89, e.g., causing miscarriage, public nuisance, offences against public safety, morals, etc. It may be stated here that the illustration given under this section has become somewhat inappropriate as pregnancy can now be terminated under [section 3 of Medical Termination of Pregnancy Act, 1971](#), on a number of grounds and not only on the ground of saving the life of the woman.

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).
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# 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.<sup>1</sup>

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).
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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).
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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).
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15. Communication made in good faith to a person for his benefit (section 93).
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18. Act done in private defence (sections 96–106).

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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.<sup>3</sup>

**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.<sup>4</sup> 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.<sup>5</sup>

## **[s 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—**

**Provisos.**

**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 no 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 house-top, 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.**

#### **COMMENT.—**

**Acts done in good faith.**—This section is designed to meet those cases which do not come either under section 88 or under section 89. The principal object of sections 88, 89 and 92 is protection of medical practitioners. Illustrations (a) and (b) exemplify cases in which it is impossible to give consent; illustrations (c) and (d), where legal capacity to consent is wanting.

The author of the Code observes:

There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian, yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught on a blanket below, but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall though the person who threw it down knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship, we extend by clause 72 a protection very similar to that which we have given to the acts of regular guardians.<sup>244</sup>

This section speaks of 'hurt', whereas section 89 speaks of 'grievous hurt', otherwise the terminology of both the sections is almost identical.

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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244. The Works of Lord Macaulay- 'On the Chapter of General Exceptions', Note B.

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### [s 93] Communication made in good faith.

**No communication made in good faith is an offence by reason of any harm<sup>1</sup> 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.

### COMMENT.—

This section protects the innocent without unduly cloaking the guilty.

The communication under this section must be

- (1) made in good faith; and
- (2) for the benefit of the person to whom it is made.

The illustration to this section does not say, however, whether the communication was made to the patient for his benefit.

**1. 'Harm'.—**In this section 'harm' means an injurious mental reaction.<sup>245.</sup>

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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245. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.

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