

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).
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5. Act caused by accident (section 80).
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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 104] When such right extends to causing any harm other than death.

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

COMMENT.—

This section applies in cases where an injury (but not death) is inflicted on the offender in the course of his committing the offences of theft, mischief, or criminal trespass by the person exercising the right of private defence. But the section does not apply to a case where death has been caused in exercise of the supposed right of private defence.⁴⁹⁹ Even so where the accused had killed a person by exceeding his right of private defence of property under this section, his case would fall within the ambit of Exception-II to [section 300 IPC, 1860](#), and his offence would amount to culpable homicide not amounting to murder. He could not, therefore, be punished with a sentence of death. In the instant case the sentence was altered to one of life imprisonment.⁵⁰⁰

Sections 101 and 104 restrict the right of private defence in certain cases to voluntarily causing hurt or grievous hurt. Section 101 is a corollary to section 100, and this section to section 103.

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. *Musammatt 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).

499. *Ramram Mahton*, (1947) 26 Pat 550.

500. *Jai Bhagwan v State of Haryana*, [AIR 1999 SC 1083](#) [[LNIND 1999 SC 116](#)] : [1999 Cr LJ 1634](#) accused party was in possession of the land into which the other party entered for tilling it. The mother of the accused exhorted them and they murderously assaulted the deceased. The act amounted to criminal trespass within the meaning of section 411. The right of self-defence to the extent of causing death did not exist. The offence of murder was made out. *State of UP v Laeeq*, [AIR 1999 SC 1942](#) [[LNIND 1999 SC 447](#)] : [1999 Cr LJ 2879](#) exceeding the right of private defence, punishment under section 304.

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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 105] Commencement and continuance of the right of private defence of property.

The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either

the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

COMMENT.—

This section indicates when the right of defence of property commences and till what period it continues. It is similar to section 102.

[s 105.1] First clause.—

The right of private defence of property commences when a reasonable apprehension of danger to property commences. Before such apprehension commences the owner of the property is not called upon to apply for protection to the public authorities. The right commences not when the actual danger to the property commences but when there is reasonable apprehension of danger.^{501.}

[s 105.2] Second clause.—

The right of private defence of property against theft continues till (1) the offender has affected his retreat with the property, or (2) the assistance of public authorities is obtained, or (3) the property has been recovered.^{502.} An offender is to be considered as having affected his retreat when he has once got off having escaped immediate pursuit not having been made. A recapture of the plundered property, while it is in course of being carried away, is authorized, for the taking and retaking is one transaction. But when the offence has been committed and the property removed, a recapture after an interval of time by the owner or by other persons on his behalf, however justifiable, cannot be deemed an exercise of the right of defence of property. The recovery which the section contemplates seems to be a recovery either immediate or made before the offender has reached his final retreat.^{503.} Where the appellants followed up tracks purporting to be those of their stolen cattle, and prior to the arrival of the police (for whose assistance one of their party had ridden away) proceeded to the complainants' village and fired at them, it was held that the appellants' right of private defence of their property had been put an end to by the successful retreat of the thieves, and that their

alleged rediscovery of the cattle in the complainants' possession could not revive that right.^{504.}

[s 105.3] Third clause.—

A rightful owner in peaceful possession of his land is entitled to defend his property against any person or persons who threaten to dispossess him. The law does not expect any cowardice on his part when there is real and imminent danger to his property from outside sources. Thus, a rightful owner is entitled to throw out, by using such force as would in the circumstances of the case appear to be reasonable necessary, any person who tries to invade his right to peaceful possession of his property. But if the trespasser has settled in the possession of the property, the recourse which the rightful person must adopt, is to recover possession in accordance with law and not by force. In such a case the trespasser would be entitled to defend his possession even against a rightful owner if the latter tries to evict him by use of force. But no hard and fast rule can be laid down in this behalf because much would depend on the facts of each case.^{505.}

[s 105.4] Fourth clause.—

In the case of criminal trespass and mischief the right of private defence ceases to exist as soon as the commission of these offences ceases.^{506.}

[s 105.5] Fifth clause.—

The right of private defence against house-breaking continues only so long as the house-trespass continues; hence, where a person followed a thief and killed him in the open, after the house-trespass had ceased, it was held that he could not plead the right of private defence.^{507.}

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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501. *Chakradhar*, (1964) 2 Cr LJ 696 .

502. *Punjabrao*, (1945) Nag 881.

503. M & M 81; *Amar Singh*, AIR 1968 Raj 11 [LNIND 1966 RAJ 160] .

504. *Mir Dad*, (1925) 7 Lah 21.

505. *Maguni Charan Pradhan v State of Orissa*, (1991) 3 SCC 352 [LNIND 1991 SC 191] : 1991 (2) Crimes 261 (SC).

506. *Rajesh Kumar v Dharamvi*, 1997 Cr LJ 2242 : AIR 1997 SC 3769 [LNIND 1997 SC 445] , the accused came to the place of occurrence and attacked the complainant after the latter had already damaged the outer door of the house. It was held that the accused had no right of private defence.

507. *Balakee Jolahed*, (1868) 10 WR (Cr) 9; *Gulbadan v State*, (1885) PR No. 25 of 1885.

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Of the Right of Private Defence

[s 106] Right of private defence against deadly assault when there is risk of harm to innocent person.