

armed bullies of a locality raided a flat in a drunken state and demanded money from the inmates with the use of force. This amounted to the crime of extortion giving the inmates the right to defend themselves against the raiders. Both the raiders met their death in the process of the ensuing scuffle, it being not known nor capable of being ascertained who played what roll in the combat. The Supreme Court held that it could not be said of any one of them that he exceeded the right of private defence. Hence, they could not be convicted under section 302 read with section 34.³⁹⁶ The accused using his licenced gun fired only one shot after receiving a severe blow on his head fracturing his skull. It was held that he did not exceed his right of self-defence.³⁹⁷ A person had a lurking suspicion about illicit relations between his elder brother's wife and the accused and he caught hold of the accused when the latter visited their house to meet her. The accused inflicted knife injuries on him to extricate himself but did not inflict any further injury after freeing himself. It was held that the accused had not exceeded the right of private defence and was not guilty under section 307 for attempted murder.³⁹⁸ Where the accused fired a single gunshot at the deceased party to save his uncle who had received serious injuries in the attack made by the deceased party, the gun shot unfortunately proved fatal, the accused could not be said to have exceeded his right of self- defence.³⁹⁹ Where in a murder case over obstruction of water course, the victim assaulted the accused twice and injured him whereupon the accused inflicted a blow on him which proved fatal, the accused could not be said to have exceeded his right of private defence.⁴⁰⁰

A police party was looking for the accused to affect their arrest. The complainant party was helping the police. On being located, the accused party opened fire. The police withdrew after receiving injuries. Two members of the complainant party were killed. Even a runaway complainant was shot down. This showed that the attack continued even when all danger to the accused party had ceased. Thus, they exceeded the right of private defence. Conviction for murder was upheld.⁴⁰¹

Where the death occurred due to the firing resorted to as part of the self-defence, the same would amount to 'culpable homicide not amounting to murder', which was committed without any pre-meditation in a sudden fight, in the heat of passion and upon a sudden quarrel and that the offender could not be said to have taken undue advantage or acted in a cruel or unusual manner, which would normally fall under Exception 4 of [section 300 IPC, 1860](#).⁴⁰²

[s 97.9] Burden on accused to probablise his defence.—

It is for the accused to establish the plea of private defence. He is not required to prove it beyond reasonable doubt. The Court has only to examine probabilities in appreciating the plea. In the present case, the accused had miserably failed to establish or even to probablise his defence. The deceased persons had merely asked them why they had cut the mature crop, when they became the victim of attack. They were unarmed.⁴⁰³ The accused need not take the plea of private defence explicitly. He can succeed in his plea if he is able to bring out from the evidence of the prosecution witness or other evidence of the prosecution witness or other evidence that the apparent [criminal act](#) was committed by him in exercise of private defence. The burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing preponderance of probabilities.⁴⁰⁴

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).
337. *Nareshi Singh*, (1923) 2 Pat 595.
338. *Surjit Singh v State of Punjab*, 1996 (2) SCC 336 [LNIND 1996 SC 233] at 342 : AIR 1996 SC 1388 [LNIND 1996 SC 233] .
339. *Sikandar Singh v State of Bihar*, (2010) 7 SCC 477 [LNIND 2010 SC 603] : AIR 2010 SC 44023 : (2010) 3 SCC(Cr) 417.
340. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : AIR 2008 SC 1172 [LNIND 2008 SC 187] .
341. *Ibid*, See also *Narain Singh v State of Haryana*, (2008) 11 SCC 540 [LNIND 2008 SC 864] : AIR 2008 SC 2006 [LNIND 2008 SC 864] : 2008 Cr LJ 2613 , for restatement of principles.
342. *State of MP v Mohandas*, 1992 Cr LJ 101 (MP).
343. *State of MP v Mohandas*, 1991 Cr LJ 101 (MP).
344. *Bhagat Singh v The State*, 1992 Cr LJ 221 (All).
345. *Jarnail Singh v State of Punjab*, AIR 1993 SC 72 : 1992 Cr LJ 3863 : 1993 Supp (1) SCC 588 . See also *Jaipal v State of Haryana*, AIR 2000 SC 1271 [LNIND 2000 SC 448] : 2000 Cr LJ 1778 ; *Murali v State of TN*, 2001 Cr LJ 470 (SC).
346. *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] .
347. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] : (2002) 1 SCC 71 [LNIND 2001 SC 2369] .
348. *Munshi Ram v Delhi Administration*, AIR 1968 SC 702 [LNIND 1967 SC 347]: 1968 Cr LJ 806; *Rajanikant*, (1970) 2 SCC 866 [LNIND 1970 SC 401] : 1970 SCC (Cr) 575 ; *State of Rajasthan v Manoj Kumar*, 2014 Cr LJ 2420.
349. *State of Gujarat v Bai Fatima*, 1975 Cr LJ 1079 : AIR 1975 SC 1478 [LNIND 1975 SC 130] .
350. *Raza Pasha*, 1983 Cr LJ 977 : AIR 1983 SC 575 [LNIND 1983 SC 79] . *Sekar v State of TN*, 2003 Cr LJ 93 : AIR 2002 SC 3667 [LNIND 2002 SC 628] , the plea of self-defence cannot be based upon surmises and speculation. The Court noted the relevant factors in order to find out whether the right is available or not.
351. *Salim Zia*, 1979 Cr LJ 323 : AIR 1979 SC 319 ; *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 . *Mohd. Ramzani v State of Delhi*, 1980 Cr LJ 1010 : 1980 SCC (Cr) 907 : AIR 1980 SC 1341 . The burden is on the accused. The Court does not presume the existence of the circumstances which entitle the accused to his defence. *Subodh Tewari v State of Assam*, 1988 Cr LJ 223 Gau. To the same effect, *Savita Kumari v UOI*, 1993 AIR SCW 1174 : 1993 Cr LJ 1590 : (1993) 2 SCC 357 [LNIND 1993 SC 87] .
352. *Jharmal v State of Haryana*, 1995 Cr LJ 3212 : 1994 (2) SCC 551 [LNIND 1994 SC 256] ; *Rizwan v State of Chhatisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] , burden of proof is on the accused is to establish his plea. It is discharged by showing preponderance of probabilities in favour of his plea.

353. *Debraj v State of UP*, (1993) Supp 2 SCC 552 **followed** in *Maskandar Ali v Assam*, (1995) 2 Cr LJ 1900 Gau. Where the Court said that the burden is on the accused to prove his plea. But he has not to establish his right beyond all doubt. It is enough that he is able to show on a preponderance of probability that he acted in private defence. Also to the same effect, *Dwarka Pd. v State of UP*, (1993) AIR SCW 1122 : (1993) Supp. 3 SCC 141.

354. *Bahadur Singh v State of Punjab*, AIR 1992 SC 70 : 1992 Cr LJ 3709 : (1992) 4 SCC 503 .

355. *Pulicherla Nagaraju v State of Andhra Pradesh*, AIR 2006 SC 3010 [LNIND 2006 SC 621] : (2006) 11 SCC 444 [LNIND 2006 SC 621] .

356. *Hafiz v State of UP*, (2005) 12 SCC 599 [LNIND 2005 SC 773] .

357. *Rose*, (1884) 15 Cox 540. *Kashiram v State of MP*, (2002) 1 SCC 71 [LNIND 2001 SC 2369] , incident of gun shot injuries took place near the house of the accused persons. One of them sustained gun shot and other wounds. This created an apprehension of further grievous hurt being caused to the victims. This entitled them to exercise private defence even to the extent of causing death.

358. *Yeshwant Rao v State of MP*, AIR 1992 SC 1633 : 1992 Cr LJ 2779 .

359. *Raghavan Achari v State of Kerala*, AIR 1993 SC 203 : 1992 Cr LJ 3857 : 1993 Supp (1) SCC 719 .

360. *Bhagwan Swaroop v State of MP*, AIR 1992 SC 675 [LNIND 1992 SC 112] : 1992 Cr LJ 777 : (1992) 2 SCC 406 [LNIND 1992 SC 112] .

361. *Hukam Singh*, (1961) 2 Cr LJ 711 : AIR 1961 SC 1541 [LNIND 1961 SC 136] .

362. *Munshi Ram*, AIR 1968 SC 702 [LNIND 1967 SC 347] : 1968 Cr LJ 806 .

363. *Buduka Kalita*, 1972 Cr LJ 1627 (Gau).

364. *Puran Singh*, 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] .

365. *State of Orissa v Bhagabat*, 1978 Cr LJ 1566 (Orissa).

366. *Abdul Kadir v State of Assam*, 1985 Cr LJ 1898 : AIR 1986 SC 305 : 1985 SCC (Cr) 501. See also *Mehraddin Sheikh v State of WB*, 1985 SCC (Cr) 241 : (1985) 2 SCC 448 where the Court said that a factual study of the respective position of the parties is necessary.

367. *Nagendra Pal Singh v State of UP*, AIR 1993 SC 950 : 1993 Cr LJ 190 : (1993) Supp (3) SCC 197 .

368. *State of UP v Niyamat*, (1987) 3 SCC 434 [LNIND 1987 SC 391] : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1987 Cr LJ 1881 .

369. *Ramesh Laxman Pardesi v State of Maharashtra*, 1987 SCC (Cr) 615 : 1987 Supp SCC 1 .

370. *Patori Devi v Amar Nath*, (1988) 1 SCC 610 : AIR 1988 SC 560 : 1988 Cr LJ 836 .

371. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] : (2002) 1 SCC 71 [LNIND 2001 SC 2369] Also see *B Parichhat v State of MP*, AIR 1972 SC 535 : (1972) 4 SCC 694 : 1972 Cr LJ 322 .

372. *Sachee*, (1867) 7 WR (Cr) 76 (112). *Mohinder Singh v State of Punjab*, (1995) 1 Cr LJ 244 (P&H) an attempt to take forcible possession of land resisted, resistance held justified, the Court explained when the right of resistance can extend to causing death. *Tanaji Govind Misal v State of Maharashtra*, AIR 1998 SC 174 [LNIND 1997 SC 1211] : 1998 Cr LJ 340 , evidence showed that the property belonged to the complainant party and not to attackers, the owners suffered 51 wounds whereas the attackers received 15 wounds, which were also insignificant. The Court held that the conviction of the accused could not be altered from under section 300 to section 304. *Pohap Singh v State of Haryana*, 1998 Cr LJ 1564 : AIR 1998 SC 1554 [LNIND 1997 SC 1658] , the accused party received more injuries than those suffered by the deceased's party. The Court said that not the accused but the deceased was the aggressor and the accused acted in self defence.

373. *Mokee*, (1869) 12 WR (Cr) 15.
374. *Birjoo Singh v Khub Lall*, (1873) 19 WR (Cr) 66.
375. *Triloki Nath v State of UP* AIR 2006 SC 321 [LNIND 2005 SC 867] : (2005) 13 SCC 323 [LNIND 2005 SC 867] ; in this case, occurrence took place 300 paces away from the disputed plot - Plea of self defence against property held not available to the accused.
376. *AR Yelve v State of Maharashtra*, 1996 Cr LJ 1718 : AIR 1996 SC 2945 [LNIND 1996 SC 336] ; *Ram Pal v State of Haryana*, (2009) 7 SCC 614 [LNIND 2009 SC 1264] : AIR 2009 SC 2847 [LNIND 2009 SC 1264] , appellants were not in settled possession of property and as such had no right of private defence to defend possession of that property. They were aggressors coming to place of occurrence fully armed, reversal of acquittal of accused by the High Court was upheld.
377. *Panna Lal v State of MP*, 2015 Cr LJ 3286 .
378. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] : (2002) 2 SCC 481 [LNIND 2002 SC 13] .
379. *Kishan Chand v State of UP*, (2007) 14 SCC 737 [LNIND 2007 SC 1190] : AIR 2008 SC 133 [LNIND 2007 SC 1190] .
380. *Adhimoolam v State*, 1995 Cr LJ 1051 (Mad) **following** *Puran Singh v State of Punjab*, AIR 1975 SC 1674 [LNIND 1975 SC 174] : (1975) Cr LJ 1479 (SC) where the court cited AIR 1968 SC 702 [LNIND 1967 SC 347] : 1968 Cr LJ 806 as defining the concept of settled possession.
381. *Satya Narain Yadav v Gajanand*, (2008) 16 SCC 609 [LNIND 2008 SC 2782] : AIR 2008 SC 3284 [LNIND 2008 SC 2782] .
382. *State of Haryana v Sher Singh*, AIR 2002 SC 3223 [LNIND 2002 SC 1215] .
383. *Ram Pat v State of Haryana*, (2009) 7 SCC 614 [LNIND 2009 SC 1264] : (2009) 8 SCR 1115 [LNIND 2009 SC 1264] : AIR 2009 SC 2847 [LNIND 2009 SC 1264] .
384. *Ashok Kumar v State of TN*, AIR 2006 SC 2419 [LNIND 2006 SC 360] : (2006) 10 SCC 157 [LNIND 2006 SC 360] .
385. *Daulat Trimbak Shewale v State of Maharashtra*, (2004) 10 SCC 715 [LNIND 2004 SC 586] : AIR 2004 SC 3140 [LNIND 2004 SC 586] : 2004 Cr LJ 2825 .
386. *Madam v State of MP*, (2008) 11 SCC 657 [LNIND 2008 SC 1390] : AIR 2008 SC 3083 [LNIND 2008 SC 1390] : 2008 Cr LJ 3950 .
387. *Narain Singh v State of Haryana*, (2008) 11 SCC 540 [LNIND 2008 SC 864] : AIR 2008 SC 2006 [LNIND 2008 SC 864] : 2008 Cr LJ 2613 . **Following** principles stated in *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] . *Salim v State of Haryana*, (2008) 12 SCC 705 [LNIND 2008 SC 1613] : (2008) Cr LJ 4327 , finding that one of the parties used force and fire causing death to take possession of land, private defence not available. The Court said that even if the right was there, it was exceeded.
388. *AC Gangadhar v State of Karnataka*, (2009) 14 SCC 710 [LNIND 1998 SC 506] : AIR 1998 SC 2381 [LNIND 1998 SC 506] .
389. *Vajrapu Sambayya Naidu v. State of A.P.*, (2004) 10 SCC 152 [LNIND 2003 SC 176] : AIR 2003 SC 3706 [LNIND 2003 SC 176] .
390. *Parichhat*, 1972 Cr LJ 322 : AIR 1972 SC 535 . *Dilip Singh v State of Rajasthan*, (1994) 2 Cr LJ 2439 (Raj) in a dispute over possession of property, one party tried to take forcible possession by committing criminal trespass, they possessed only an agricultural implement, not capable of causing apprehension of death but even so the other party fired at them killing one, held, they exceeded private defence, punishable under section 304-I. *Telantle v State of AP*, (1994) 2 Cr LJ 2302 (AP) number of injuries (18 in this case caused by son on his father) indicated excess of the right of private defence. *Thomas George v State of Kerala*, AIR 2000 SC 3497 : 2000 Cr LJ 3475 , right of private defence of person, punishment altered from under

section 302 to that under section 304, Part II. *Sekar v State of TN*, 2003 Cr LJ 53 (SC) quarrel over sheepling damaging crop of the victim, owner of the sheep struck him, he fell down and was struck in the neck even after that. Right of private defence exceeded; *Madan v State of MP*, (2008) 11 SCC 657 [LNIND 2008 SC 1390] : AIR 2008 SC 3083 [LNIND 2008 SC 1390] : 2008 Cr LJ 3950 , accused persons forced open the wooden door and entered the place where the wife and daughter of one of them were sleeping. They caught hands of the householder and assaulted him with *lathis*. He later died. The wife and daughter were also assaulted when they tried to intervene. The attackers were also injured to a certain extent and therefore, had the right of private but they exceeded it. Their punishment was altered from under section 302 to section 304 Pt. I.

391. *Deo Narain*, 1973 Cr LJ 677 (SC) : (1973) 3 SCR 57 [LNIND 1972 SC 572] : AIR 1973 SC 473 [LNIND 1972 SC 572] . See further *Laxman Sahu v State of Orissa*, 1988 Cr LJ 188 : AIR 1988 SC 83 : 1986 Supp SCC 555 : 1987 SCC (Cr) 173 where a lathi blow inflicted on the forehead caused death without any apparent need for it, the accused was convicted under section 304 part I and the above case was distinguished. See also *Sukumar Roy v State of WB*, AIR 2006 SC 3406 [LNIND 2006 SC 882] : (2006) 10 SCC 635 [LNIND 2006 SC 882] .

392. *Rafiq*, 1979 Cr LJ 706 : AIR 1979 SC 1179 ; *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 ; see also *VC Cheriyan v State*, 1982 Cr LJ 2071 (Ker). The accused receiving gun shot injuries, opened fire at the other party killing two persons, entitled to right of private defence but exceeded, convicted under section 304 Part I and not for murder *Jagtar Singh v State of Punjab*, AIR 1993 SC 2448 [LNIND 1993 SC 11] : 1993 Cr LJ 306 . See also *Jasbir Singh v State of Punjab*, AIR 1993 SC 968 : 1993 Cr LJ 301 : (1993) Supp (2) SCC 760 , diversion of flow of tubewell water by the deceased, accused fired killing him on the spot.

393. *Beersingh Jagatsingh v State of Maharashtra*, 2013 Cr LJ 2248 (Bom).

394. *Bayadas Bawri*, 1982 Cr LJ 213 (Gau).

395. *Ram Phal v State of Haryana*, AIR 1993 SC 1979 : 1993 Cr LJ 2603 : 1993 Supp (3) SCC 740 . **Contra** : see *Kulwant Singh v State of Punjab*, AIR 1994 SC 1271 : 1994 Cr LJ 1109 , group clash, injuries on both sides, one died, circumstances did not entitle the exercise of right of self-defence to the accused.

396. *Kishore Shambudatta Mishra v State of Maharashtra*, AIR 1989 SC 1173 : 1989 Cr LJ 1149 : 1989 Supp (1) SCC 399 .

397. *Kamal Singh v State of MP*, (1995) 2 Cr LJ 1834 MP.

398. *Krushna Chandra Bisoi v State of Orissa*, 1992 Cr LJ 1766 (Ori).

399. *Sukhdev Singh v State of Punjab*, 1995 Cr LJ 3227 (SC).

400. *Gurdev Singh v State of Rajasthan*, 1996 Cr LJ 1270 (Raj). *State v Bhuri*, 1997 Cr LJ 708 (Raj), mother of accused attacked and an injury caused with a sharp weapon, the accused hit back with grand force a lathi blow which fell on the head of the aggressor causing his death, right of private defence exceeded.

401. *Ram Avtar v State of UP*, 2003 Cr LJ 480 (SC).

402. *Rajinder Singh v State of Haryana*, 2015 Cr LJ 1330 .

403. *Abid v State of UP*, (2009) 14 SCC 701 [LNIND 2009 SC 1395] .

404. *Krishnan v State of TN*, AIR 2006 SC 3037 [LNIND 2006 SC 612] : (2006) 11 SCC 304 [LNIND 2006 SC 612] .

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

Of the Right of Private Defence

[s 98] Right of private defence against the act of a person of unsound mind, etc.

When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

ILLUSTRATIONS

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

COMMENT.—

The right of private defence would have lost most of its value if it was not allowed to be exercised against persons suffering from the incapacities mentioned in this section.

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.
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Of the Right of Private Defence

[s 99] Acts against which there is no right of private defence.