

no such thing as an act of State. Courts of law are established for the express purpose of limiting public authority in its conduct towards individuals.

Persons carrying out an act of State under proper orders will be protected by the [Penal Code](#), in the same way as if they were carrying out a lawful order under the municipal law. To support a plea of this nature two things are essential:—

- (1) that the defendant had authority to act on behalf of the State in the matter; and
- (2) that in so acting, he was professing to act as a matter of policy, outside the law, and not as a matter of right within the law.

[s 79.3] Protection of private persons.—

Private persons acting under [sections 38, 43, 72 and 73](#) of the [Cr PC, 1973](#) will be protected under this section.

[s 79.4] Fake Encounters. —

Unprovoked firing by appellants who were police officials caused death of two persons and grievous gun-shot injuries to another person. Seven police officers admitted firing into the vehicle. But the defence case was that they had done so only on the direction of ACP, a superior officer. The Supreme Court held that it cannot, by any stretch of imagination, be claimed by anybody that a case of murder would fall within the expression 'colour of duty'.^{39.}

[s 79.5] CASES.—Mistake of fact.—

Good Defence.—Where an accused owing to a defect in his vision and the effect of a fall *bona fide* believed that his son of whom he was very fond was a tiger and caused fatal injuries to him with an axe in a moment of delusion, he was protected under this section, and his act being done under a *bona fide* mistake, he could not be convicted of an offence of murder.^{40.} Once 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 connected agencies enter the statutory harbour and are protected because section 79 exonerates them in view of the *bona fide* belief that the certificate is justificatory.^{41.}

[s 79.6] English case.—

The accused was convicted of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband. She believed in good faith and on reasonable grounds that her husband was dead. It was held that a *bona fide* belief on reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence to the indictment, and that the conviction was wrong.^{42.} Where the question was whether the accused was to be held liable for injuring a person whom he thought was belabouring another when in fact he was only trying to immobilise a person who had attempted to rob a woman, the Court said that if W was labouring under a mistake of fact as to the circumstances when he committed

the alleged offence, he was to be judged according to his mistaken view of the facts regardless of whether his mistake was reasonable or unreasonable. The reasonableness or otherwise of the belief was only material to the question of whether the belief was in fact held by the defendant at all.⁴³

[s 79.7] Bad defence.—

Deceased attempted to steal coconut from the garden of which accused was a watchman. Accused contended that, he while discharging his duties as a watchman in good faith and under mistake of fact inflicted an injury which unfortunately resulted in the death of the victim. Explaining the applicability of section 79, Supreme Court held that there was no mistake of fact which could even if existed or found true could warrant or justify in law, the imposition of such a serious injury as found inflicted on the victim.⁴⁴ A police-officer saw a horse tied up in B's premises and because it happened to resemble one which his father had lost a short time previously, he jumped at once to the conclusion that B had either stolen the horse himself, or purchased it from the thief, and compelled B to account for his possession. The officer found that B had bought the animal from one S; so he sent for S, charged him with the theft, and compelled him to give bail whilst an investigation was pending. The officer never sent for the supposed owner of the horse, or took the trouble of getting any credible information as to whether it was his father's horse or not. It was held that the police-officer had not acted in good faith, that is, with due care and attention and that this section did not protect him.⁴⁵ The accused struck a person with a full force *lathi* blow thinking that he was a thief and he had to do so to safeguard his property. The incident took place outside the house near a pond. The place was away from the house. There being no occasion for private defence of property and the blow being given on the head with severity, it was held that the accused was liable to be convicted under section 304 Part II. He was sentenced to three years RI.⁴⁶

[s 79.8] English case.—

The accused took an unmarried girl under the age of 16 years out of the possession, and against the will, of her father. The defence of the accused was that he was *bona fide* and reasonably believed that the girl was older than 16. It was held that the taking of the girl was unlawful the defence was bad.⁴⁷ This case may be distinguished from *Tolson's* case, in which a woman married believing her husband to be dead. There the conduct of the woman was not in the smallest degree immoral, but was, on the other hand, perfectly natural and legitimate.

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).
14. 1st Rep. section 114, p 219.
15. *Raj Kapoor v Laxman*, AIR 1980 SC 605 [LNIND 1979 SC 492] : (1980) 2 SCC 175 [LNIND 1979 SC 492] : 1980 (2) SCR 512 [LNIND 1979 SC 492] : 1980 Cr LJ 436 ; *Jayantilal K Katakia v P Govindan Nair*, AIR 1981 SC 1196 : (1981) 2 SCC 423 .
16. *State of AP v N Venugopal*, AIR 1964 SC 33 [LNIND 1963 SC 159] .
17. *State of Maharashtra v Narhar Rao*, AIR 1966 SC 1783 [LNIND 1966 SC 85] ; *State of Maharashtra v Atma Ram*, AIR 1966 SC 1786 [LNIND 1978 SC 193] .
18. *Bhanuprasad Hariprasad Dave v State of Gujarat*, AIR 1968 SC 1323 [LNIND 1968 SC 119] .
19. *Raj Kapoor v Laxman*, AIR 1980 SC 605 [LNIND 1979 SC 492] : (1980) 2 SCC 175 [LNIND 1979 SC 492] : 1980 (2) SCR 512 [LNIND 1979 SC 492] : 1980 Cr LJ 436 .
20. *State of Orissa v Bhagaban Barik*, AIR 1987 SC 1265 [LNIND 1987 SC 366] : (1987) 2 SCC 498 [LNIND 1987 SC 366] .
21. Per Lord Esher, MR, in *Barrow v Isaacs*, (1891) 1 QB 417 , 420.
22. Per Lord Russell, CJ, in *Sandford v Beal*, (1899) 65 LJQB 73 , 74, 73 LT 406.
23. Per Cave, J, in *Tolson*, (1889) 23 QBD 168 , 181.
24. Per Stephen, J, in *Ibid.*, p 188.
25. 1 Hale PC pp 42, 43.
26. *Levett*, (1839) Cro Car 538.
27. *State of Orissa v Khora Ghasi*, 1978 Cr LJ 1305 (Ori).
28. *Keso Sahu v Saligram*, 1977 Cr LJ 1725 (Ori).
29. *Raj Kapoor v Laxman*, 1980 Cr LJ 436 : AIR 1980 SC 605 [LNIND 1979 SC 492] .
30. *Tustipada Mandal*, (1950) Cut 75.
31. 1 Hale PC 42.
32. *Fischer*, (1891) 14 Mad 342, 354, FB.
33. *Esop*, (1836) 7 C & P 456.
34. *Bilbie v Lumley*, (1802) 2 East 469.
35. *Bailey v Bailey*, (1800) Russ & Ry 1; C & J cases, see also *State of Maharashtra v MH George*, 1965 (1) Cr LJ 641 : AIR 1965 SC 722 [LNIND 1964 SC 208] .
36. *Tustipada Mandal*, (1950) Cut. 75.
37. *Bailey's Case*, (1800) Russ. & Ry 1.
38. *Mayer Hans George*, (1964) 67 Bom LR, 583 : AIR 1965 SC 722 [LNIND 1964 SC 208] : (1965) 1 Cr LJ 641 .
39. *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 : (2011) 2 SCC(Cr) 782 : (2011) 6 SCR 138 [LNIND 2011 SC 475] .
40. *Chirangi*, (1952) Nag 348.
41. *Raj Kapoor v Laxman*, AIR 1980 SC 605 [LNIND 1979 SC 492] : (1980) 2 SCC 175 [LNIND 1979 SC 492] : 1980 (2) SCR 512 [LNIND 1979 SC 492] : 1980 Cr LJ 436 .
42. *Tolson*, (1889) 23 QBD 168 .
43. *R. v Williams*, (1987) 3 All ER 411 Ch, following dictum of LAWTON LJ in *R. v Kimber*, (1983) 1 All ER 320 . See also *Beckford v R*, (1987) 3 All ER 425 PC, where the same test was applied in a situation in which a person acted in self defence under a mistaken, but honestly held belief, that the person whom he shot dead was a dangerous gunman.
44. *Pitchai v State*, (2004) 13 SCC 579 : (2006) 1 SCC(Cr) 505 See also *Nagraj v State of Mysore*, AIR 1964 SC 269 [LNIND 1963 SC 153] : 1964 (3) SCR 671 [LNIND 1963 SC 153] : 1964 Cr LJ 161 .

45. *Sheo Surun Sahai v. Mohomed Fazil Khan*, (1868) 10 WR (Cr) 20.
46. *State of Orissa v Bhagbhan Barik*, (1987) 2 SCC 498 [LNIND 1987 SC 366] : AIR 1987 SC 1265 [LNIND 1987 SC 366] : 1987 Cr LJ 1115 . The Court **relied** on Russel On Crimes, 76 (vol 1).
47. *Prince*, (1875) LR 2 CCR 154.

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).

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 80] Accident in doing a lawful act.

Nothing is an offence which is done by accident ¹ or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

ILLUSTRATION

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

COMMENT.—

This section exempts the doer of an innocent or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may ensue from accident or misfortune.⁴⁸ To claim the benefit of this provision it has to be shown:

- (1) that the act in question was without any criminal intention or knowledge;
- (2) that the act was being done in a lawful manner by lawful means; and
- (3) that act was being done with proper care and caution.⁴⁹

1. 'Accident'.—An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.⁵⁰ An accident is something that happens out of the ordinary course of things.⁵¹ The idea of something fortuitous and unexpected is involved in the word 'accident'.⁵² Where two brothers were sleeping together and one of them while in a state of semi-sleep felt that somebody was throttling him, picked up the *dao*, kept on the head of the bed, and administered a blow which was received by his sleeping brother who died, there being neither intention nor motive, the accused was let off under this section. His act was not voluntary.⁵³

An injury is said to be accidentally caused whensoever it is neither wilfully nor negligently caused.⁵⁴ Where the accused fired a shot at his assailant who escaped but four other persons were injured and one of them unfortunately expired, it was held that the accused was not liable for the fatal injury to an innocent person as his case fell within the scope of section 80 read with [sections 96 and 100, IPC, 1860](#).⁵⁵ Shooting with an unlicensed gun does not debar an accused from claiming immunity under this section.⁵⁶

[s 80.1] Medical Negligence.—

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.⁵⁷ In *Dr. Suresh Gupta v Govt. of NCT of Delhi*,⁵⁸ the Apex Court held that where the medical practitioner failed to take appropriate steps, viz., "not putting a cuffed endotracheal tube of proper size" so as to prevent aspiration of blood blocking respiratory passage, the act attributed to him may be described as negligent act but not so reckless as to make him criminally liable. In *Kusum Sharma v Batra Hospital and Medical Research Centre*,⁵⁹ the Supreme Court reiterated the legal position after taking survey of catena of case law. In the context of issue pertaining to criminal liability of a medical practitioner, it is laid

down that the prosecution of a medical practitioner would be liable to be quashed if the evidence on record does not project substratum enough to infer gross or excessive degree of negligence on his/her part. The criminal liability cannot be fastened on the Medical Practitioner unless the negligence is so obvious and of such high degree that it would be culpable by applying the settled norms.^{60.}

[s 80.2] CASES.—

Deceased allegedly dashed by offending tractor and crushed by its wheels. The Steering bolt of steering wheel was evidently broken all of a sudden. Offending vehicle became free and was out of control. Incident was merely an accident and not an act of rashness or negligence on the part of the accused.^{61.} Where the act of the accused is itself of criminal nature, the protection of this section cannot be availed. In this case, the accused picked up his gun, unlocked it, loaded it with cartridges, aimed at the chest of the victim from a close range of 4–5 feet and shot it. Quite naturally this section was held to be not applicable. There could be no suggestion of an accident.^{62.} Where the Death is caused by shooting an arrow under *bona fide* belief that object aimed at was an animal, accused is entitled to the benefit under sections 79 or 80.^{63.} The accused was attacked when he was asleep at night by his brother who tried to strangle him. Apprehending imminent death, the accused aimed a blow at his assailant brother with a piece of bamboo on which he could lay hand and the blow accidentally struck the head of his intervening father as a result of which he ultimately died. It was held that the accused exercised his lawful right of self- defence and the blow fell on the head of his father by accident and misfortune and he was fully protected by sections 80 and 106. His conviction under section 304 Part II was set aside.^{64.}

[s 80.3] Burden of Proof.—

The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off from the revolver in the course of a struggle in the circumstances mentioned in [section 80 of the IPC, 1860](#) and hit the deceased resulting in his death. The Court then shall presume the absence of circumstances bringing the case within the provisions of [section 80 of the IPC, 1860](#), that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist. But this presumption may be rebutted by the accused by adducing evidence to support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged and that burden never shifts.^{65.}

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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48. *Sukhdev Singh v Delhi State (Govt. of NCT of Delhi)*, (2003) 7 SCC 441 [LNIND 2003 SC 728] : AIR 2003 SC 3716 [LNIND 2003 SC 728] , if either of these elements is missing, the act is not to be excused on the ground of accident.
49. *Atmendra v State of Karnataka*, 1998 Cr LJ 2838 : AIR 1998 SC 1985 [LNIND 1998 SC 386] (SC).
50. *Stephen's Digest of Criminal Law*, 9th Edn, Article 316.
51. *Fenwick v Schmalz*, (1868) LR 3 CP 313, 316. *Atmendra v State of Karnataka*, 1998 Cr LJ 2838 : AIR 1998 SC 1985 [LNIND 1998 SC 386] (SC); *Sita Ram v State of Rajasthan*, 1998 Cr LJ 287 (Raj), the accused labourer was digging earth by spade, another labourer came close to him to remove the soil and became the victim of one spade blow of which he died. It was held that the act of the accused came neither within section 302 nor section 304. It fell within section 304A being an act of criminal negligence. Sentence imposed upon him was reduced to the period already undergone.
52. *Per Lord Halsbury in Hamilton, Fraser & Co v Pandorf & Co*, (1887) 12 AC 518 , 524.
53. *Patreswar Basumatary v State of Assam*, 1989 Cr LJ 196 (Gau).
54. 10th Parl Rep 16.
55. *Raja Ram*, 1977 Cr LJ NOC 85 (All); see also *Khora Ghasi*, 1978 Cr LJ 1305 (Ori) under section 79 ante.
56. *Rangaswamy*, (1952) Nag 93.
57. *Jacob Mathew v State of Punjab*, AIR 2005 SC 3180 [LNIND 2005 SC 587] : 2005 (6) SCC 1 [LNIND 2005 SC 587] in this case SC issued guidelines regarding the prosecution of Doctors for medical Negligence; See comments in section 304A.
58. *Dr. Suresh Gupta v Govt. of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : 2004 AIR SCW 4442 : AIR 2004 SC 4091 [LNIND 2004 SC 744] .
59. *Kusum Sharma v Batra Hospital and Medical Research Centre*, 2010 (3) SCC 480 [LNIND 2010 SC 164] .
60. *Dr. Saroja Patil v State of Maharashtra*, 2011 Cr LJ 1060 (Bom).
61. *Mahadev v State of MP*, 2006 Cr LJ 4246 (MP).
62. *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] .
63. *State of Orissa, v Khora Ghasi*, 1978 Cr LJ 1305 ; *State of MP v Rangaswami* 1952 Cr LJ 1191 .
64. *Girish Saikia v State of Assam*, 1993 Cr LJ 3808 (Gau).
65. *K M Nanavati v State of Maharashtra*, AIR 1962 SC 605 [LNIND 1961 SC 362] : 1962 (Supp1) SCR 567 : 1962 Cr LJ 521 ; *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

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