

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 102] Commencement and continuance of the right of private defence of the body.

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

COMMENT.—

This section indicates when the right of private defence of the body commences and till what time it continues. The right commences as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed, but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues.⁴⁸⁴ It commences and continues as long as danger to body lasts. The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger. There must be an attempt or threat and consequent thereon an apprehension of danger; but it is not a mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension is requisite. Suppose the threat to proceed from a woman or child and to be addressed to a strong man, in such a case there could hardly be a reasonable apprehension. Present and imminent danger seems to be meant.⁴⁸⁵ The person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right. In the exercise of his right, he must use force necessary for the purpose and he must stop using the force as soon as the threat has disappeared. So long as the threat lasts and the right of private defence can be legitimately exercised; if the danger is continuing, the right is there; if the danger or the apprehension about it has ceased to exist there is no longer the right of private defence.⁴⁸⁶ Right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues.⁴⁸⁷ There is no right to inflict punishment on the wrong-doer for his past act after the apprehension has ceased to exist. The right of defence ends with the necessity for it. So where the deceased was fleeing for his life, there was no justification to shoot him down. This would be a sheer case of murder and nothing else.⁴⁸⁸ Where the testimony of the independent witness showed that the accused chased one of the deceased who fled away from the scene of occurrence and killed him, they could not be said to have right of private defence as regards the killing of such deceased.⁴⁸⁹ Though the nature of apprehension depends upon the nature of weapon intended to be used or used, it cannot be said that as the complainant's party had only used *lathi*, the accused was not justified in using his spear especially when a blow with a *lathi* was aimed at a vulnerable part like the head.⁴⁹⁰

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).
484. *Sekar v State*, AIR 2002 SC 3667 [LNIND 2002 SC 628] : (2002) 8 SCC 354 [LNIND 2002 SC 628] .
485. M&M 78; *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] , explanation of the starting point of the right and its end point.
486. *Jai Dev v State of Punjab*, 1963 (1) Cr LJ 495 : AIR 1963 SC 612 [LNIND 1962 SC 249] .
487. *Laxman Singh v Poonam Singh*, AIR 2003 SC 3204 [LNIND 2003 SC 767] : (2004) 10 SCC 94 [LNIND 2003 SC 767] ; *Bishna v State of WB*, AIR 2006 SC 302 [LNIND 2005 SC 873] : (2005) 12 SCC 657 [LNIND 2005 SC 873] ; *Babulal Bhagwan Khandare v State of Maharashtra*, AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .
488. *State of UP v Ramswarup*, 1974 Cr LJ 1035 : AIR 1974 SC 1570 [LNIND 1974 SC 472] ; *Onkarnath*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] .
489. *State of UP v Roop Singh*, AIR 1996 SC 215 : 1996 Cr LJ 410 .
490. *Deo Narain*, 1973 Cr LJ 677 : AIR 1973 SC 473 [LNIND 1972 SC 572] . See also *Sarejerac Sahadeo Gaikwad v State*, 1997 Cr LJ 3839 (Bom).

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Of the Right of Private Defence

[s 103] When the right of private defence of property extends to causing death.

The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

State Amendments

Karnataka.—*The following amendments were made by Karnataka Act No. 8 of 1972, s. 2 (w.e.f. 7-10-1972).*

In its application to the State of Karnataka in s. 103(1) in clause Thirdly—

(i) after the words "mischief by fire", insert the words "or any explosive substance";

(ii) after the words "as a human dwelling, or", insert the words "as a place of worship or".

(2) after clause Fourthly, insert the following clause, namely:—

Fifthly.—Mischief by fire or any explosive substance committed on any property used or intended to be used for the purpose of Government or any local authority, statutory body or company owned or controlled by Government or railway or any vehicle used or adapted to be used for the carriage of passengers for hire or reward.

Maharashtra.—*The following amendments were made by Maharashtra Act No. 19 of 1971, s. 26 (w.e.f. 31-12-1971).*

In its application to the State of Maharashtra, In section 103, add the following at the end, namely:—

"Fifthly.—Mischief by fire or any explosive substance committed on any property used or intended to be used for the purposes of Government or any local authority, statutory body, company owned or controlled by Government, railway or tramway, or on any vehicle used or adapted to be used, for the carriage of passengers for hire or reward."

Uttar Pradesh.—*The following amendments were made by U.P. Act No. 29 of 1970, s. 2, w.e.f. 17-7-1970.*

In its application to the State of Uttar Pradesh, In section 103, after clause Fourthly, add the following clause, namely:—

Fifthly.—Mischief by fire or any explosive substance committed on—

(a) Any property used or intended to be used for the purpose of Government, or any local authority or other corporation owned or controlled by the Government, or

(b) any railway as defined in clause (4) of section 3 of the Indian [Railways Act, 1890](#) or railways stores as defined in the Railways Stores (Unlawful Possession) Act, 1955; or

(c) any transport vehicle as defined in clause (33) of [section 2 of the Motor Vehicles Act, 1939](#).

COMMENT.—

Death caused in defence of property.—Section 100 enumerates the cases in which the right of private defence of the body extends to the causing of death; this section enumerates the cases in which it extends to the causing of death in defence of property.

A person employed to guard the property of his employer is protected by sections 97, 99, 103 and 105 if he causes death in safeguarding his employer's property when there is reason to apprehend that the person whose death has been caused was about to commit one of the offences mentioned in this section or to attempt to commit one of those offences. A person whose duty it is to guard a public building is in the same position, that is to say, it is his duty to protect the property of his employer and he may take such steps for this purpose as the law permits. The fact that the property to be guarded is public property does not extend the protection given to a guard. Therefore, a police constable on guard duty at a magazine or other public building is not entitled to fire at a person merely because the latter does not answer his challenge.⁴⁹¹ The deceased, none of whom was in possession of any dangerous weapons, were harvesting crop on a plot of land with peaceful intention under the protection of police. The accused who claimed the crops did not approach the authorities for redress, although they had time to do so, sent away the police constables by a ruse and then attacked the deceased with guns and other dangerous weapons and shot them down at close range. It was held by the Supreme Court that the acts of the deceased did not amount to robbery and that the accused had no right of private defence of property.⁴⁹² The accused was in possession of the plots which were under litigation. Finding his opponent, a blind man, getting the plots ploughed, the accused asked him to stop ploughing. On this, 8–10 persons armed with spears and '*lathis*' proceeded towards him. The accused fired a shot from his gun causing death of his opponent, the blind man. The Court observed that a blind villager could not be thought of going to take possession of the plots without mobilising enough man power to deal with resistance likely to be put up by his adversary. It was held that in the circumstances the right of private defence of the person became available to the accused.⁴⁹³

In the words of the Supreme Court, the High Court committed an error in relation to the plea of self-defence raised on behalf of the accused to the effect that the incident took place at an open space. There is no law that the right of self-defence cannot be exercised in relation to an open space.⁴⁹⁴ Reasonable force may be used in defence of property. It would not in general be reasonable to kill in defence of property alone.⁴⁹⁵

[s 103.1] Trespasser.—

The right of private defence of property extending to causing of death is not available in cases of trespass on open land.⁴⁹⁶

[s 103.2] Causing death while on patrol duty.—

The accused constable killed his head constable. The accused was doing his patrolling duty at the time on a bridge. He claimed to have fired at somebody whom he saw with firearm near the value tower, which was neither used for human dwelling nor for

custody of property. He did not plead that he entertained apprehension of death or grievous hurt. The Court said that the plea of private defence extending to the causing of death was not tenable.⁴⁹⁷

[s 103.3] CASES.—

The accused did not close his flour mill on the day of "Bharat Bandh", organized by some political parties. The activists entered the mill and demanded closure. They were armed with sharp-edged weapons. They threatened and assaulted the person who was operating the mill. He fired at them resulting in death of two persons and also injuring some innocent people. His property was set on fire. It was held that the acts of the accused were within the reasonable limits of the right of private defence. His conviction was set aside.⁴⁹⁸

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).

491. *Jamuna Singh*, (1944) 23 Pat 908.

492. *Gurdatta Mal*, AIR 1965 SC 257 [LNIND 1964 SC 30] : (1965) 1 Cr LJ 242 . *Champer v State of Orissa*, 1988 Cr LJ 1882 Orissa, wherein a land dispute, death was caused in excess of the right of private defence. *Mahabir Choudhary v State of Bihar*, AIR 1996 SC 1998 [LNIND 1996 SC 891] : 1996 Cr LJ 2860 , causing death in response to mischief to property, there being no fear of death or grievous hurt, held right exceeded. *Ram Bilas Yadav v State of Bihar*, AIR 2002 SC 530 [LNIND 2001 SC 2789] , irrigation dispute, appellants came with pre-determination and also more armed and did more harm than necessary. They were not entitled to any benefit under the section or to the benefit of section 300, exception 2.

493. *Chandra Shekhar Tiwari v State*, 1993 Cr LJ 2159 (All).

494. *Kishan Chand v State of UP*, (2007) 14 SCC 737 [LNIND 2007 SC 1190] : AIR 2008 SC 133 [LNIND 2007 SC 1190] : (2007) 6 All LJ 658.

495. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : AIR 2008 SC 1172 [LNIND 2008 SC 187] .

496. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] : 2002 Cr LJ 563 ; *Puttan v State of TN*, AIR 2000 SC 3405 (2) : 2000 SCC (Cr) 1504, the circumstances showed that the accused were entitled to private defence of property. But procurement of a lethal weapon, and the number of injuries inflicted by him showed that the accused crossed all frontiers of private defence. Conviction was altered to one under section 304 Part I. *Gokula v State of Rajasthan*, 1998 Cr LJ 4053 : AIR 1998 SC 3016 [LNIND 1998 SC 743] , two persons seen on the land were not shown to be trespassers, there was no question of any justification for causing their death in defence of property. The accused convicted for murder. Another

similar case, *Jotram v State of Rajasthan*, [1998 Cr LJ 1492](#) (Raj); *Arjunan v State of TN*, [1997 Cr LJ 2327](#) (Mad), in a sudden quarrel over the right to cut a tree, the accused gave a blow of the wooden reaper on the head of the deceased causing death, the tree stood on the land of the deceased and was in his actual physical possession, the right of private defence not available to the accused. See also *Govind Singh v State of Rajasthan*, [1997 Cr LJ 1562](#) (Raj), no proof of trespassing cattle, yet attack and killing, conviction under section 304, Part II.

497. *Bhupendra Singh A Chudasama v State of Gujarat*, [AIR 1997 SC 3790](#) [[LNIND 1997 SC 1378](#)] : [1998 Cr LJ 57](#) .

498. *James Martin v State of Kerala*, [\(2004\) 2 SCC 203](#) [[LNIND 2003 SC 1097](#)] .