

305. *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 . This case is against all previous authorities and is wrongly decided (MH Editor).
306. *Dr. Mohammad Khalil Chisti v State of Rajasthan*, 2013 Cr LJ 637 (SC) : 2013 (1) MLJ (Cr) 198 [LNIND 2012 SC 801] : (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Gopal v State of Rajasthan*, (2013) 2 SCC 188 [LNIND 2013 SC 37] : 2013 Cr LJ 1297 .
307. *Onkarnath Singh v State of UP*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] ; *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] ; *Sikhar Behera*, 1982 Cr LJ 1167 (Orissa); *Munir Ahmad v State of Rajasthan*, AIR 1989 SC 705 : 1989 Cr LJ 845 : (1989) 26 ACC 115 : 1989 Supp SCC 377 ; reiterated by the Supreme Court in *Paras Nath Singh v State of Bihar*, and *Hari Krishna Singh v State of Bihar*, AIR 1988 SC 863 [LNIND 1988 SC 139] : (1988) 2 SCC 95 [LNIND 1988 SC 139] : 1988 Cr LJ 925 . *Gajanand v State*, 1954 Cr LJ 1746 , AIR 1954 SC 695 , followed, *Abdul Hamid v State of UP*, 1991 Cr LJ 431 . See also *State of Assam v Upendra Das*, 1991 Cr LJ 2930 Gau, relying upon *Lakshmisingh v State of Bihar*, AIR 1976 SC 2263 : 1976 Cr LJ 1736 . For other cases of free fight and, therefore, acquittal. See *Ram Nath v State*, 1991 Cr LJ 1825 All; *Sonpal v State of UP*, 1991 Cr LJ 1597 All, prosecution not explaining how the event sparked off and how the accused suffered injuries. *Nityanand Pasayat v State*, 1989 Cr LJ 1547 (Ori), quarrel between two groups. *Amir Ali v State of Assam*, 1989 Cr LJ 1512 , a case of mutual fight over possession of land in which both sides were injured. The Court added that if a group of 5 assembles in private defence, they are not an unlawful assembly; but if they persist in use of force even after their right is over, they become an unlawful assembly. *Chandrasekharan v State of Kerala*, 1987 Cr LJ 1715 (Ker); *State of Rajasthan v. Sughad Singh*, AIR 1994 SC 1593 : 1994 Cr LJ 2188 .
308. *Amrik Singh v State of Punjab*, 1993 Cr LJ 2857 : 1993 AIR SCW 2482 : 1994 Supp (1) SCC 320.
309. *Rohtash v State of Haryana*, 1993 Cr LJ 3303 (P&H).
310. *Sikhar Behera v State of Orissa*, 1993 Cr LJ 3664 : 1993 AIR SCW 3162 : 1994 Supp (1) SCC 493. *Amerika Rai v State of Bihar*, AIR 2011 SC 1379 [LNIND 2011 SC 220] : (2011) 3 SCR 176 [LNIND 2011 SC 220] : (2011) 2 SCC(Cr) 429 : (2011) 4 SCC 677 [LNIND 2011 SC 220] *Ram Kumar v State of Haryana*, AIR 1998 SC 1437 [LNIND 1998 SC 231] : 1998 Cr LJ 2049 ; *Pammi v Govt. of MP*, AIR 1998 SC 1185 [LNIND 1998 SC 200] : 1998 Cr LJ 1617 ; *Periasami v State of TN*, 1997 Cr LJ 219 : (1996) 6 SCC 457 [LNIND 1996 SC 1552] .
311. *Mohammad Iqbal v State of MP*, 2012 Cr LJ 337 (Chh).
312. *Ranbir Singh v State of Haryana*, 2009 Cr LJ 3051 (SC) : (2009) 16 SCC 193 [LNIND 2009 SC 1053] .
313. *Sikandar Singh v State of Bihar* (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC(Cr) 417; *Dashrath Singh v State of UP*, (2004) 7 SCC 408 [LNIND 2004 SC 798] ; *Bishna v State of WB*, AIR 2006 SC 302 [LNIND 2005 SC 873] : (2005) 12 SCC 657 [LNIND 2005 SC 873] , *Shriram v State of MP*, (2004) 9 SCC 292 [LNIND 2003 SC 1026] .
314. *Lacchiram v State of MP*, 1990 Cr LJ 2229 MP, unexplained injuries on the person of the accused. But such injuries do not by themselves afford a defence. *Govardhan v State*, 1987 Cr LJ 541 (Raj). *Ram Kumar v State of Haryana*, 1994 Cr LJ 1450 P&H, dispute over water course, accused entered field to divert water, caused innumerable injuries to those who objected and also himself received a few injuries, he was held to be an aggressor having no right of private defence; *Velummei v State*, 1994 Cr LJ 1738 (Ker), a person entering the house of another for crime is an aggressor, he has no right of private defence. *Man Bharan Singh v State of MP*, 1996 Cr LJ 2707 (MP), every minor injury on the person of the accused does not require explanation.

315. *State of Punjab v Gurlabh Singh*, (2009) 13 SCC 556 [LNIND 2009 SC 1262] : AIR 2009 SC 2469 [LNIND 2009 SC 1262] ; *Radhe v State of Chhattisgarh*, (2008) 11 SCC 785 [LNIND 2008 SC 1333] : AIR 2008 SC 2878 [LNIND 2008 SC 1333] : 2008 Cr LJ 3520 , the mere fact of a quarrel and the accused sustaining injuries does not in itself create the right of self-defence to the extent of causing death, there has to be an attack creating apprehension of fatal injury. Such was not the case here.
316. *Onkarnath*, supra. Injuries to the accused not caused during the course of the same incident, no right of private defence, *Munna v State of UP*, AIR 1992 SC 278 : 1993 Cr LJ 45 : 1993 Supp (2) SCC 757 ; *State of Kerala v Mavila Thamban Nambiar*, 1993 Cr LJ 1817 (Ker), the accused fell off during the course of struggle and injured himself, those injuries could not give him the right of killing in private defence.
317. *State of Punjab v Sohan Singh*, AIR 1992 SC 1247 : 1992 Cr LJ 2514 : 1993 Supp (1) SCC 312 .
318. *Sridhar Das v State of Orissa*, 1992 Cr LJ 2907 (Ori).
319. *Makwana Takhat Singh Ratan Singh v State of Gujarat*, AIR 1992 SC 1989 : 1992 Cr LJ 3596 . No explanation of injuries on the person of the accused made, no difference to the acceptance of their plea of self-defence, *Hardeep Singh v State*, 1996 Cr LJ 3091 (Raj).
320. *Arjun v State of MP*, 1995 Cr LJ 3797 (MP).
321. *State of UP v Mukunde*, (1994) 2 SCC 191 [LNIND 1994 SC 71] : 1994 SCC (Cr) 473. Also to the same effect *Kasam Abdulla v State of Maharashtra*, 1998 Cr LJ 1422 : AIR 1998 SC 1013 [LNIND 1998 SC 157] , injuries on the person of a accused explained.
322. *Thakhaji Hiraji v Thakore Kuber Singh Chaman Singh*, (2001) 6 SCC 145 [LNIND 2001 SC 1150] : AIR 2001 SC 2326 : 2001 AIR SCW 2077.
323. The Court also noted the decision in *Chandu v State of Maharashtra*, (2001) 4 Scale 590 [LNIND 2009 NGP 319] : (2001) 5 Supreme 672; *Dev Raj v State of HP*, AIR 1994 SC 523 : 1993 AIR SCW 3966 : (1994) Supp 2 SCC 552, such injuries cannot be lightly ignored; *Tara Chand v State of Haryana*, AIR 1971 SC 1891 : 1971 Cr LJ 1411, the circumstance can also be taken into account in the mitigation of sentence.
324. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] . See also *State of Rajasthan v Pura*, 2000 Cr LJ 2615 (Raj); *Dharminder v State of HP*, AIR 2002 SC 3097 [LNIND 2002 SC 537] ; *Jesu Asir Singh v State*, AIR (2007) SC 3015 [LNIND 2007 SC 977] : (2007) Cr LJ 4310 : (2007) 12 SCC 19 [LNIND 2007 SC 977] : (2008) 2 SCC (Cr) 192.
325. *Poosaram*, 1984 Cr LJ 1848 (Raj); See also *State of Gujarat v Bai Fatima*, 1975 Cr LJ 1079 : AIR SC 1478; *Rizwan v State of Chhattisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] , non-explanation of injuries on the accused persons was not taken by itself to give them the benefit of the right of private defence. The Court considered the factors to be taken into account for examining whether the right of private defence must have existed.
326. *Radhe v State of Chhattisgarh*, (2008) 11 SCC 785 [LNIND 2008 SC 1333] : AIR 2008 SC 2878 [LNIND 2008 SC 1333] .
327. *Laxman Singh v Poonam Singh*, (2004) 10 SCC 94 [LNIND 2003 SC 767] : (2004) 1 MPLJ 93 : (2004) 1 Mah LJ 317 . *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] : (2004) 2 MPLJ 231 : 2004 Mah LJ 358 . *Shriram v State of MP*, (2004) 9 SCC 292 [LNIND 2003 SC 1026] : AIR 2004 SC 491 [LNIND 2003 SC 1026] : 2004 Cr LJ 610 .
328. *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] .
329. *Rajesh Kumar v Dharmavir*, AIR 1997 SC 3769 [LNIND 1997 SC 445] : 1997 Cr LJ 2242.
330. *Ranveer Singh v State of MP* (2009) 3 SCC 384 [LNIND 2009 SC 123] : AIR 2009 SC 1658 [LNIND 2009 SC 123] ; *Bishna Alias Bhiswadeb Mahato v State of WB*, (2005) 12 SCC 657 [LNIND

2005 SC 873] Also see *Ravishwar Manjhi v State of Jharkhand*, AIR 2009 SC 1262 [LNIND 2008 SC 2423] : (2008) 16 SCC 561 [LNIND 2008 SC 2423] .

331. *State v Tanaji Dagadu Chawan*, 1998 Cr LJ 4515 (Bom).

332. *State of Rajasthan v Shiv Singh Haren Das v State of Assam*, 2011 Cr LJ 580 (Raj).

333. *Moti Singh v State of Maharashtra*, (2002) 9 SCC 494 .

334. *V Subramani v State of TN*, 2005 Cr LJ 1727 SC : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .

335. *Nagaraj v State*, 2006 Cr LJ 3724 (Mad—DB).

336. *Mehi Lal v State of UP*, 2011 Cr LJ 1440 (All).

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).
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

Of the Right of Private Defence

[s 97] Right of private defence of the body and of property.

Every person has a right, subject to the restrictions contained in section 99, to defend

—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

COMMENT.—

This section broadly specifies the offences against which the right of private defence can be exercised. Section 99 provides the limitations. These two sections combined together lay down the principles of the right of private defence.

The first clause of this section provides for the defence of body against any offence affecting the human body. The second provides for the defence of property against an act which amounts to the commission of certain offences.

There is no obligation upon a person entitled to exercise the right of private defence and to defend his person or property, to retire merely because his assailant threatens him with violence.³³⁷

Explaining the genesis of the rule, the Supreme Court has observed:³³⁸

"It is important to bear in mind that self-preservation of one's life is the necessary concomitant of the right of life enshrined in [Art. 21 of the Constitution of India](#), fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it."

[s 97.1] Aggressor has no right of private defence.—

The right to defend does not include a right to launch an offensive or aggression.³³⁹ The right of private defence does not arise where the accused were the aggressors and the question of exceeding such right also does not arise.³⁴⁰ The Supreme Court added, in this case, that the right of self-defence arises when there is unexpected apprehension and one is taken unawares, or the accused happens to kill accidentally while using reasonable force private defence can be used to ward off unlawful force, or to prevent it, to avoid unlawful detention and to escape from such detention.³⁴¹

When the father of the accused was trying to forcibly remove the gate of the thrashing ground of the deceased which was situated on the land of the deceased, his act amounted to an offence of 'mischief'. And, if the deceased while protecting his own property assaulted the father of the accused with a *lathi*, and the accused killed him in return, the accused could not claim the right of private defence of body of his father.³⁴² In another case of the same kind the father of the accused was trying to pull out the gate of the deceased thrashing mill and on the deceased assaulting him in protection, the accused struck him dead. The right of private defence was not available in the circumstances.³⁴³ Where the parties went away from the property over which they were fighting, the death caused at that shifted place was not a justifiable exercise of the right of private defence.³⁴⁴ Where the accused succeeded in establishing their right to the property in dispute through the Court and then went to the field with a view

to ask the other party to vacate the premises, it was held that it by itself did not render them to be aggressors for the purpose of denying them the benefit of right of self-defence.^{345.}

Number of injuries is not always the safe criterion for determining who the aggressor is. The fact of injuries on the body of the accused does not by itself create the presumption that the accused was entitled to the right of private defence.^{346.}

[s 97.2] Unlawful assembly.—

So long as an assembly of persons is acting in exercise of the right of private defence it cannot be an unlawful assembly. An assembly though lawful to begin with, may in the course of events become unlawful. So long as the accused persons were acting in exercise of right of private defence, their object was not unlawful and so there was no unlawful assembly but once they exceeded the right, the assembly ceased to be lawful and became an unlawful assembly. There too only such of the members of the assembly who shared the object of doing anything in excess of the exercise of right of private defence, alone would be liable to be punished for the acts committed in prosecution of the common object or for their individual unlawful acts.^{347.}

[s 97.3] Right of private defence to be pleaded.—

In a Supreme Court case it is stated,

It is well settled that even if an accused does not plead self-defence, it is open to the Court to consider such a plea if the same arises from materials on record.^{348.}

But if no plea was entered on behalf of the accused and there were also no circumstances to show that the accused had probably the right of private defence, such a right could not be presumed on behalf of the accused on mere conjectures and surmises.^{349.} A mere bald assertion without any evidence of facts and circumstances does not make out a case of private defence.^{350.} The accused can, however, make out his plea by mere preponderance of probabilities from materials already on record and need not prove it to the hilt.^{351.} Where by preponderance of probabilities the plea of private defence of the accused is plausible, benefit should be extended to the accused.^{352.} Failure on the part of the prosecution to prove that the injuries on the person of the accused were not caused in self-defence, makes the defence of the accused probable and he is entitled to its benefit because he has not to prove his defence beyond reasonable doubt.^{353.} Where the accused set up the plea of self-defence only during trial and not during investigation, it was held that this was not a ground for rejecting the plea.^{354.} The accused on the observation of the High Court that the deceased was stabbed by the appellant, not in pursuance of any pre-planned attack, but being under the impression that the deceased was coming to attack him. The said observation cannot be read out of context to make out a case that the accused acted in self-defence. Such a plea is neither put forth in the statement under section 313 nor brought out in the cross examination of any of the prosecution witnesses.^{355.} It is true that the right of private defence need not specifically be taken and in the event the Court on the basis of the materials on record is in a position to come to such a conclusion, despite some other plea having been raised, that such a case had been made out, it may act thereupon.^{356.}

[s 97.4] CASES.—Defence of person.—

Under circumstances which might have induced the belief that a man was cutting the throat of his wife, their son shot and killed his father. It was held that if the son had reasonable ground for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable.³⁵⁷ Where a girl was being sexually molested and her father hit the assailant resulting in consequential death, it was held that the father was entitled to the right of private defence irrespective of the fact whether the affair was with or without consent because of the girl being a minor.³⁵⁸ Where a man found his wife in compromising position with a person who sprang at the husband and caused him multiple injuries, some of them grievous, the husband thereafter gave a chopper blow resulting in the death of that person, it was held that the husband had not exceeded his right of private defence and was entitled to acquittal.³⁵⁹ Where the father of the accused was being given *lathi* blows by the complainant party, the accused fired from the licensed gun of his father to defend his father, it was held that he had acted in the exercise of the right of private defence whether the injuries caused to his father were simple or grievous.³⁶⁰ Trespassers on the property of another cannot get any benefit of right of private defence if they are attacked by the person in possession of the property.³⁶¹ However no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. Such possession of the trespasser must extend over a sufficiently long period and acquiesced in by the true owner.³⁶² Though law permits even a trespasser in settled possession to defend his possession but, it does not permit a person to take the law in his own hand to take forcible possession merely because he has obtained a favourable order under [section 145 Cr PC, 1973](#). Such a person cannot claim private defence.³⁶³ Settled possession means such clear and effective physical possession that under the criminal law he, even if he is a trespasser, gets the right to defend his possession of the property against an attack even by the true owner.³⁶⁴ If no party is proved to be in settled possession, the question of exercise of right of private defence does not arise.³⁶⁵ Where the accused were in possession of the property and had grown the paddy, they were entitled to defend their possession by using reasonable force which in the instant case went up to causing of death as the party in possession was attacked and grievous blows were given to them.³⁶⁶ Where the prosecution party attacked the accused, his brothers and others with sharp edged weapons and *lathis* and when they tried to enter the latter's house, the accused fired at the crowd resulting in the death of a man and injuries to others, it was held that the accused had acted only in the exercise of the right of private defence and he was entitled to complete acquittal.³⁶⁷ Where the accused was fired at to dispel his party from attempting to rescue their friend from illegal police detention and an informer accompanying the police who tried to prevent them from snatching the police gun received fatal injuries, it was held that they were entitled to the right of private defence.³⁶⁸ Where a fatal injury was caused in consequence of hot exchange of words, the right of private defence was held to be not available.³⁶⁹ The Supreme Court has suggested that the number and nature of injuries sustained by the accused and the deceased in any case, may furnish good evidence to consider whether the accused was acting in private defence and, if so, whether he had exceeded his right. In the state of the evidence on record in that case and the number of injuries suffered by the accused, the Court did not accede to the contention that the right was not properly exercised.³⁷⁰

[s 97.5] Defence of another person.—

The right of private defence need not necessarily be exercised for the defence of one's own person; it can be exercised for the defence of the person of another one.^{371.}

[s 97.6] Defence of property.—

Every person in possession of land is entitled to defend his possession against anyone who tries to eject him by force,^{372.} or to steal from it;^{373.} or to do an act which will have the effect of causing injury to it, e.g., cutting of a bund.^{374.} Even if a trespass has been committed, in certain situations, right of private defence can be used to eject the trespassers.^{375.} Where the accused had no right, title, interest or possession of the land in issue, right of private defence of property did not vest in him.^{376.}

Where the complainant party was about 300 feet away from the disputed land and it was further found that the accused had not shown that there was any injury on the person of the accused, it was held that no right of private defence arose in favour of the accused.^{377.}

[s 97.7] Open space.—

Though private defence is available in respect of criminal trespass or mischief as against the property owned by himself or of any other person, but criminal trespass is not enumerated as one of the offences under [section 103 IPC, 1860](#). Therefore, the right of private defence of property will not extend to the causing of death of the person who committed such acts, if the act of trespass is in respect of an open land. Only a house-trespass committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence is enumerated as one of the offences under section 103.^{378.} But in another judgment Supreme Court held that there is no law that right of self-defence cannot be exercised in relation to a dispute over an open space.^{379.} Where the trespasser was in settled possession of the field in question, and the party who claimed ownership started ploughing the field, it was held that the trespasser (accused) had the right of private defence of his possession over property and offer resistance, but that he exceeded that right in causing death. His act fell under exception 2 to section 300 and punishable under section 304, Part I.^{380.} Where a goat of the accused entered the field of another and he was trying to take it away, the other struck him with *lathi* blows and also his companion who came to his rescue. Only then the accused retaliated with *lathi* blows resulting in death. Supreme Court upheld the acquittal.^{381.} The right is subject to restrictions imposed by section 99, the accused party was in possession of the land, the deceased party wanted to enter into possession forcibly. One of the aggressors was killed and another grievously hurt. The accused that caused the death was held to be guilty of exceeding the right of private defence. The acquittal of the person who caused grievous hurt with a spear was held to be not proper. He was liable to be convicted under section 326.^{382.} Accused having not been in settled possession had no right to self-defence to defend the possession of the property.^{383.} Occurrence took place on the land which was in possession of deceased. Accused cannot take the plea of private defence.^{384.} No right of private defence of property to a person who was not in possession of the property.^{385.}

Where the accused to a certain stage acted in defence of their property but exceeded it in breaking into the room of their victim, striking him with a *lathi* blow and also his wife and daughter who were also there in the room, the victim subsequently dying, their

conviction was shifted from under section 302 to that under section 304 Part 1.³⁸⁶ The right of private defence of property (share in land) was held to have been exceeded when the deceased's side being armed with *lathis* only, the accused party fired at them with a gun, killing one and injuring others. The right of private defence was not available to them.³⁸⁷

Where the finding of the Courts below was that the accused and his companions were aggressors because they assaulted the victim and his children when they came out to protest against cutting of their by the accused, it was held that the benefit of the right of private defence was not available to the accused.³⁸⁸

Defence of property may create circumstances ripening into the right of defence of person. This is so because even in defending property, the attack and counter-attack is likely to be on person. This was the situation in a case in which the accused while defending land over which they had possession; they became the victim of attack on person with sharp cutting weapons. It became their right to repel the danger of grievous hurt or even death and to use for that purpose reasonably appropriate force. Their right extended to cause death of the aggressors if that could be the only way of saving themselves.³⁸⁹

[s 97.8] CASES.—Exceeding private defence.—

The father of the accused was attacked by the deceased with a *lathi* and suffered a simple injury on his head, whereupon the accused in order to protect his father administered a fatal blow on the chest of the deceased with a *ballam*. It was held that though the accused had the right of private defence, he had obviously exceeded it and was, therefore, liable under section 304-Part I, *IPC, 1860*.³⁹⁰ A somewhat contrary view has, however, been taken by the Supreme Court in a later case where too the accused had exercised his right of private defence against a *lathi* blow on the head. Thus, in *Deo Narain's* case it has been held that the accused was justified in using his spear though the other party had aimed only a *lathi* blow on the head, which being a vulnerable part even a *lathi* blow could prove dangerous.³⁹¹ It thus, appears that the part of the body against which the attack is directed is more important than the weapon used. Where the deceased attacked the accused with a stick and the accused retaliated by stabbing the former to death his offence fell under section 304-Part I, *IPC, 1860*, as he had exceeded the right of private defence.³⁹² Evidence on record showed that accused had received many injuries on his person, and exercised right of private defence of person in good faith. He had sustained four injuries on various parts of his body including on vital parts, thus, case would be covered by Exception 2 to *section 300 of IPC, 1860*. The nature of weapon used, circumstances in which incident took place, injuries on body of accused as well as deceased, showed that there was no premeditation. He had exercised his right of self-defence but having regard to the injuries inflicted by him on deceased, he exceeded same.³⁹³ Where the accused, a person with only one hand was attacked with a bamboo and sustained several injuries and then to ward off further attack gave only one blow with a pen-knife on the aggressor which unfortunately fell on a vital part resulting in his death, it could not be said that he had exceeded his right of private defence. For the accused it was a case of life or death struggle and his case, therefore, squarely fell within the ambit of clauses (1) and (2) of *section 100, IPC, 1860*, and he could not be held guilty of any offence.³⁹⁴ In a sudden group clash over a house both sides received injuries and one person was killed. There was no prior enmity between two groups and the whole incident developed suddenly. Accused persons received quite a number of injuries, some on vital parts, and the prosecution was not able to explain those injuries. It was held that the accused could not be said to have exceeded the right of private defence. Their conviction was set aside.³⁹⁵ Two