

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:—

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

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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.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 87] Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person,

above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

ILLUSTRATION

A and Z agrees to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

COMMENT.—

Consent.—This section protects a person who causes injury to another person above 18 years of age who has given his consent by doing an act not intended and not known to be likely to cause death or grievous hurt. It appears to proceed upon the maxim *volenti non fit injuria*. He who consents suffers no injury. This rule is founded upon two very simple propositions: (1) that every person is the best judge of his own interest and (2) that no man will consent to what he thinks hurtful to himself. Every man is free to inflict any suffering or damage he chooses on his own person and property; and if, instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property, and so another who takes it by his permission does not commit theft. He may inflict self-torture or he may consent to suffer torture at the hands of another.

The section does not permit a man to give his consent to anything intended, or known to be likely to cause his own death or grievous hurt.

[s 87.1] Sado-masochistic desires.—

In the absence of a good reason, the victim's consent is no defence and the satisfaction of sado-masochistic desires does not constitute such a good reason. A group of sado-masochistics participated in consensual acts of violence against each other for sexual gratification. They were charged with various offences. They were convicted for causing harm to one member. It is not in public interest that a person should wound or cause actual bodily harm to another for no good reason and without such a reason the victim's consent afforded no defence.^{210.}

[s 87.2] Injection of heroin on request resulting in death.—

The accused appealed against a sentence of five years' imprisonment for manslaughter. The deceased, visited him, at his flat. He had previously drunk a significant quantity of alcohol. He took some heroin and demanded more. At his request the accused injected him with more heroin, resulting in his death. The accused contended that weight should have been given to his admission of responsibility and his guilty plea, the fact that the deceased had insisted upon more heroin, that there was no commercial motive involved in the supply and that he had co-operated in naming the supplier of the heroin.

It was held that it was necessary to take into consideration accused's co-operation in naming the supplier of the heroin and other mitigating factors. The sentence for manslaughter was reduced to three years' imprisonment and the sentence for supplying a Class A drug, from three years' imprisonment to two years.^{211.}

Sections 87 and 88 of the IPC, 1860 do not come into play in the cases where interest of the Society is involved.²¹².

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).
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210. *R v Laskey*, (1993) 2 WLR 556 (HL).
211. *R v Powell (Jason Wayne)*, (2002) EWCA Crim 661 : (2002) 2 Cr App R (S) 117, [CA (Crim Div)].
212. *Deepa v SI of Police*, 1985 Cr LJ 1120 (Ker).

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[s 88] Act not intended to cause death, done by consent in good faith for person's benefit.

Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has

given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

ILLUSTRATION

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending in good faith, Z's benefit performs that operation on Z, with Z's consent. A has committed no offence.

COMMENT.—

The preceding section allows any harm to be inflicted short of death or grievous hurt. This section sanctions the infliction of any harm if it is for the benefit of the person to whom it is caused. No consent can justify an intentional causing of death. But a person for whose benefit a thing is done may consent that another shall do that thing, even if death may probably ensue. If a person gives his free and intelligent consent to take the risk of an operation which, in a large proportion of cases, has proved fatal, the surgeon who operates cannot be punished even if death ensues.²¹³ Again; if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though when they fired they knew themselves to be likely to cause his death.²¹⁴

This section differs from the last section in two particulars—(1) under it any harm except death may be inflicted; (2) the age of the person consenting is not mentioned (but see section 90 under which the age of the consenting party must at least be 12 years).

Persons not qualified as medical practitioners cannot claim the benefit of this section as they can hardly be deemed to act in 'good faith' as that expression is defined in section 52.²¹⁵

[s 88.1] Criminal liability on doctor or surgeon.—

Prosecution has to come out with a case of high degree of negligence on part of doctor. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal.' It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.²¹⁶ Even if the surgery was done without the consent of the patient or his/her guardian, if it is for the benefit of the patient he is not liable. Section 98 deals with harm caused with the consent of the person injured or someone competent under law to give such consent on his behalf excludes causing of such harm from the category of offence. Here the complainant has given her consent. [Section 88 IPC, 1860](#) provides that harm done for the benefit of the person injured and with his consent will not make the person causing harm liable for criminal offence.²¹⁷

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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5. *A K Chaudhary v State of Gujarat*, [2006 Cr LJ 726](#) (Guj).
213. *RP Dhanda (Dr.) v Bhurelal*, [1987 Cr LJ 1316](#) MP, eye-operation for cataract by qualified doctor with patient's consent resulting in loss of sight.
214. The Works of Lord Macaulay-On the Chapter of General Exceptions Note B.
215. *Juggankhan*, (1963) 1 Cr LJ 296 (MP).
216. *Suresh Gupta v Govt. of NCT of Delhi*, [AIR 2004 SC 4091](#) [LNIND 2004 SC 744] : (2004) 6 SCC 422 [LNIND 2004 SC 744] ; *Jacob Mathew v State of Punjab*, [AIR 2005 SC 3180](#) [LNIND 2005 SC 587] : 2005 (6) SCC 1 [LNIND 2005 SC 587] .
217. *Dr. Gopinatha Pillai T M v State of Kerala*, [2000 Cr LJ 3682](#) (Ker); *Katcherla Venkata Sunil v Vanguri Seshumamba*, [2008 Cr LJ 853](#) (AP).

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[s 89] Act done in good faith for benefit of child or insane person, by or by consent of guardian.

Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any