

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The Indian Penal Code was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The Indian Penal Code was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general
Penal Code for India; It is enacted as follows:—**

COMMENT.—The Indian Penal Code, 1860 (IPC, 1860) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.¹ It is not necessary and indeed not permissible to construe the IPC, 1860 at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.²

[s 1] Title and extent of operation of the Code.

This Act shall be called the Indian Penal Code, and shall ³[extend to the whole of India ⁴[except the State of Jammu and Kashmir].]

COMMENT—

Before 1860, the English criminal law, as modified by several Acts,⁵ was administered in the Presidency towns of Bombay, Calcutta and Madras. But in the mofussil, the Courts were principally guided by the Mohammedan criminal law, the glaring defects of which were partly removed by Regulations of the local Governments. In 1827, the judicial system of Bombay was thoroughly revised and from that time the law which the criminal Courts administered was set forth in a Regulation⁶, defining offences and specifying punishments. But in the Bengal and Madras Presidencies the Mohammedan criminal law was in force till the Indian Penal Code came into operation.

[s 1.1] Trial of offences under IPC, 1860.—

All offences under IPC, 1860 shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure, 1973 (Cr PC, 1973).⁷

[s 1.2] Overlapping Offences.—

Where there is some overlapping between offences contained in [IPC, 1860](#) and other enactments, the Supreme Court has held that it would not mean that the offender could not be tried under [IPC, 1860](#). The Court concerned can pronounce on such issues on the basis of evidence produced before it. There may be some overlapping of facts in the cases under [section 420 IPC, 1860](#) and [section 138 of the Negotiable Instruments Act, 1881](#) but ingredients of offences are entirely different. Thus, the subsequent case is not barred.⁸ A "terrorist act" and an act of "waging war against the Government of India" may have some overlapping features, but a terrorist act may not always be an act of waging war against the Government of India, and vice versa. The provisions of Chapter IV of the [Unlawful Activities \(Prevention\) Act, 1967](#) and those of Chapter VI of the [IPC, 1860](#) including section 121, basically cover different areas.⁹ The mere fact that the offence in question was covered by the [Customs Act, 1962](#) did not mean that it could not be tried under [IPC, 1860](#) if it also falls under it.¹⁰

1. *MC Verghese v Ponnan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .

2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).

3. The original words have successively been amended by Act 12 of 1891, section 2 and Sch I, the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.

4. Subs. by Act 3 of 1951, section 3 and Sch, for "except Part B States" (w.e.f. 1-4-1951).

5. 9 Geo. IV, section 74; Acts VII and XIX of 1837; Act XXXI of 1838; Acts XXII and XXXI of 1839; Acts VII and X of 1844; Act XVI of 1852. See Pramod Kumar, *Perspectives of the New Bill on Indian Penal Code and Reflections on the Joint Select Committee Report—Some Comments*, (1980) 22 JILI 307.

6. XIV of 1827.

7. [Section 4\(1\) Code of Criminal Procedure, 1973](#). Also see commentary under [section 3 of IPC infra](#).

8. *Sangeetaben Mahendrabhai Patel v State of Gujarat*, AIR 2012 SC 2844 [LNIND 2012 SC 1473] : (2012) 7 SCC 621 [LNIND 2012 SC 1473] .

9. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : AIR 2012 (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 [relied on *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715]

10. *Natarajan v State*, (2008) 8 SCC 413 [LNIND 2008 SC 1093] : (2008) 3 SCC (Cr) 507.

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The Indian Penal Code was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The Indian Penal Code was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general
Penal Code for India; It is enacted as follows:—**

COMMENT.—The Indian Penal Code, 1860 (IPC, 1860) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.¹ It is not necessary and indeed not permissible to construe the IPC, 1860 at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.²

[s 2] Punishment of offences committed within India.

Every person¹ shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within^{11.}[India]^{12.}[*].²**

COMMENT—

This section deals with the intraterritorial operation of the Code. It makes the Code universal in its application to every person in any part of India for every act or omission contrary to the provisions of the Code.

Section 2 read with section 4 of the IPC, 1860 makes the provisions of the Code applicable to the offences committed "in any place without and beyond" the territory of India; (1) by a citizen of India or (2) on any ship or aircraft registered in India, irrespective of its location, by any person not necessarily a citizen. Such a declaration was made as long back as in 1898. By an amendment in 2009 to the said section, the Code is extended to any person in any place "without and beyond the territory of India", committing an offence targeting a computer resource located in India.^{13.}

1. 'Every person'.—Every person is made liable to punishment, without distinction of nation, rank, caste or creed, provided the offence with which he is charged has been committed in some part of India. A foreigner who enters the Indian territories and thus, accepts the protection of Indian laws virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. It is no defence on behalf of a foreigner that he did not know he was doing wrong, the act not being an offence in his own country. A foreigner who commits an offence within India is guilty and can be

punished as such without any limitation as to his corporal presence in India at the time.¹⁴ Indian Courts have jurisdiction against foreigners residing in foreign countries but their acts connected with transaction or part of transaction arising in India.¹⁵

[s 2.1] Corporate Criminal Liability

A company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the fact that the corporation cannot commit a crime, the generally accepted modern rule is that a corporation may be subject to indictment and other criminal process although the [criminal act](#) may be committed through its agent. The majority in the [Constitution](#) bench held that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment is mandatory imprisonment and fine.¹⁶ When imprisonment and fine is prescribed as punishment the Court can impose the punishment of fine which could be enforced against the company.¹⁷

In *CBI v Blue Sky Tie-up Pvt Ltd*,¹⁸ the question again came up for consideration before the Supreme Court and it was held that since the majority of the [Constitution](#) Bench ruled in *Standard Chartered Bank v Directorate of Enforcement [supra]* that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body, the contrary view taken by the learned single Judge cannot be approved.

[s 2.2] Vicarious Liability.—

[Indian Penal Code](#), save and except some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.¹⁹ Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.²⁰ The provisions of the [Essential Commodities Act, 1955](#), [Negotiable Instruments Act, 1881](#), Employees' Provident Fund (Miscellaneous Provision) Act, 1952, etc., have created such vicarious liability. It is interesting to note that section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to [section 405 of the IPC, 1860](#) a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under [section 406 of the IPC, 1860](#) vicarious liability has been held to be not extendable to the Directors or officers of the company.²¹

There is no exception in favour of anyone in the [Penal Code](#), but the following persons are exempted from the jurisdiction of criminal Courts of every country:—

(a) **Foreign Sovereigns.**—The real principle on which the exemption, of every sovereign from the jurisdiction of every Court, has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority.²²

(b) Diplomats.—United Nations Privileges and Immunities Act, 1947, and the [Diplomatic Relations \(Vienna Convention\) Act, 1972](#), gave certain diplomats, missions and their member's diplomatic immunity even from criminal jurisdiction. The [Diplomatic Relations \(Vienna Convention\) Act](#) had been enacted to give effect to the Vienna Convention on Diplomatic Relations, 1961. The effect of section 2 of the Act is to give the force of law in India to certain provisions set out in the Schedule to the Act.

A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction except in the case of:

- (i) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (ii) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (iii) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.²³ A diplomatic agent is not obliged to give evidence as a witness.²⁴ Privileges and immunities are conferred on United Nations and its Representatives as well as on other international organisations and their representatives by the United Nations (Privileges and Immunities) Act, 1947.²⁵

(c) Alien enemies.—In respect of acts of war alien enemies cannot be tried by criminal Courts. If an alien enemy commits a crime unconnected with war, e.g., theft, he would be triable by ordinary criminal Courts.

(d) Foreign army.—When armies of one State are by consent on the soil of a foreign State they are exempted from the jurisdiction of the State on whose soil they are.

(e) Warships.—Men-of-war of a State in foreign waters are exempt from the jurisdiction of the State within whose territorial jurisdiction they are. The domestic Courts, in accordance with principles of international law, will accord to the ship and its crew and its contents certain immunities. The immunities can, in any case, be waived by the nation to which the public ship belongs.²⁶

(f) President and Governors.—Under [Article 361](#) of the Indian [Constitution](#), the President and Governors are exempt from the jurisdiction of Courts.

2. 'Within India'.—If the offence is committed outside India it is not punishable under the [Penal Code](#), unless it has been made so by means of special provisions such as sections 3, 4, 108A, etc., of the Code. Under [section 179 of the Cr PC, 1973](#) even the place(s) wherein the consequence (of the [criminal act](#)) "ensues" would be relevant to determine the Court of competent jurisdiction. Therefore, even the Courts within whose local jurisdiction, the repercussion/effect of the [criminal act](#) occurs, would have jurisdiction in the matter. When the consequence of an act committed by a foreigner outside India if ensued in India, he can be tried in India.²⁷ Normally crime carries the person. The commission of a crime gives the Court of the place where it is committed jurisdiction over the person of the offender.²⁸

[s 2.3] Territorial jurisdiction.—

The territory of India is defined under Article 1 of the Constitution of India. Article 1 of the Constitution of India deals only with the geographical territory while Article 297 deals with 'maritime territory'.

Article 297(3) authorises the Parliament to specify from time to time the limits of various maritime zones such as, territorial waters, continental shelf, etc. Clauses (1) and (2) of the said Article make a declaration that all lands, minerals and other things of value and all other resources shall vest in the Union of India.²⁹ Section 18 of the IPC, 1860 defines India as the territory of India excluding the state of Jammu and Kashmir. These territorial limits would include the territorial waters of India.³⁰ Under the General Clauses Act, 1897, India is defined to mean all territories for the time being comprised in the territory of India as defined in the Constitution of India. Under the provisions of Article 297 of the Constitution of India, all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf or the exclusive economic zone of India vest in the Union. The Constitution of India does not itself define the terms territorial waters, continental shelf, and exclusive economic zone. Clause (3) of Article 297 states that their limits shall be such as may be specified by Parliament. In 1976, Parliament implemented the amendments to the Constitution of India by passing the Maritime Zones Act, 1976.³¹ Insofar the Republic of India is concerned, the limit of the territorial waters was initially understood to be three nautical miles. It had been extended subsequently; up to six nautical miles by a Presidential proclamation dated 22 March 1952 and to 12 nautical miles by another proclamation dated 30 September 1967. By The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 80 of 1976, it was statutorily fixed at 12 nautical miles. Section 3 of the Act stipulates that the sovereignty of India extends to the territorial waters, the limit of which is 12 nautical miles. Section 5 of the Territorial Waters Act, 1976 defines the contiguous zone of India as an area beyond and adjacent to territorial waters to a distance of 24 nautical miles from the nearest point of the baseline. Section 7 of the Act defines the Exclusive economic zone of India as an area beyond and adjacent to territorial waters up to a limit of 200 nautical miles.³²

[s 2.4] Jurisdiction beyond Territorial Waters

In the case of *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*,³³ the Supreme Court examined the effective operation of the statutes of a country in relation to foreigners and foreign ships.

In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters, and such places as intention to that effect is shown. A statute extends to all persons within the country if that intention is shown. The Indian Parliament, therefore, has no authority to legislate for foreign vessels or foreigners in them on the high seas. Thus a foreign ship on the high seas, or her foreign owners or their agents in a foreign country, are not deprived of rights by our statutory enactment expressed in general terms unless it provides that a foreign ship entering an Indian port or territorial waters and thus coming within the territorial jurisdiction is to be covered. Without anything more Indian statutes are ineffective against foreign property and foreigners outside the jurisdiction.

It is this principle which is reflected in section 2(2) of the Merchant Shipping Act, 1958.³⁴

Earlier in *Aban Loyd Chiles Offshore Ltd v UOI*,³⁵ it was held that India has been given only certain limited sovereign rights and such limited sovereign rights conferred on India in respect of continental shelf and exclusive economic zone cannot be equated to extending the sovereignty of India over the continental shelf and exclusive economic zone as in the case of territorial waters.

1. *MC Verghese v Ponnan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
11. The original words "the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 3-4-1951), to read as above.
12. The words and figures "on or after the said first day of May, 1861" rep. by Act 12 of 1891, section 2 and Sch I.
13. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
14. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC). See also *State of Maharashtra v Mayer Hans George*, 1965 (1) SCR 123 [LNIND 1964 SC 415] : AIR 1965 SC 722 [LNIND 1964 SC 208] : 1965 (1) Cr LJ 641 .
15. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .
16. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] : AIR 2005 SC 2622 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961; *Asstt Commr v Velliappa Textiles Ltd*, 2003 (11) SCC 405 [LNIND 2003 SC 794] : 2004 SCC (Cr) 1214 **Overruled**.
17. *Standard Chartered Bank v Directorate of Enforcement*, AIR 2006 SC 1301 [LNIND 2006 SC 145] : (2006) 4 SCC 278 [LNIND 2006 SC 145] : (2006) 2 SCC (Cr) 221. See also *CBI v Blue Sky Tie-up Pvt Ltd*, (2011) 6 Scale 436 : AIR 2012 (SCW) 1098 : 2012 Cr LJ 1216 . Also see *Aneeta Hada v Godfather Travels & Tours*, (2012) 5 SCC 66 : 2012 Cr LJ 2525 : AIR 2012 SC 2795 [LNIND 2012 SC 260] .
18. *CBI v Blue Sky Tie-up Pvt Ltd*, (2011) 6 Scale 436 : AIR 2012 (SCW) 1098 : 2012 Cr LJ 1216 . Also see *Aneeta Hada v Godfather Travels & Tours*, (2012) 5 SCC 66 : 2012 Cr LJ 2525 : AIR 2012 SC 2795 [LNIND 2012 SC 260] in which it is held that directors cannot be prosecuted without the Company being arraigned as an accused–138 NI Act.
19. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : 2009 Cr LJ 3733 : AIR 2009 SC 2594 [LNIND 2009 SC 1276] .
20. *Maksud Saiyed v State of Gujarat*, (2008) 5 SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] : (2008) 2 SCC (Cr) 692.
21. *SK Alagh v State of UP*, AIR 2008 SC 1731 [LNIND 2008 SC 368] : (2008) 5 SCC 662 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 2 SCC (Cr) 686.
22. Per Brett, LJ in *The Parlement Belge*, (1880) 5 PD 197 , 207.
23. Article 31 (1) of Diplomatic Relations (Vienna Convention) Act, 1972.
24. Article 31 (1) of Diplomatic Relations (Vienna Convention) Act, 1972.
25. United Nations (Privileges and Immunities) Act, Act No. XLV of 1947.
26. *Chung Chi Cheung*, (1939) AC 160 .
27. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 ; *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC) : 1958 SCR 328 [LNIND 1957 SC 81] .

28. *Kubic Dariusz v UOI*, AIR 1990 SC 605 [LNIND 1990 SC 25] : (1990) 1 SCC 568 [LNIND 1990 SC 25] : 1990 Cr LJ 796 .
29. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
30. *BK Wadeyar v Daulatram Rameshwariyal*, AIR 1961 SC 311 [LNIND 1960 SC 493] : 1961 (1) SCR 924 [LNIND 1960 SC 493] .
31. *Aban Loyd Chiles Offshore Ltd v UOI*, JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] : (2008) 11 SCC 439 [LNIND 2008 SC 897] .
32. *UOI Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
33. *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*, 1990 (3) SCC 481 [LNIND 1990 SC 150] : JT 1990 (1) SC 528 [LNIND 1990 SC 150] : 1990 (1) SCR 884 .
34. *World Tanker Carrier Corp v SNP Shipping Services Pvt Ltd*, AIR 1998 SC 2330 [LNIND 1998 SC 461] : 1998 (5) SCC 310 [LNIND 1998 SC 461] .
35. *Aban Loyd Chiles Offshore Ltd v UOI*, (2008) 11 SCC 439 [LNIND 2008 SC 897] : JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] .

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The Indian Penal Code was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The Indian Penal Code was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general
Penal Code for India; It is enacted as follows:—**

COMMENT.—The Indian Penal Code, 1860 (IPC, 1860) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.¹ It is not necessary and indeed not permissible to construe the IPC, 1860 at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.².

[s 3] Punishment of offences committed beyond, but which by law may be tried within India.

Any person liable, by any ³⁶[Indian law], to be tried for an offence committed beyond ³⁷[India] shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within ³⁸[India].

COMMENT—

This section and section 4 relate to the extraterritorial operation of the Code. The words of this section postulate the existence of a law that an act constituting an offence in India shall also be an offence when committed outside India. Thus, taking part in a marriage which is prohibited by the Child Marriage Restraint Act, 1929 by a citizen of India beyond India is not an offence which can be punished in India.³⁹ This section only applies to the case of a person who at the time of committing the offence charged was amenable to an Indian Court.⁴⁰ Thus, an Indian citizen who committed an offence outside India which was not an offence according to the laws of that country would still be liable to be tried in India if it was an offence under the Indian law.⁴¹ An Indian citizen was murdered by another Indian citizen in a foreign country and the police refused to register an FIR on the ground that the offence was committed outside India. The Court held that the refusal was illegal and directed the police to register the crime and proceed with investigation in accordance with the law. The Court observed that section 3 of the IPC, 1860 helps the authorities in India to proceed by treating the offence as one committed within India. No doubt it is by a fiction that such an assumption is made. But such an assumption was necessary for practical purposes.⁴²

In a series of cases⁴³, it was also held that an offence committed outside India by a citizen of India can be investigated by the local police even without prior sanction of the Central Government. Where both husband and wife are Indians residing at USA, a complaint against the husband alleging cruelty is maintainable.⁴⁴.

The operation of the section is restricted to the cases specified in the [Extradition Act, 1962](#) and the [Cr PC, 1973, sections 188 and 189](#).

1. *MC Verghese v Ponnan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
36. Subs. by the A.O. 1937 for "law passed by the Governor General of India in Council".
37. The original words "the limits of the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 3 April 1951), to read as above.
38. The original words "the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch, (w.e.f. 3-4-1951) to read as above.
39. *Sheikh Haidar v Syed Issa*, (1939) Npg 241.
40. *Pirtai*, (1873) 10 BHC (Cr C) 356.
41. *Pheroze v State of Maharashtra*, 1964 (2) Cr LJ 533 (Bom).
42. *Remia v Sub-Inspector of Police, Tanur*, 1993 Cr LJ 1098 (Ker). The court referred to *State of WB v Jugal Kishore*, AIR 1969 SC 1171 [LNIND 1969 SC 8] : 1969 Cr LJ 1559 .
43. *Souda Beevi v Sub Inspector of Police*, 2012 Cr LJ 58 (NOC) : 2011 (4) Ker LT 52 ; *Muhammad Rafi v State of Kerala*, 2010 Cr LJ 592 : 2009 (1) Ker LT 943 ; *Vijaya Saradhi Vajja v Devi Siroopa Madapati*, 2007 Cr LJ 636 (AP); *Samarudeen v Asst. Director of Enforcement*, (1999 (2) Ker LT 794 [FB]); *S Clara v State of TN*, 2008 Cr LJ 2477 (Mad).
44. *Harihar Narasimha Iyer v State of TN*, 2013 Cr LJ 378 ; *Rajesh Gupta v State of AP*, 2011 Cr LJ 3506 : 2011 (3) Crimes 236 .

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The Indian Penal Code was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The Indian Penal Code was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

WHEREAS it is expedient to provide a general
Penal Code for India; It is enacted as follows:—

COMMENT.—The Indian Penal Code, 1860 (IPC, 1860) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.¹ It is not necessary and indeed not permissible to construe the IPC, 1860 at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.².

45. [s 4] Extension of Code to extraterritorial offences.

The provisions of this Code apply also to any offence committed by—

46. [(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be;]

47. [(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

48. [Explanation.—In this section—

(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;

(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

49. [ILLUSTRATION]

50. [*] A, 51. [who is a 52. [citizen of India]], commits a murder in Uganda. He can be tried and convicted of murder in any place in 53. [India] in which he may be found.**

54. [*]**

COMMENT—

This section shows the extent to which the Code applies to offences committed outside India. The Code applies to any offence committed by—

- (1) any citizen of India in any place, wherever he may be;
- (2) any person on any ship or aircraft registered in India wherever it may be; and
- (3) any person, whether or not a citizen of India, who commits any offence, from anywhere in the world, targeting a computer resource located in India.

Hence, except for the case of an offence committed against a computer resource located in India, to extend the scope of operation of [IPC, 1860](#) against persons, either the offender must be a citizen of India or he must have committed the offence on any ship or aircraft registered in India.

[s 4.1] Crimes committed outside India.—

Where an offence is committed beyond the limits of India but the offender is found within its limits, then

- (I) he may be given up for trial in the country where the offence was committed (extradition) or
- (II) he may be tried in India (extraterritorial jurisdiction).

Where an offence was committed by an Indian citizen outside India, it was held that the offence was punishable under the [IPC, 1860](#). An investigation of such an offence would not require sanction of the Central Government under the proviso to [section 188, Cr PC, 1973](#). But an enquiry as contemplated by [section 202, Cr PC, 1973](#) could only be with the sanction of the Central Government.⁵⁵

(I) Extradition.—Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the Courts of the other State. Surrender of a person within the State to another State—whether a citizen or an alien—is a political act done in pursuance of a treaty or an arrangement *ad hoc*.⁵⁶ Though extradition is granted in implementation of the international commitment of the State, the procedure to be followed by the Courts in deciding, whether extradition should be granted and on what terms, is determined by the municipal law of the land. Extradition is founded on the broad principle that it is in the interest of civilised communities that criminals should not go unpunished and on that account, it is recognised as a part of the comity of nations that one State should ordinarily afford to another State assistance towards bringing offenders to justice.⁵⁷ The procedure for securing the extradition from India is laid down in the [Extradition Act, 1962](#).

(II) Extraterritorial jurisdiction.—Indian Courts are empowered to try offences committed out of India on (A) land, (B) high seas or (C) aircraft.

(A) Land.—By virtue of [sections 3 and 4](#) of the [Penal Code](#), and [section 188 of the Cr PC, 1973](#) local Courts can take cognizance of offences committed beyond the territories of India. Where the Court is dealing with an act committed outside India by a citizen of India which would be an offence punishable under the [Penal Code](#) if it had been committed in India, section 4 constitutes the act an offence and it can be dealt with under [section 188 of the Cr PC, 1973](#).⁵⁸ If, however, at the time of commission of

the offence the accused person is not a citizen of India, the provisions of section 4 of the Penal Code and section 188 of the Cr PC, 1973 have no application.⁵⁹

Section 188 of the Cr PC, 1973, provides that when an offence is committed outside India—

- (a) by a citizen of India, whether on high seas or elsewhere; or
- (b) by any person not being such citizen on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

The word 'found' in section 188, Cr PC, 1973 means not where a person is discovered but where he is actually present.⁶⁰ A man brought to a place against his will can be said to be found there.⁶¹ When a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The Bombay High Court has laid down this principle, following English precedents, in Savarkar's case.⁶² The accused Savarkar had escaped at Marseilles from the custody of police officers charged with the duty of bringing him from London to Bombay, but was re-arrested there and brought to Bombay and committed for trial by the Special Magistrate at Nasik. The High Court held that the trial and committal were valid.⁶³ The provisions of the IPC, 1860 have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the IPC, 1860 subject to the limitation imposed under the proviso to section 188 Cr PC, 1973.⁶⁴ Section 4 gives extraterritorial jurisdiction but as the Explanation says the acts committed must amount to an offence under the Penal Code.⁶⁵

[s 4.2] Acts done within Indian as well as foreign territory.—

A person who is a citizen of India is liable to be tried by the Courts of this country for acts done by him, partly within and partly without the Indian territories, provided the acts amount together to an offence under the Code.⁶⁶

(B) Admiralty jurisdiction.—The jurisdiction to try offences committed on the high seas is known as the admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

Admiralty jurisdiction extends over—

- (1) Offences committed on Indian ships on the high seas.
- (2) Offences committed on foreign ships in Indian territorial waters.
- (3) Piracy.

Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them. Admiralty jurisdiction of the High Courts in India has been historically traced to the Charters of 1774 and 1728, as subsequently expanded and clarified by the Letters Patent of 1823, 1862 and 1865 read with the Admiralty Court Act, 1861, the Colonial Courts of Admiralty Act, 1890, and the Colonial Court of Admiralty (India) Act, 1891 and preserved by section 106 of the Government of India Act, 1915, section 223 of the Government of India Act, 1935 and

Article 225 of the Constitution of India. The pre-Constitution enactments have continued to remain in force in India as existing laws.⁶⁷

The High Court as a Court of Admiralty is treated as a separate entity exercising a distinct and specific or prescribed or limited jurisdiction. This reasoning is based on the assumption that the continuance in force of the Colonial Courts of Admiralty Act, 1890 as an existing law carves out a distinct jurisdiction of the High Court limited in ambit and efficacy to what has been granted by the Admiralty Court Act 1861, and that jurisdiction has remained stultified ever since. This restrictive construction is not warranted by the provisions of the [Constitution](#). Accordingly, a foreign ship falls within the jurisdiction of the High Court where the vessel happens to be at the relevant time, i.e., at the time when the jurisdiction of the High Court is invoked, or, where the cause of action wholly or in part arises. The [Merchant Shipping Act](#) empowers the concerned High Court to arrest a ship in respect of a substantive right. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action. The conclusion is that all the High Courts in India have inherent admiralty jurisdiction and can invoke the same for the enforcement of a maritime claim.⁶⁸

Even while exercising extraordinary powers available under the [Constitution](#) the jurisdiction of the High Court is primarily circumscribed by its territorial limits, viz., the jurisdiction has to be in context of the territorial jurisdiction available to the High Court. If the overall scheme of [IPC, 1860](#) (section 4), [Cr PC, 1973](#) (section 188), The [Merchant Shipping Act, 1958](#) (section 437) and the Territorial Waters Act, 1976 (section 13) are taken into consideration read with sections 2(2) and 3(15) of the [Merchant Shipping Act](#), it is apparent that for a Court, including High Court, to be vested with jurisdiction, an offender or offending vessel have to be found within local territorial limits of such Court.⁶⁹

[s 4.3] Piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁷⁰

The Convention on the Law of Sea known as United National Convention on the Law of Sea, 1982 (UNCLOS) sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities. UNCLOS, 1982 is a

comprehensive code on the international law of sea. It codifies and consolidates the traditional law within a single, unificatory legal framework. It has changed the legal concept of continental shelf and also introduced a new maritime zone known as exclusive economic zone. Exclusive economic zone is a new concept having several new features.⁷¹. The UNCLOS signed by India in 1982 and ratified on 29 June 1995, encapsulates the law of the sea and is supplemented by several subsequent resolutions adopted by the Security Council of the United Nations.

Before UNCLOS came into existence, the law relating to the seas which was in operation in India, was the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, which spelt out the jurisdiction of the Central Government over the Territorial Waters, the Contiguous Zones and the Exclusive Economic Zone. The provisions of the UNCLOS are in harmony with and not in conflict with the provisions of the Maritime Zones Act, 1976, in this regard. Article 33 of the Convention recognises and describes the Contiguous Zone of a nation to extend to 24 nautical miles from the baseline from which the breadth of the territorial sea is measured. Similarly, Articles 56 and 57 describe the rights, jurisdiction and duties of the coastal State in the Exclusive Economic Zone and the breadth thereof extending to 20 nautical miles from the baseline from which the breadth of the territorial sea is measured. This provision is also in consonance with the provisions of the 1976 Act. The area of difference between the provisions of the Maritime Zones Act, 1976, and the Convention occurs in Article 97 of the Convention which relates to the penal jurisdiction in matters of collision or any other incident of navigation.⁷².

[s 4.4] Jurisdiction of Indian High Courts.—

In view of the declaration of law made by the Supreme Court in *M V Elisabeth v Harwan Investment and Trading*,⁷³ the High Courts in India have inherent admiralty jurisdiction.

The offences which come within the admiralty jurisdiction are now defined by the [Merchant Shipping Act, 1958](#).

(C) Aircraft.—The provisions of the Code are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be.

[s 4.5] Liability of foreigners in India for offences committed outside its limits.

The acts of a foreigner committed by him in territory beyond the limits of India do not constitute an offence against the [Penal Code](#), and, consequently, a foreigner cannot be held criminally responsible under that Code by the tribunals of India for acts committed by him beyond its territorial limits. Thus, when it is sought to punish a person, who is not an Indian subject, as an offender in respect of a certain act, the question is not 'where was the act committed' but 'was that person at the time, when the act was done, within the territory of India'. For, if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender, and he is, therefore, not subject to the jurisdiction of criminal Courts.⁷⁴ But if a foreigner in a foreign territory initiates an offence which is completed within Indian territory, he is, if found within Indian territory, liable to be tried by the Indian Court within whose jurisdiction the offence was completed.⁷⁵.

[s 4.6] Section 4 IPC and section 188 of Cr PC.—

Section 188 Cr PC, 1973 and section 4 of the IPC, 1860 spell out that if the person committing the offence at that point of time is a citizen of India, then, even if the offence is committed beyond the contours of India, he will be subject to the jurisdiction of the Courts in India. The rule enunciated under the two sections rests on the principle that qua citizens the jurisdiction of Courts is not lost by reason of the venue of the offence. However, section 188 of the Code places an interdiction in the enquiry or trial over offences committed outside India by a citizen of India insisting for sanction from the Central Government to do so.⁷⁶.

1. *MC Verghese v Ponnan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
45. Subs. by Act 4 of 1898, section 2, for section 4.
46. Subs. by the A.O. 1950, for clauses (1) to (4).
47. Ins. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51(a)(i) (w.e.f. 27-10-2009).
48. Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51(a)(ii), for Explanation (w.e.f. 27-10-2009). Explanation, before substitution, stood as under: "Explanation.—In this section the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code."
49. Subs. by Act 36 of 1957, section 3 and Sch II, for "Illustrations" (w.e.f. 17-9-1957).
50. The brackets and letter "(a)" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17-9-1957).
51. Subs. by the A.O. 1948, for "a coolie, who is a Native Indian subject".
52. Subs. by the A.O. 1950, for "a British subject of Indian domicile".
53. The words "British India" have been successively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.
54. Illustrations (b), (c) and (d) omitted by the A.O. 1950.
55. *Muhammad Rafi v State of Kerala*, 2010 Cr LJ 592 Ker DB.
56. *State of WB v Jugal Kishore More*, (1969) 3 SCR 320 [LNIND 1969 SC 8] : 1969 Cr LJ 1559 : AIR 1969 SC 1171 [LNIND 1969 SC 8] .
57. *Abu Salem Abdul Qayoom Ansari v State of Maharashtra*, JT 2010 (10) SC 202 [LNIND 2010 SC 858] : 2010 (9) Scale 460 : (2011) 3 SCC (Cr) 125 : (2011) 11 SCC 214 [LNIND 2010 SC 858] .
58. *Ajay Aggarwal v UOI*, 1993 (3) SCC 609 [LNIND 1993 SC 431] : AIR 1993 SC 1637 [LNIND 1993 SC 431] : 1993 Cr LJ 2516 .
59. *Central Bank of India Ltd v Ram Narain*, (1955) 1 SCR 697 [LNIND 1954 SC 126] : 1955 Cr LJ 152 : AIR 1955 SC 36 [LNIND 1954 SC 126] .
60. *Maganlal v State*, (1882) 6 Bom 622.
61. *Lopez and Sattler*, (1858) 27 LJ (MC) 48.
62. *Vinayak D Savarkar*, (1910) 13 Bom LR 296 , 35 Bom 225.

63. *Supra*. Also see *Om Hemrajani v State of UP*, (2005) 1 SCC 617 [LNIND 2004 SC 1181] : AIR 2005 SC 392 [LNIND 2004 SC 1181].
64. *Thota Venkateswarlu v State of AP*, AIR 2011 SC 2900 [LNIND 2011 SC 850] : (2011) 9 SCC 527 [LNIND 2011 SC 850] : 2011 Cr LJ 4925 : (2011) 3 SCC (Cr) 772.
65. *Rambharthi*, (1923) 25 Bom LR 772 [LNIND 1923 BOM 115] : 47 Bom 907; *Sheikh Haidar v Syed Issa*, (1939) Nag 241.
66. *Moulivie Ahmudoollah*, (1865) 2 WR (Cr) 60.
67. See *Kamalakar Mahadev Bhagat v Scindia Steam Navigation Co Ltd*, AIR 1961 Bom 186 [LNIND 1960 BOM 71] : (1960) 62 Bom LR 995 ; *Sahida Ismail v Petko R Salvejkov*, AIR 1973 Bom 18 [LNIND 1971 BOM 74] : (1972) 74 Bom LR 514 ; *Jayaswal Shipping Co v SS Leelavati*, AIR 1954 Cal 415 [LNIND 1953 CAL 202] ; *Reena Padhi v 'Jagdhir'*, AIR 1982 Ori 57 [LNIND 1981 ORI 93] .
68. *M V Elisabeth v Harwan Investment and Trading*, 1993 Supp (2) SCC 433 : AIR 1993 SC 1014 [LNIND 1992 SC 194] ; *MV Al Quamar v Tsavliris Salvage (International) Ltd*, AIR 2000 SC 2826 [LNIND 2000 SC 1119] : (2000) 8 SCC 278 [LNIND 2000 SC 1119] : 2000 (5) Scale 618 [LNIND 2000 SC 1119] ; *MV Free Neptune v DLF Southern Towns Private*, 2011 (1) Ker LT 904 : 2011 (1) KHC 628 .
69. *MG Forests Pte Ltd v "MV Project Workshop"*, Gujarat High Court Judgement dated 24 February 2004.
70. Article 100. United Nations Convention on the Law of the Sea (UNCLOS), 1982.
71. *Aban Loyd Chiles Offshore Ltd v UOI*, JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] : (2008) 11 SCC 439 [LNIND 2008 SC 897] .
72. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
73. *M V Elisabeth v Harwan Investment and Trading*, 1993 Supp (2) SCC 433 : AIR 1993 SC 1014 [LNIND 1992 SC 194] .
74. *Musst. Kishen Kour*, (1878) PR No. 20 of 1878; *Jameson*, (1896) 2 QB 425 .
75. *Chhotalal*, (1912) 14 Bom LR 147 [LNIND 1912 BOM 26] .
76. *P T Abdul Rahiman v State of Kerala*, 2013 Cr LJ 893 (Ker).

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The [Indian Penal Code](#) was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The [Indian Penal Code](#) was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general
Penal Code for India; It is enacted as follows:—**

COMMENT.—The [Indian Penal Code, 1860](#) (IPC, 1860) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.¹ It is not necessary and indeed not permissible to construe the [IPC, 1860](#) at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.²

77. [Is 5] Certain laws not to be affected by this Act.

Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law¹ .]

COMMENT—

This section is a saving clause to section 2. Though the Code was intended to be a general one, it was not thought desirable to make it exhaustive, and hence, offences defined by local and special laws were left out of the Code, and merely declared to be punishable as theretofore.⁷⁸ Thus, the personnel of the Army, Navy and Airforce are governed by the provisions of the [Army Act, 1950](#), The [Navy Act, 1957](#), and The [Indian Air Force Act, 1950](#) in regard to offences of mutiny and desertion committed by them.⁷⁹

1. 'Special or local law'.—A special law is a law relating to a particular subject,⁸⁰ whereas a local law is a law which applies only to a particular part of the country.⁸¹ The distinction between a statute creating a new offence with a particular penalty and a statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty is well settled. In the former case the new offence is punishable by the new penalty only; in the latter it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included. The Principle is that where a new offence is created and the particular manner in which proceedings should be taken is laid down, then proceedings cannot be taken in any other way.⁸² However, a person cannot be punished under both the [Penal Code](#) and a special law for the same

offence,^{83.} and ordinarily the sentence should be under the special Act.^{84.} This is, however, confined to cases where the offences are coincident or practically so.^{85.}

The Supreme Court issued specific guidelines regarding the interpretation of general law and special law. See the Box below for these Guidelines.

Supreme Court Guidelines on Interpretation of General law and Special law

- (i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the later law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;
- (ii) When two provisions of law – one being a general law and the other being special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.
- (iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.
- (iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

[*Maya Mathew v State of Kerala*^{86.} and *P Raghava Kurup v V Ananthakumari*^{87.}.]

[s 5.1] Contempt of Court

Contempt of Courts Act, 1971 (Act 70 of 1971) makes it clear that, Contempt of Court means 'Civil contempt' or 'Criminal contempt'.^{88.} 'Civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an Undertaking given to a Court.^{89.} "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which – (i) scandalises or tends to scandalise or lowers or tends to lower the authority of any Court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.^{90.} The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law relating to contempt of Courts.^{91.} Contempt proceeding is *sui generis* (of its own kind or class or unique). It has peculiar features which are not found in criminal proceedings. The respondent does not stand in the position of a person accused of an offence. Initiation of contempt proceedings against the respondent who is already accused in a criminal proceedings, does not amount to double jeopardy.^{92.} Mens rea is not necessary for committing contempt of Court. The main ingredient of the offence of contempt of Court is the result of one's contumacious act of offending the prestige and dignity of the judiciary so as to lower it in the estimation of the general public. Whether the contemnor intended it or not is of no consequence.^{93.}

[s 5.2] Contempt of Supreme Court and High Courts

Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which includes the power to punish the contempt of itself. There are no curbs on the power of the High Court to punish for contempt of itself except those contained in the [Contempt of Courts Act, 1971](#).⁹⁴ For the judiciary to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task, constitutional Courts have been given the power to punish for contempt, but greater the power; higher the responsibility.⁹⁵

[s 5.3] Contempt of Subordinate Courts

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the [IPC, 1860](#) [[section 10 Contempt of Courts Act, 1971](#)]. The procedure prescribed either under the [Cr PC, 1973](#) or under the [Indian Evidence Act, 1872](#) is not attracted to the proceedings initiated under [section 15 of the Contempt of Courts Act](#). The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemnors are made aware of the charges levelled against them and given a fair and reasonable opportunity.⁹⁶

[s 5.4] Section 228 IPC vis-a-vis Contempt of Courts Act

What is made punishable under [section 228 IPC, 1860](#)⁹⁷ is the offence of intentional insult to a Judge or interruption of Court proceedings but not as a contempt of Court. The definition of criminal contempt is wide enough to include any act by a person which would either scandalise the Court or tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings.⁹⁸

1. *MC Verghese v Ponnai*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .

2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).

77. Subs. by the A.O. 1950, for section 5.

78. *Ramachandrappa*, (1883) 6 Mad 249; *Motilal Shah*, (1930) 32 Bom LR 1502 : 55 Bom 89.

79. *UOI v Anand Singh Bisht*, AIR 1997 SC 361 [LNIND 1996 SC 1341] : (1996) 10 SCC 153 [LNIND 1996 SC 1341] : 1996 Cr LJ 4435 : (1996) 1 SCC (Cr) 1198.
80. Section 41 IPC, 1860.
81. Section 42 IPC, 1860.
82. *Bhalchandra Ranadive*, (1929) 31 Bom LR 1151 , 1178 : 54 Bom 35.
83. *Hussun Ali*, (1873) 5 NWP 49.
84. *Kuloda Prosad Majumdar*, (1906) 11 Cal WN 100; *Bhogilal*, (1931) 33 Bom LR 648 .
85. *Joti Prasad Gupta*, (1931) 53 All 642 , 649; *Suchit Raut v State*, (1929) 9 Pat 126.
86. *Maya Mathew v State of Kerala*, (2010) 4 SCC 498 [LNIND 2010 SC 190] : (2010) 3 SCR 16 [LNIND 2010 SC 190] : AIR 2010 SC 1932 [LNIND 2010 SC 190] : 2010 (2) Scale 833 [LNIND 2010 SC 190] .
87. *P Raghava Kurup v V Ananthakumari*, (2007) 9 SCC 179 [LNIND 2007 SC 215] : 2007 (2) SCR 1058 [LNIND 2007 SC 215] : (2007) 3 Scale 431 [LNIND 2007 SC 215] .
88. Section 2(a).
89. Section 2(b).
90. Section 2(c).
91. Section 22.
92. *Delhi Judicial Service, Association, Tis Hazari Court v State of Gujarat*, AIR 1991 SC 2176 [LNIND 1991 SC 446] : 1991 (4) SCC 406 [LNIND 1991 SC 446] .
93. VG Ramachandran, *Contempt of Court*, 6th Edn, p 319 quoted in *Re MV Jayarajan*, 2012 (1) Ker LT SN 23 : 2011 (4) KHC 585 .
94. *V G Peterson v O V Forbes*, AIR 1963 SC 692 [LNIND 1962 SC 298] : 1963 Supp (1) SCR 40 : 1963 (1) Cr LJ 633 .
95. *HG Rangangoud v State Trading Corp of India*, AIR 2012 SC 490 : 2012 (1) SCC 297 .
96. *Daroga Singh v BK Pandey*, AIR 2004 SC 2579 [LNIND 2004 SC 485] : (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 .
97. **[s 228] - Intentional insult or interruption to public servant sitting in judicial proceeding.—** Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
98. *Daroga Singh v BK Pandey*, AIR 2004 SC 2579 [LNIND 2004 SC 485] : (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 6] Definitions in the Code to be understood subject to exceptions.

Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.

ILLUSTRATION

- (a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

COMMENT—

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 the definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lies on the accused.¹.

Section 6 is a convenient formula to avoid reproduction of lengthy exceptions in the description of offences. In other words, all the offences must be read subject to Chapter IV relating to General Exceptions (sections. 76–106 [IPC, 1860](#)). So when an act falls within any one of these exceptions by virtue of section 6 of the Code, the accused has to be given benefit of the appropriate General Exception even though it is not specifically stated over again in the description of the offence committed.² [Section 6 of the Indian Penal Code](#) imposes an obligation on the court to consider the case of exceptions on its own so far as it relates to the burden of proving legal insanity under section 106 of the Act. If the case of the accused comes within the purview of [section 84 IPC, 1860](#), which is one of the provisions in Chapter IV of the General Exceptions of

the [Indian Penal Code](#), the court is to give due consideration and find out as to whether at the time of the occurrence the accused had any mental disability so as not to know what he was doing.³

The provisions of section 6 should be read as a proviso to [section 105 of the Evidence Act 1872](#).⁴ 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 [Indian Penal Code \(XLV of 1860\)](#), 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.⁵

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : (2005) 9 SCC 71 [LNIND 2004 SC 1370].

2. *Abdul Latif v State of Assam*, 1981 Cr LJ 1205 (Gau); see also *Patras Mardi v State*, 1982 Cr LJ NOC 7 (Gau).

3. *Khageswar Pujari v State of Orissa*, 1984 Cr LJ 1108 (Orissa), see also *Smt. Sandhya Rani Bardhan v State*, 1977 Cr LJ NOC 245 (Gau). *Subodh Tewari v State of Assam*, 988 Cr LJ 223 (Assam).

4. *Khuraijam Somat Singh v State*, 1997 Cr LJ 1461 (Gau).

5. [Section 105 Evidence Act](#).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 7] Sense of expression once explained.

Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

COMMENT—

Section 7 of IPC, 1860 provides that 'every expression' which is explained in any part of the Code, is used in every part of the Code in conformity with the explanation. Let it be noted that unlike the modern statute, section 7 does not provide 'unless the context otherwise indicate' a phrase that prefaces the dictionary clauses of a modern statute. Therefore, the expression 'Government' in section 21(12)(a) must mean either the Central Government or the Government of a State.⁶

6. *RS Nayak v AR Antulay*, (1984) 2 SCC 183 [LNIND 1984 SC 43] : AIR 1984 SC 684 [LNIND 1984 SC 43].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 8] Gender.

The pronoun "he" and its derivatives are used of any person, whether male or female.

COMMENT—

Section 8 of the Indian Penal Code lays down that the pronoun 'he' and its derivatives are used for any person whether male or female. Thus, in view of section 8, IPC, 1860 read with section 2(y), Code of Criminal Procedure, 1973 (Cr PC, 1973) the pronoun 'his' in clause (d) of section 125(1), Cr PC, 1973 also indicates a female.⁷

7. *Vijaya (Dr.) v Kashirao Rajaram Sawai*, 1987 Cr LJ 977 : AIR 1987 SC 1100 [LNIND 1987 SC 200] ; *M Areefa Beevi v Dr. K M Sahib*, 1983 Cr LJ 412 (Ker) : See also *Girdhar Gopal v State*, 1953 Cr LJ 964 (MB) (Section 354 IPC, 1860).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 9] Number.

Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 10] "Man" "Woman".

The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

COMMENT—

A female child of seven and a half months was held to be a "woman" for the purpose of section 354 IPC, 1860.⁸.

8. State of Punjab v Major Singh, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 1 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 11] "Person".

The word "person" includes any Company or Association or body of persons, whether incorporated or not.

COMMENT—

The term 'person' has been defined in [section 11, IPC, 1860](#), and the same is *in pari materia* with [section 3\(42\) of the General Clauses Act 1897](#). Obviously, the definition is inclusive.⁹ A natural person, an incorporated person or even an unincorporated association or body of persons like a partnership can be a person under [section 11 of IPC, 1860](#).¹⁰ The Supreme Court has held in *Standard Chartered Bank v Directorate of Enforcement*,¹¹ that, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability. A juristic person has been held to come within the meaning of the word "person" for the purposes of section 415 (cheating).¹²

The State and its instrumentalities are juristic persons,¹³ but by implication, the State stands excluded from the purview of the word 'person' for the purpose of limiting its right to avail the revisional power of the High Court under [section 397\(1\) of Cr PC, 1973](#) for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as to deems proper.¹⁴ Chief Educational Officer is an artificial person/ juristic person falling under [section 11 of IPC, 1860](#).¹⁵

[s 11.1] Accused person.—

Though the word "person" is defined in the [Indian Penal Code section 11](#) and the [General Clauses Act section 3\(42\)](#) which are identical and are not exhaustive but an inclusive one. The words "accused" or "accused person" or "accused of an offence" are not defined either in the [Indian Penal Code](#) or in the [Indian Evidence Act](#) or in the [General Clauses Act 1897](#).¹⁶

[s 11.2] Complainant.—

A complaint can be filed in the name of a juristic person because it is also a person in the eye of law. It is clear that complainant must be a corporeal person who is capable of making a physical presence in the court. Its corollary is that even if the complaint is

made in the name of incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court and it is that natural person who is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the complainant is a body corporate it is the *de jure* complainant, and it must necessarily associate a human being as *de facto* complainant to represent the former in court proceedings.¹⁷ A company is a person in law and not in fact. A person in law is always required to be represented by a person in fact. A company can file a complaint for Defamation ([section 500 IPC, 1860](#)) through its authorised representative.¹⁸

9. *Chief Education Officer, Salem v K S Palanichamy*, [2012 Cr LJ 2543](#) (Mad).
10. *B Raman v M/S. Shasun Chemicals and Drugs Ltd*, [2006 Cr LJ 4552](#) (Mad); *Target Overseas Exports Pvt Ltd v A M Iqbal*, [2005 Cr LJ 1931](#) (Ker).
11. *Standard Chartered Bank v Directorate of Enforcement*, [AIR 2005 SC 2622 \[LNIND 2005 SC 476\]](#).
12. *Reji Michael v Vertex Securities Ltd*, [1999 Cr LJ 3787](#) (Ker).
13. *Common Cause, A Registered Society v UOI*, [\(1999\) 6 SCC 667 \[LNIND 1999 SC 637\] : AIR 1999 SC 2979 \[LNIND 1999 SC 637\]](#).
14. *Krishnan v Krishnaveni*, [AIR 1997 SC 987 \[LNIND 1997 SC 1883\] : 1997 Cr LJ 1519 : \(1997\) 4 SCC 241 \[LNIND 1997 SC 1883\]](#).
15. *Chief Education Officer, Salem v K S Palanichamy*, [2012 Cr LJ 2543](#) (Mad).
16. *Direcotorate of Enforcement v Deepak Mahajan*, [AIR 1994 SC 1775 \[LNIND 1993 SC 656\] : \(1994\) 3 SCC 440 : 1994 Cr LJ 2269](#).
17. *Associated Cement Co Ltd v Keshvanand*, [AIR 1998 SC 596 \[LNIND 1997 SC 1634\] : \(1998\) 1 SCC 687 \[LNIND 1997 SC 1634\] : 1998 Cr LJ 856](#).
18. *CM Ibrahim v Tata Sons Ltd*, [2009 Cr LJ 228](#) (Kar).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 12] "Public."

The word "public" includes any class of the public, or any community.

COMMENT—

This definition is inclusive and does not define the word 'public'. It only says that any class of public or any community is included within the term 'public'. A body or class of persons living in a particular locality may come within the term 'public'.¹⁹

¹⁹. *Harnandan Lal v Rampalak Mahto*, (1938) 18 Pat 76.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 13] [Repealed]

[Definition of "Queen".] [Rep. by the A.O. 1950.]

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

20. [§ 14] "Servant of Government".

The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]

20. Subs. by the A.O. 1950, for section 14.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

20. [§ 14] "Servant of Government".

The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]

20. Subs. by the A.O. 1950, for section 14.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 15] *[Repealed]*

[Definition of "British India".] [Rep. by the A.O. 1937.]

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 16] [Repealed]

[Definition of "Government of India".] [Rep. by the A.O. 1937.]

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

21.[s 17] "Government"

The word "Government" denotes the Central Government or the Government of a **22.**
[***] State.]

COMMENT—

Legislature of a State cannot be comprehended in the expression 'State Government'.**23.**

21. Subs. by A.O. 1950, for section 17.

22. The word and letter "Part A" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

23. *RS Nayak v AR Antulay*, (1984) 2 SCC 183 [LNIND 1984 SC 43] : AIR 1984 SC 684 [LNIND 1984 SC 43].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

21.[s 17] "Government"

The word "Government" denotes the Central Government or the Government of a **22.**
[***] State.]

COMMENT—

Legislature of a State cannot be comprehended in the expression 'State Government'.**23.**

21. Subs. by A.O. 1950, for section 17.

22. The word and letter "Part A" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

23. *RS Nayak v AR Antulay*, (1984) 2 SCC 183 [LNIND 1984 SC 43] : AIR 1984 SC 684 [LNIND 1984 SC 43].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

24. [s 18] "India."

"India" means the territory of India excluding the State of Jammu and Kashmir.]

COMMENT—

This exclusion of the State of Jammu and Kashmir in this section is not violative of Article 1 and the First Schedule of the [Constitution of India](#).²⁵ In fact, *Fazal Ali*, CJ, as he then was, held that exclusion of a territory postulates the existence of a territory itself; State of Jammu and Kashmir cannot be taken as a foreign territory.²⁶ Since the First Schedule to the [Constitution of India](#) specifically includes Jammu and Kashmir as a part of the territories of India, the exclusion of the State of Jammu and Kashmir from [section 18 of the Penal Code](#) only means that for the purposes of application of the provisions of the [Indian Penal Code](#), that State shall not be considered as a part of India. In fact, section 1 of the Code itself makes this position abundantly clear. The State of Jammu and Kashmir has a separate [Penal Code](#) of its own. It is known as the [Ranbir Penal Code](#), which is almost same as the [Indian Penal Code](#).

24. Subs. by Act 3 of 1951, section 3 and Sch, for section 18 (w.e.f. 1-4-1951). Earlier section 18 was repealed by the A.O. 1937 and was again inserted by the A.O. 1950.

25. *KRK Vara Prasad v UOI*, AIR 1980 AP 243 [[LNIND 1980 AP 27](#)] .

26. *Virender Singh v General Officer Commanding*, 1974 J & K LR 101 (FB).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

24. [s 18] "India."

"India" means the territory of India excluding the State of Jammu and Kashmir.]

COMMENT—

This exclusion of the State of Jammu and Kashmir in this section is not violative of Article 1 and the First Schedule of the [Constitution of India](#).²⁵ In fact, *Fazal Ali*, CJ, as he then was, held that exclusion of a territory postulates the existence of a territory itself; State of Jammu and Kashmir cannot be taken as a foreign territory.²⁶ Since the First Schedule to the [Constitution of India](#) specifically includes Jammu and Kashmir as a part of the territories of India, the exclusion of the State of Jammu and Kashmir from [section 18 of the Penal Code](#) only means that for the purposes of application of the provisions of the [Indian Penal Code](#), that State shall not be considered as a part of India. In fact, section 1 of the Code itself makes this position abundantly clear. The State of Jammu and Kashmir has a separate [Penal Code](#) of its own. It is known as the [Ranbir Penal Code](#), which is almost same as the [Indian Penal Code](#).

24. Subs. by Act 3 of 1951, section 3 and Sch, for section 18 (w.e.f. 1-4-1951). Earlier section 18 was repealed by the A.O. 1937 and was again inserted by the A.O. 1950.

25. *KRK Vara Prasad v UOI*, [AIR 1980 AP 243](#) [[LNIND 1980 AP 27](#)] .

26. *Virender Singh v General Officer Commanding*, 1974 J & K LR 101 (FB).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[§ 19] "Judge."

[§ 19] The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

ILLUSTRATIONS

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
- (c) A member of a panchayat which has power, under ²⁷ Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

COMMENT—

Section 19 IPC, 1860 defines a 'Judge' as denoting not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceedings, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons empowered by law to give such a judgment. The Collector is neither a Judge as defined under section 19 nor does he act judicially, when discharging any of the functions under the Land Acquisition Act.²⁸ Regional Provident Fund Commissioner while passing an order under section 7-A of Employees' Provident Funds and Miscellaneous Provisions Act 1952 was 'Judge' within definition under section 19 of IPC, 1860.²⁹ The right to pronounce a definitive judgment is considered the *sine qua non* of a Court.³⁰

Illustration (d) is very important as it indicates that a Magistrate, who has power to try and determine cases, is a Court of Justice, but is not a Court of Justice when sitting in committal proceedings.

27. Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).
28. *Surendra Kumar Bhatia v Kanhaiya Lal*, AIR 2009 SC 1961 [LNIND 2009 SC 209] : (2009)12 SCC 184 [LNIND 2009 SC 209].
29. *E S Sanjeева Rao v CBI, Mumbai*, 2012 Cr LJ 4053 (Bom) : 2013 (1) RCR (Criminal) 284.
30. *Brajnandan Sinha v Jyoti Narain*, AIR 1956 SC 66 [LNIND 1955 SC 98] : 1956 SCJ 155 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 20] "Court of Justice".

The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

ILLUSTRATION

A panchayat acting under ³¹ Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

COMMENT—

The word 'court' is a generic term and embraces a Judge but the vice versa is not true. Therefore, the words 'court' and 'Judge' are frequently used interchangeably because a Judge is an essential constituent of a court since there can be no dispensation of justice without a Judge. But that is not to say that when a Judge demits office the court ceases to exist *Supreme Court Legal Aid Committee v UOI*.³²

31. Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).

32. *Supreme Court Legal Aid Committee v UOI*, (1994) 6 SCC 731 [LNIND 1994 SC 955] : JT 1994 (6) SC 544 [LNIND 1989 SC 165].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 21] "Public servant".

The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:—

33. [***]

34. Second.—Every Commissioned Officer in the Military, 35. [Naval or Air] Forces 36. [37. [***] of India];

38. [Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

Fourth.—Every officer of a Court of Justice 39. [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of 40. [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of 41. [the Government], or to make any survey, assessment or contract on behalf of 42. [the Government], or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of 43. [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of 44. [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of 45. [the Government] 46. [***];

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any

secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

47. [Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

48. [Twelfth.—Every person—

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;**
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (Act 1 of 1956).]**

ILLUSTRATION

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

49 [Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]

50. [*]**

STATE AMENDMENT

Rajasthan.—In section 21, after clause twelfth, add the following clause, namely:

— "Thirteenth.—Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law.

Explanation.—The expression 'Public Body' includes—

- (a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government; and**
- (b) a local authority."**

[Vide Rajasthan Act, 4 of 1993, sec. 2 (w.e.f. 11-2-1993)].

COMMENT—

Public Servant.—A line is drawn between the great mass of the community and certain classes of persons in the service and pay of Government, or exercising various public functions, who are here included in the words "public servant." There are several offences which can only be committed by public servants and, on the other hand, public servants in the discharge of their duties have many privileges peculiar to themselves.⁵¹.

The test to determine whether a person is a public servant is (1) whether he is in the service or pay of the Government and (2) whether he is entrusted with the performance of any public duty.⁵² The definition is not exhaustive. A person may be a public servant in terms of another statute.⁵³.

Illustration.—The illustration at the end of the section relates to clause (10). The word "Commissioner" is used in the sense of a Municipal Councillor or member and not merely an officer designated as "Commissioner."⁵⁴.

The definition of the term "public servant" cannot be extended to the provisions of the [Representation of the People Act](#) where this Act makes reference to persons in the service of the Government.⁵⁵.

[s 21.1] Enlargement of concept under [Prevention of Corruption Act 1988](#).—

Section 2(i) of the [Prevention of Corruption Act 1988](#) has enlarged the concept of public servant wider than that contained in [section 21 IPC, 1860](#). A comparison of the definition of 'public servant' contained in [section 21 of IPC, 1860](#) and that contained in section 2(c) of the 1988 Act would show that [section 21 of IPC, 1860](#) did not include persons falling under sub-clause (ix), (x), (xi) and (xii) of section 2(c). Sub-clause (viii) of section 2(c) is also wider in amplitude than clause (12)(a) of [section 21 of IPC, 1860](#).⁵⁶ Definition of 'public servant' is of no relevance under the [PC Act 1988](#).⁵⁷

[s 21.2] Definition not exhaustive.—

The definition under the section has been held to be not exhaustive. A person may be a public servant in terms of some other statute.⁵⁸

[s 21.3] Judges [clause "Third"].—

Examining the scope of clause "third", the Supreme Court has laid down in *K Veeraswami v UOI*,⁵⁹ that this category of public servants would include judges of the High Courts and Supreme Court. The words "every judge", as used in the clause, the Court said, indicates "all judges and judges of all courts". "It is a general term... and should not be narrowly construed. It must receive comprehensive meaning. A judge of the superior court cannot ... be excluded from the definition of "public servant". It is not necessary that there should be master and servant relationship to constitute a person as a "public servant". The court noted that [section 21 IPC, 1860](#) does not define the expression "public servant" as a concept. It enumerates only the categories of public servants. Each category is different from the other and in some of the categories there is hardly any relationship of master and servant. In the view of the Andhra Pradesh High Court the Central Government is not a competent authority for sanctioning the prosecution of a High Court Judge.⁶⁰

[s 21.4] Explanation 2.—

The person who in fact discharges the duties of the office which brings him under some one of the descriptions of public servant, is for all the purposes of the Code rightfully a public servant, whatever legal defect there may be in his right to hold the office.⁶¹ But even if a person is in actual possession of the situation of a public servant, he is not a public servant unless he has a right to hold that situation, although in determining that right the legal defect, if any, has to be ignored.⁶² A public servant under suspension does not cease to be a public servant within the meaning of this section.⁶³

[s 21.5] CASES.—

^{64.}

The following persons are held to be Public Servants:

- (1) Member of Parliament (MP)^{65.}
- (2) Chief Minister and Ministers^{66.}
- (3) Judges of Superior Courts^{67.}
- (4) Speaker of Legislative Assembly^{68.}
- (5) Employee of a Nationalised Bank^{69.}
- (6) All Railway Servants^{70.}
- (7) Teacher in a Government school^{71.}
- (8) Chairman of Managing Committee of a Municipality^{72.}
- (9) Employees of Life Insurance Corporation^{73.}
- (10) Member of Auxiliary Air Force^{74.}
- (11) Employee of Bharat Heavy Electricals (India) Limited^{75.}
- (12) Employees of Government Company^{76.}
- (13) Officers of State Electricity Board^{77.}
- (14) An employee of a Co-operative Society which is controlled or aided by the government, is a public servant covered under [section 2\(c\) of the IPC Act 1988](#)^{78.} as also the manager for the commission of offence under [section 409 of the IPC, 1860](#)^{79.}
- (15) Secretary, Health Supervisor of Municipality^{80.}
- (16) Drug Inspector^{81.}
- (17) Any surveyor while performing his legitimate function under any of the Revenue Civil Court^{82.}
- (18) Government Pleaders^{83.}

- (19) An IAS officer posted as the managing director of a State Financial Corporation⁸⁴.
- (20) The sarpanch of a Gram Panchayat.⁸⁵

The following persons are not Public Servants:

- (1) University Examiner⁸⁶.
- (2) Elected office bearers with President and Secretary of a registered Co-operative Society.⁸⁷.
- (3) A Chartered Accountant who had been appointed as an Investigator by the Central Government under the [Insurance Act 1938](#).⁸⁸
- (4) Municipal Councillor⁸⁹.
- (5) Laboratory Officer in Municipal Corporation⁹⁰.
- (6) Member of IAS whose service placed at the disposal of Co-operative Society.⁹¹.
- (7) A Government Company is not a public servant though its employees are public servants Government Company.⁹².
- (8) Chairperson and Standing Committee Chairman of Municipality.⁹³.
- (9) Leader of Opposition.⁹⁴.
- (10) Hospital or the Authorization Committee constituted by the Government under [section 9\(4\) of the Transplantation of Human Organs Act 1994](#).⁹⁵
- (11) Branch Manager under the Assam State Warehousing Corporation.⁹⁶.
- (12) Commissioner appointed by Civil Court to seize account book.⁹⁷.
- (13) A panel doctor under the ESI Scheme.⁹⁸.

33. Clause First omitted by the A.O. 1950.

34. Clause First omitted by the A.O. 1950.

35. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Naval".

36. The original words "of the Queen while serving under the Government of India, or any Government" have successively been amended by the A.O. 1937, the A.O. 1948 and the A.O.1950 to read as above.

37. The words "of the Dominion" omitted by the A.O. 1950.

38. Subs. by Act 40 of 1964, section 2, for clause *Third* (w.e.f. 18-12-1964).

39. Ins. by Act 40 of 1964, section 2 (w.e.f. 18-12-1964).

40. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".

41. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
42. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
43. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
44. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
45. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for "the word Government".
46. Certain words omitted by Act 40 of 1964, section 2 (w.e.f. 18-12-1964).
47. Ins. by Act 39 of 1920, section 2.
48. Subs. by Act 40 of 1964, section 2, for clause Twelfth (w.e.f. 18-12-1964).
49. Ins. by Act 39 of 1920, section 2.
50. *Explanation 4* omitted by Act 40 of 1964, section 2 (w.e.f. 18-12-1964). Earlier *Explanation 4* was inserted by Act 2 of 1958, section 2 (w.e.f. 12-2-1958).
51. M&M 20.
52. *GA Monterio*, AIR 1957 SC 13 [LNIND 1956 SC 66] : 1957 Cr LJ 1956 . See further *Lakshmimansingh (Dr.) v Naresh KC Jah*, 1990 Cr LJ 1921 : AIR 1990 SC 1976 [LNIND 1990 SC 370] : (1990) 4 SCC 169 [LNIND 1990 SC 370] ; where a municipal officer working on deputation on a Government post (public analyst) committed an act entailing his removal and it was held that his removal would have to be effected by the Municipality and there he was not a public servant and hence, permission of the State under s 197(1) of Cr PC, 1973 was not necessary. *Mohinder Singh v State of Punjab*, 2001 Cr LJ 2329 (P&H), sanction is necessary only when the offence occurs in the course of the performance of official duty. For offences connected with cheating, preparing false records, misappropriation of public funds, including criminal conspiracy against a public servant, no prior sanction is necessary.
53. *Naresh Kumar Madan v State of MP* AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 4 SCC 766 [LNIND 2007 SC 452] .
54. *Banshilal Luhadia*, AIR 1962 Raj 250 [LNIND 1962 RAJ 124] .
55. *Abdul Rehman v State of Kerala*, 1999 Cr LJ 4801 (Ker).
56. *PV Narsimha Rao v State (CBI/SPE)*, AIR 1998 SC 2120 [LNIND 1998 SC 1259] : 1998 Cr LJ 2930 .
57. *State of Maharashtra v Prabhakar Rao*, (2002) 7 SCC 636 : JT 2002 (Supp1) SC 5.
58. *Naresh Kumar Madan v State of MP*, (2007) 4 SCC 766 [LNIND 2007 SC 452] : AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 2 KLT 539 : (2007) 54 AIC 87 .
59. *K. Veeraswami v Union of India*, (1991) 3 SCC 655 [LNIND 1991 SC 320] : 1991 SCC (Cr) 734 : 1991 Cr LR (SC) 677 .
60. *Advocate General, AP v Rachapudi Subba Rao*, 1991 Cr LJ 613 AP.
61. *Ramkrishna Das*, (1871) 7 Beng LR 446, 448.
62. *Bira Kishore*, AIR 1964 Orissa 202 .
63. *Dhanpal Singh*, AIR 1970 Punj & Haryana 514.
64. *M Karunanidhi v UOI*, 1979 Cr LJ 773 : AIR 1979 SC 598 ; See also *Shiv Bahadur*, 1954 Cr LJ 910 : AIR 1954 SC 322 [LNIND 1954 SC 30] ; *AR Antulay*, (1984) Cr LJ 613 : AIR 1984; *Rajendra Kumar Singh v State of MP*, 1999 Cr LJ 2807 (MP).
65. *PV Narasimha Rao v State (CBI/SPE)*, AIR 1998 SC 2120 [LNIND 1998 SC 1259] : (1998) 4 SCC 626 [LNIND 1998 SC 1259] (CB) Though another Constitution Bench in *RS Nayak v AR*

Antulay, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 [LNIND 1984 SC 43] that MLA is not a public servant within the meaning of **Section 21 IPC, 1860**, in view of the Narasimha Rao case (Supra) MLA and MPs are public servant within the meaning of **Section 2 (i) of PC Act**. See also *Habibulla Khan v State of Orissa*, 1993 Cr LJ 3604 ; *L. K. Advani v Central Bureau of Investigation*, 1997 Cr LJ 2559 (Del) : 1997 (4) Crimes 1 [LNIND 1997 DEL 319] .

66. *M Karunanidhi v UOI*, AIR 1979 SC 898 [LNIND 1979 SC 135] : (1979) 3 SCC 431 [LNIND 1979 SC 135] ; *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , Minister is a Public Servant -*R Balakrishna Pillai v State of Kerala*, AIR 1996 SC 901 [LNIND 1995 SC 1239] : (1996) 1 SCC 478 [LNIND 1995 SC 1239] , *Dattatraya Narayan Patil v State of Maharashtra*, AIR 1975 SC 1685 [LNIND 1975 SC 157] : (1976) 1 SCC 11 [LNIND 1975 SC 157] ; *Rajendra Kumar Singh and etc. v State of MP*, 1999 Cr LJ 2807 (MP).
67. *K Veeraswami v UOI*, (1991) 3 SCC 655 [LNIND 1991 SC 320] : (1991) 1 SCC (Cr) 734.
68. *P Nallammal v State*, 1999 Cr LJ 1591 (Mad).
69. *UOI v Ashok Kumar Mitra*, AIR 1995 SC 1976 [LNIND 1995 SC 295] : (1995) 2 SCC 768 [LNIND 1995 SC 295] ; *Mir Nagvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] ; *State (Delhi Administration) v S R Vij*, 1999 Cr LJ 4762 (Del).
70. *Ram Krishan v State of Delhi*, AIR 1956 SC 476 [LNIND 1956 SC 157] : 1956 Cr LJ 837 , *Shamrao Vishnu Parulekar v The District Magistrate*, AIR 1957 SC 23 [LNIND 1956 SC 60] : 1957 Cr LJ 5 ; *GA Monterio v State of Ajmer*, AIR 1957 SC 13 [LNIND 1956 SC 66] : 1957 Cr LJ 1 ; *Bajrang Lal v State of Rajasthan* AIR 1976 SC 1008 [LNIND 1976 SC 57] : (1976) 2 SCC 217 [LNIND 1976 SC 57] . But see *KN Shukla v Navnit Lal Manilal Bhatt*, AIR 1967 SC 1331 [LNIND 1966 SC 310] : 1967 Cr LJ 1200 .
71. *State of Ajmer v Shiv Lal*, AIR 1959 SC 847 [LNIND 1959 SC 67] : 1959 Cr LJ 1127 .
72. *Maharudrappa Danappa Kesarappanavar v The State of Mysore*, AIR 1961 SC 785 [LNIND 1961 SC 60] : 1961 Cr LJ 857 .
73. *State through Central Bureau of Investigation v D P Dogra*, AIR 1986 SC 312 : (1985) 4 SCC 319 .
74. *State (SPE, Hyderabad) v Air Commodore Kailash Chand*, AIR 1980 SC 522 [LNIND 1979 SC 504] : (1980) 1 SCC 667 [LNIND 1979 SC 504] .
75. *State of MP v M v Narasimhan*, AIR 1975 SC 1835 [LNIND 1975 SC 212] : (1975) 2 SCC 377 [LNIND 1975 SC 212] .
76. *National Small Industries Corporation Ltd v State* AIR 2009 SC 1284 [LNIND 2008 SC 2243] : (2009) 1 SCC 407 [LNIND 2008 SC 2243] .
77. *Bihar State Electricity Board v Nand Kishore Tamakhuwala*, AIR 1986 SC 1653 [LNIND 1986 SC 82] : (1986) 2 SCC 414 [LNIND 1986 SC 82] , *Naresh Kumar Madan v State of MP* AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 4 SCC 766 [LNIND 2007 SC 452] .
78. *Govt. of AP v P Venken Reddy* AIR 2002 SC 3346 : (2002) 7 SCC 631 .
79. *Haridas Mondal v State of WB*, 2016 Cr LJ 4335 : 2016 (4) Crimes 530 (Cal).
80. *Chairperson, Kanhangad Municipality v State of Kerala*, 2012 Cr LJ 4366 (Ker); *G S K Janardhana Rao v Guntupalli Guru Prasad*, 2000 Cr LJ 2927 (A.P) - officers of Municipal Corporation.
81. *Laxmi Medical Distributors v State of AP*, 2005 Cr LJ 1601 (A.P).
82. *Ram Avtar Sah v State of Bihar*, 2002 Cr LJ 3899 (Pat).
83. *Appadirai v State*, Rep. By The Station House Officer, Cid Branch, Pondicherry 2001 Cr LJ 3129 (Mad).
84. *Girish Chandra Patra v Pinakee Enterprises Ltd*, 1989 Cr LJ 527 (Ori).
85. *Sarat Chandra Dehury v Sankirtan Behera*, 1989 Cr LJ (NOC) 162 Orissa; *Sukhdev Singh v State of Punjab*, 1988 Cr LJ 265 P&H.

86. *Dilaver Babu Khurana v State of Maharashtra*, AIR 2002 SC 564 [LNIND 2002 SC 1739] : (2002) 2 SCC 135 [LNIND 2002 SC 1739] ; *State of Gujarat v Manshanker Prabhashanker Dwivedi*, AIR 1973 SC 330 [LNIND 1972 SC 257] : (1972) 2 SCC 392 [LNIND 1972 SC 257] .
87. *Govt. of AP v P Venken Reddy*, AIR 2002 SC 3346 : (2002) 7 SCC 631 : *Rabindra Nath Bera v State Of WB*, 2012 Cr LJ 913 (Cal); *Haladhar Sasmal v State Of WB*, 2012 Cr LJ 1726 (CAL) A 'public servant' within the meaning of Maharashtra **Co-operative Societies Act**, 1960 is not a public servant under **Section 21 of IPC, 1860**; *State of Maharashtra v Lalit Rajshi Shah*, AIR 2000 SC 937 [LNIND 2000 SC 387] : (2000) 2 SCC 699 [LNIND 2000 SC 387] .
88. *Ram Krishna Dalmia v Delhi Administration*, (1963 (1) SCR 253 [LNIND 1962 SC 146] : AIR 1962 SC 1821 [LNIND 1962 SC 146] ; Insurance surveyor is not public servant- 1988 Cr LJ 311 (Delhi).
89. *State of TN v T Thulasingam*, AIR 1995 SC 1314 [LNIND 1994 SC 1256] : (1994) Supp 2 SCC 405; *Ramesh Balkrishna Kulkarni v State of Maharashtra*, 1985 (3) SCC 606 [LNIND 1985 SC 235] : AIR 1985 SC 1655 [LNIND 1985 SC 235] .
90. *Lakshmansingh Himatsingh Vaghela v Naresh Kumar Chandrashanker Jha*, AIR 1990 SC 1976 [LNIND 1990 SC 370] : (1990) 4 SCC 169 [LNIND 1990 SC 370] .
91. *SS Dhanoa v Municipal Corporation Delhi*, AIR 1981 SC 1395 [LNIND 1981 SC 282] : (1981) 3 SCC 431 [LNIND 1981 SC 282] .
92. *National Small Industries Corporation Ltd v State*, AIR 2009 SC 1284 [LNIND 2008 SC 2243] : (2009) 1 SCC 407 [LNIND 2008 SC 2243] .
93. *Chairperson, Kanhangad Municipality v State of Kerala*, 2012 Cr LJ 4366 (Ker).
94. *Sushil Modi v Mohan Guruswamy*, 2008 Cr LJ 541 (Del).
95. *Santosh Hospitals Private Ltd Chennai v State Human Rights Commission, TN* AIR 2005 Mad. 348 [LNIND 2005 MAD 935] .
96. *Ghulam Rabbani v State of Assam*, 2001 Cr LJ 2331 : 2002 (1) Crimes 132 [LNIND 2001 GAU 403] (Gau).
97. *Padam Sen v State of UP* AIR 1961 SC 218 [LNIND 1960 SC 221] : 1961 Cr LJ 322 .
98. *State of Maharashtra v Dr. Rustom Franrose Hakim*, 2000 Cr LJ 3401 (Bom).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 22] "Movable property".

The words "movable property" are intended to include corporeal property¹ of every description, except land and things attached to the earth² or permanently fastened to anything which is attached to the earth.

COMMENT—

This definition is restricted to corporeal property; it excludes all choices in action. The definition of "movable property" in the section is not exhaustive.⁹⁹ The definition of "movable property" given in the [Indian Penal Code](#) is basically meant for the provisions contained in the [Indian Penal Code](#) itself ([section 125 Cr PC, 1973](#)).¹⁰⁰

1. 'Corporeal property' is property which may be perceived by the senses, in contradistinction to incorporeal rights, which are not so perceptible, as obligations of all kinds. Thus, salt produced on a swamp,¹⁰¹ and papers forming part of the record of a case,¹⁰² are movable property within the meaning of this section. Even if an assessment order is not 'property' in the hands of the Income-tax Officer, it is 'property' in the hands of the assessee ([section 420 IPC, 1860](#)).¹⁰³

2. 'Land and things attached to the earth'.—This section does not exempt "earth and things attached to the earth", but "land and things attached to the earth"; "land" and "earth" are not synonymous terms, and there is a great distinction between "the earth", and "earth". By severance, things that are immovable become movable; and it is perfectly correct to call those things attached which can be severed; and undoubtedly it is possible to sever earth from the earth and attach it again thereto. Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, are movable property capable of being the subject of theft.¹⁰⁴ Any part of "the earth", whether it is stones or sand or clay or any other component, when severed from "the earth", is movable property.¹⁰⁵ Standing crop, so long as it is attached to the earth is not movable property as defined in the Code, but the moment it is severed from the earth its character is changed and it can become the subject of theft.¹⁰⁶

Fish in any water are corporeal property and they become subject of theft as soon as they are separated from the waters, dead or alive, and are moved.¹⁰⁷

99. *RK Dalmia v Delhi Administration*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 .
100. *Bhagwat Baburao Gaikwad v Baburao Bhaiyya Gaikwad*, 1993 Cr LJ 2393 (Bom).
101. *Tamma Ghantaya*, (1881) 4 Mad 228.
102. *Ramaswami Aiyer v Vaithiling Mudali*, (1882) 1 Weir 28.
103. *Ishwarlal Girdharilal Parekh v State of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 .
104. *Shivram*, (1891) 15 Bom 702.
105. *Suri Venkatappayya Sastri v Madula Venkanna*, (1904) 27 Mad 531, 535 (FB), **overruling** *Kotayya*, (1887) 10 Mad 255. It has been said that the words "corporeal property of every description" were not supposed to apply for all purposes. The matter before the court was that of attachment of salary for payment of maintenance.
106. *Kunhayu v State*, 1965 KLT 66 : 1965 KLJ 51 .
107. *State of Rajasthan v Pooran Singh*, 1977 Cr LJ 1055 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 23] "Wrongful gain."

"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, Losing wrongfully

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property,¹ as well as when such person is wrongfully deprived of property.

COMMENT—

The word 'wrongful' means prejudicially affecting a party in some legal right. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it. Thus, where a pledgee used a turban that was pledged, it was held that the deterioration of the turban by use was not 'wrongful loss' of property to the owner, and the wrongful beneficial use of it by the pledgee was not a 'wrongful gain' to him.¹⁰⁸ The gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled.¹⁰⁹ Forcible and illegal seizure of bullocks of a widow in satisfaction of a debt due to the accused by her deceased husband was held to be a 'wrongful loss'.¹¹⁰ Where a person, who purchased rice from a famine relief officer, at a certain rate on condition that he should sell it at a pound the rupee less, did not sell it at the rate agreed upon, but at four pounds the rupee less, it was held that no wrongful gain or wrongful loss had been caused to anyone within the meaning of this section. The rice having been sold to the accused, and he having paid for it, it was not unlawful for him to sell it again at such price as he thought fit.¹¹¹ Where the accused removed jute kept in a pond of the complainant for wetting and requested the complainant to take it away as the accused *bona fide* claimed the ownership of the pond, it was held that no wrongful loss was caused to the complainant.¹¹²

The words "gaining wrongfully," or "losing wrongfully" would cover cases of wrongful detention of property in the one case and wrongfully being kept out of property in the

other.¹¹³

1. 'Wrongfully kept out of any property'.—When the owner is kept out of possession of his property with the object of depriving him of the benefit arising from the possession even temporarily, the case will come within the definition. If a creditor by force or otherwise takes the goods of his debtor out of his possession against his will in order to put pressure on him to compel him to discharge his debt he will be guilty of theft by causing wrongful loss to the debtor.¹¹⁴ The loss must be caused wrongfully. Thus, whose municipal officers demolished an unauthorised construction as the complainant refused to remove the structure in spite of notice, they could not be held guilty of committing an offence of mischief within the meaning of [section 425, IPC, 1860](#), for there was no intention to cause wrongful loss to the complainant as the demolition was done lawfully in exercise of powers under sections 179 and 189 of the Maharashtra Municipalities Act.¹¹⁵

Fees payable to a college for attending lectures are "property" within the meaning of this section.¹¹⁶

108. (1866) 3 MHC (Appx.) 6.

109. *KN Mehra v State of Rajasthan*, [AIR 1957 SC 369 \[LNIND 1957 SC 14\] : 1957 Cr LJ 552](#) .

110. *Preonath Banerjee*, (1866) 5 WR (Cr) 68.

111. *Lal Mohomed*, (1874) 22 WR (Cr) 82.

112. *Paltu Goswami v Ram Kumar*, [AIR 1960 Tripura 40](#) .

113. *Krishan Kumar*, [\(1960\) 1 SCR 452 \[LNIND 1959 SC 135\] : 1959 Cr LJ 1508 : AIR 1960 SC 1390](#) .

114. *Sri Churn Chungo*, [\(1895\) 22 Cal 1017](#) , FB; *Ganpat Krishnaji*, [\(1930\) 32 Bom LR 351](#) .

115. *Shriram v Thakurdas*, [1978 Cr LJ 715](#) (Bom).

116. *Soshi Bhushan*, [\(1893\) 15 All 210](#) , 216.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 24] "Dishonestly".

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

COMMENT—

From this definition it will appear that the term 'dishonestly' is not used in the Code in its popular significance. Unless there is wrongful gain to one person, or wrongful loss to another, an act would not be 'dishonest'. Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property.¹¹⁷ An act done with the intention to cause 'wrongful gain' can be said to be dishonest.¹¹⁸ Deceit is not an ingredient of the definition of the word "dishonestly". "Dishonestly" involves a pecuniary or economic gain or loss.¹¹⁹ Thus, "dishonestly" means an intention to cause either wrongful gain or wrongful loss. So where municipal officers demolished and removed an unauthorised structure lawfully by virtue of powers given to them under the Municipal Act, it could not be said that they committed the offence of theft under [section 380, IPC, 1860](#), as their act was not committed dishonestly within the meaning of [section 24](#) read with [section 23, IPC, 1860](#). And since "dishonesty" is an essential ingredient of the offence of theft, they could not be charged with that offence.¹²⁰ A mere erroneous belief and persistence in a wrong or perverse opinion cannot be said to be offence tainted with a dishonest or fraudulent intent.¹²¹

[s 24.1] Cheating.—

Two main ingredients of [section 420 IPC, 1860](#) are dishonest and fraudulent intention.¹²² For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.¹²³

[s 24.2] Breach of Trust.—

The element of 'dishonest intention' is an essential element to constitute the offence of Criminal Breach of Trust.¹²⁴

[s 24.3] Hire-purchase.—

The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.¹²⁵.

117. *Krishan Kumar v UOI*, 1959 Cr LJ 1508 : AIR 1959 SC 1390 [LNIND 1959 SC 135] .
118. *Venkatakrishnan v CBI*, AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
119. *Dr. Vimala*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 .
120. *Shriram v Thakurdas*, 1978 Cr LJ 715 (Bom). See also *Narendra Pratap Narain Singh v State of UP*, AIR 1991 SC 1394 [LNIND 1991 SC 186] : 1991 Cr LJ 1816 ; *N Vaghul v State of Maharashtra*, 1987 Cr LJ 385 (Bom).
121. *N Vaghul v State of Maharashtra*, 1987 Cr LJ 385 (Bom).
122. *Annamalai v State of Karnataka*, (2010) 8 SCC 524 [LNIND 2010 SC 745] : 2011 Cr LJ 692 .
123. *B Suresh Yadav v Sharifa Bee*, AIR 2008 SC 210 [LNIND 2007 SC 1238] : (2007) 13 SCC 107 [LNIND 2007 SC 1238] ; *Indian Oil Corporation vNEPC India Ltd*, JT 2006 (6) SC 474 [LNIND 2006 SC 537]) : (2006) 6 SCC 736 [LNIND 2006 SC 537] .
124. *Venkatakrishnan v CBI*, AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
125. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001)7 SCC 417 [LNIND 2001 SC 2906] ; *Sardar Trilok Singhv Satya Deo Tripathi*, (1979) 4 SCC 396 : AIR 1979 SC 850 ; *KA Mathai v Kora Bibbikutty*, (1996) 7SCC 212 : (1996) 1 SCC (Cr) 281.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 25] "Fraudulently".

A person is said to do a thing fraudulently if he does that thing with intent to defraud¹ but not otherwise.

COMMENT—

The intention with which an act is done is very important in determining whether the act is done 'dishonestly' or 'fraudulently'.

1. 'Intent to defraud'.—The terms 'fraud' and 'defraud' are not defined in the [Penal Code](#). The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and, as it is not defined, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found.¹²⁶.

Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous.¹²⁷.

To 'defraud' or do something fraudulently is not by itself made an offence under the [Penal Code](#), but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (sections 206, 421, 424)
- (ii) Fraudulent claim to property to prevent seizure (section 207).
- (iii) Fraudulent suffering or obtaining a decree (sections 208 and 210)
- (iv) Fraudulent possession/delivery of counterfeit coin (sections 239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (sections 246–253)
- (vi) Fraudulent acts relating to stamps (sections 261–261)
- (vii) Fraudulent use of false instruments/weight/measure (sections 264–266)
- (viii) Cheating (sections 415–420)
- (ix) Fraudulent prevention of debt being available to creditors (section 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (section 423).
- (xi) Forgery making or executing a false document (sections 463–471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security, etc. (section 477)

(xiii) Fraudulently going through marriage ceremony (section 496).

It follows therefore, that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.¹²⁸.

The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. The injury may even comprise a non-economic or non-pecuniary loss. Even in those rare cases where the benefit to the deceiver does not cause corresponding loss to the deceived, the second condition is satisfied.¹²⁹. The expression "intent to deceive" is different from the expression "intent to defraud".¹³⁰. "Intent to defraud" is established only when the deception has as its aim some advantage or the likelihood of advantage to the person who causes the deceit or some kind of injury or the possibility of injury to another.¹³¹. Thus, where an expert deposing before a court as a defence witness was asked to produce his credentials before the court and it appeared from the documents produced that they were not genuine, it was held that as he acted under the orders of the court and not voluntarily, it could not be said that his intention was to cause any one to act to his disadvantage. In the circumstances, he did not act with "intent to defraud". He was, therefore, held liable under sections 193 and 196 but not under sections 465 and 471, IPC, 1860.¹³².

[s 25.1] 'Fraudulently'; 'dishonestly'.—

According to the Supreme Court "the word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore, the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so."¹³³.

Where the accused, after the execution and registration of a document, which was not required by law to be attested, added his name to the document as an attesting witness, it was held that his act was neither fraudulent nor dishonest and the accused was, therefore, not guilty of forgery.¹³⁴. A person who is not a member of Scheduled Caste or Scheduled Tribes obtains a false certificate with a view to gain undue advantage to which he or she was not otherwise entitled to would amount to commission of fraud¹³⁵. Suppression of a material document would also amount to a fraud on the court.¹³⁶.

126. *Abbas Ali, supra.*
127. *Meghmala v G Narasimha Reddy*, 2010 (8) SCC 383 [LNIND 2010 SC 761] ; *Inderjit Singh Grewal v State of Punjab*, (2011) 12 SCC 588 [LNIND 2011 SC 801] : (2011) 10 SCR 557 [LNIND 2011 SC 801] : 2012 Cr LJ 309 (SC).
128. *Mohd. Ibrahim v State of Bihar*, (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.
129. *Dr. Vimla*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 ; *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 (2) SCC 617 .
130. *S Dutt v State of UP*, 1966 Cr LJ 459 : AIR 1960 SC 523 .
131. *Re: BV Padmanabha Rao*, 1970 Cr LJ 1502 (Mysore).
132. *S Dutt, Supra.*
133. *Dr. Vimla*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 .
134. *Surendra Nath Ghosh*, (1910) 14 CWN 1076 . See also *TR Arya v State of Punjab*, 1987 Cr LJ 222 (P&H); *Pramod Malhotra v UOI*, (2004) 3 SCC 415 [LNIND 2004 SC 1543] : AIR 2004 SC 3338 [LNIND 2004 SC 1543] : (2004) 111 DLT 605 .
135. *Lilly Kutty v Scrutiny Committee*, AIR 2005 SC 4313 [LNIND 2005 SC 989] : (2005) *Ibrahim v State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC 8 SCC 283 Also see- *Bhauraao Dagdu Paralkar v State of Maharashtra*, AIR 2005 SC 3330 : (2005) 7 SCC 605 [LNIND 2005 SC 624] .
136. *Gowrishankar v Joshi Amba Shankar Family Trust*, (1996 (3) SCC 310) [LNIND 1996 SC 447] For meaning of fraud See :*Ram Chandra Singh v Savitri Devi*, (2003 (8) SCC 319) *Roshan Deen v Preeti Lal*, (2002 (1) SCC 100) *Ram Preeti Yadav v UP Board of High School and Intermediate Education*, (2003 (8) SCC 311) [LNIND 2003 SC 741] ,*Ashok Leyland Ltd v State of TN*, (2004 (3) SCC 1) [LNIND 2004 SC 1556] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 26] "Reason to believe".

A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.

COMMENT—

"Reason to believe" is another facet of the state of mind. It is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. It is a higher level of state of mind. It means that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned.¹³⁷ The word "believe" is a very much stronger word than "suspect" and that it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the note with which he was dealing was a forged one and that it was not sufficient to show that the accused was careless or he had reason to suspect or that he did not make sufficient enquiry to ascertain the fact.¹³⁸ A person can be supposed to know something where there is a direct appeal to his senses. Suspicion or doubt cannot be raised to the level of "reason to believe."¹³⁹ "Reason to believe" in [section 42 of NDPS Act](#) is a question of fact and depends upon the facts and circumstances of each case.¹⁴⁰

137. *Joti Parshad v State of Haryana*, AIR 1993 SC 1167 : 1993 Cr LJ 413 .

138. *Hamid Ali v State*, 1961 (2) Cr LJ 801 .

139. *Prabha Malhotra v State*, 2000 Cr LJ 549 (All), the Court was examining the conduct of doctors in reference to a patient and found no departure from the normal medical practices.

140. *State of Punjab v Balbir Singh*, AIR 1994 SC 1872 [LNIND 1994 SC 283] : (1994) 3 SCC 299 [LNIND 1994 SC 283] ; *Noor Aga v State of Punjab*, (2008) 16 SCC 417 [LNIND 2008 SC 1363] : JT 2008 (7) SC 409 [LNIND 2008 SC 1363] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 27] Property in possession of wife, clerk or servant.

When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.— A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

COMMENT—

Under this section property in the possession of a person's wife, clerk, or servant, is deemed to be in that person's possession. The possession must be conscious and intelligent possession and not merely the physical presence of the accused near the object.¹⁴¹.

Corporeal property is in a person's possession when he has such power over it that he can exclude others from it, and intends to exercise, if necessary, that power on behalf of himself or of some person for whom he is a trustee.

A man's goods are in his possession not only while they are in his house or on his premises, but also when they are in a place where he may usually send them (as when horses and cattle feed on common land), or in a place where they may be lawfully deposited by him, e.g., when he buries money or ornaments in his own land, or puts them in any other secret place of deposit.

1. 'Wife'.—A permanent mistress may be regarded as a 'wife'. When a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress' possession.¹⁴².

Under this section the possession of the wife or servant must be shown to be on account of the accused otherwise he cannot be held liable for possession by his wife or servant of any incriminatory thing even in his own house. In other words, it must be shown that the accused was in conscious possession of the thing in question through his wife or servant. Moreover, it must also be shown that the possession of the incriminatory thing amounted to an offence under the [Indian Penal Code](#). Thus, possession of illicit liquor or an unlicensed pistol by the wife of the accused in his house would not make him liable for an offence under the Prohibition Act or the [Arms Act](#). The mere fact that the accused was the head of the family would not go to show

that the accused must have been in conscious possession of the incriminatory thing.¹⁴³.

141. *Wahib Basha*, AIR 1961 Mad 162 [LNIND 1960 MAD 38].

142. *Banwari Lal*, (1913) PR No. 20 of 1914; see also *Narendra Nath Majumdar*, AIR 1951 Cal 140 [LNIND 1951 CAL 14]; *Dharam Singh*, 1961 Cr LJ 152 (Pun) where the wife alone was held responsible as she produced the key.

143. *Chela Ram v State of Rajasthan*, 1984 Cr LJ 17 .1143 (Raj); *Narendra Nath Majumdar*, AIR 1951 Cal 140 [LNIND 1951 CAL 14].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 28] "Counterfeit".

A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

144. [Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.]

COMMENT—

The aforesaid definition states that imitation is not required to be exact. It also says that it is not necessary that counterfeit note should be made with primary intention of its being looked as genuine. It is sufficient if resemblance to genuine currency note is so caused that it is capable to being passed as such.¹⁴⁵ In order to apply section 28, what the Court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved. The difference between the counterfeit and the original is not therefore, limited to a difference existing only by reason of faulty reproduction.¹⁴⁶ The main ingredients of counterfeiting as laid down in [section 28, IPC, 1860](#), are:

- (i) causing one thing to resemble another thing,
- (ii) intending by means of such resemblance to practice deception, or
- (iii) knowing it to be likely that deception will thereby be practised.

There can be counterfeiting even though the imitation is not exact and there are differences in detail between the original and the imitation so long as the resemblance is so close that deception may thereby be practised. And if the resemblance is such that a person might be deceived thereby, it shall be presumed until the contrary is proved that the person causing one thing to resemble another thing was intending by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.¹⁴⁷

The word 'counterfeit' occurs in offences relating to coin provided in Chapter XII and offences relating to property marks and currency notes in Chapter XVIII.

If coins are made to resemble genuine coins and the intention of the makers is merely to use them in order to foist a false case upon their enemies, those coins do not come within the definition of counterfeit coins.¹⁴⁸ The prosecution must establish that the coins manufactured resemble the original. It must also establish that there is an intention to deceive, or the knowledge that deception would be caused by such resemblance.¹⁴⁹

[s 28.1] Foreign Currency.—

The Supreme Court has observed that the word "counterfeit" has been defined in this provision in very wide terms and the same has been further supplemented by the Explanation which draws an adverse inference against the maker of the counterfeit matter. There being no restriction as to the subject-matter of the offence, quite obviously the offence of imitating a foreign currency would be within the scope of the expression.¹⁵⁰

144. Subs. by Act 1 of 1889, section 9, for *Explanation*.

145. *Narayan Maruti Waghmode v State of Maharashtra*, 2011 Cr LJ 3318 (Bom).

146. *Liyakat Ali v State of Rajasthan* 2010 Cr LJ 2450 (Raj); *Golo Mandla Ram Rao v State of Jharkhand*, > 2003 Cr LJ 1738 (Jha); *Local Government v Seth Motilal Jain*, (1938) Nag 192.

147. *State of UP v HM Ismail*, 1960 Cr LJ 1017 : AIR 1960 SC 669 [LNIND 1960 SC 29] ; *K Hasim v State of TN*, 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142], exact reproduction is not necessary.

148. *Velayudham*, (1938) Mad 80.

149. *Shahid Sultan Khan v State of Maharashtra*, 2007 Cr LJ 568 (Bom).

150. *State of Kerala v Mathai Verghese*, (1986) 4 SCC 746 [LNIND 1986 SC 461] : AIR 1987 SC 33 [LNIND 1986 SC 461] : 1987 Cr LJ 308 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 29] "Document".

The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

ILLUSTRATIONS

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document. A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document. A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

ILLUSTRATION

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

COMMENT—

An assessment order is certainly a 'document', under [section 29, IPC, 1860](#).¹⁵¹ An agreement in writing, which purported to be entered into between five persons, was signed by only two of them. It was held that it was a 'document' within the meaning of this section though it was not signed by all the parties thereto.¹⁵² Letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the Ranger of a forest are documents.¹⁵³ Currency notes would be included in the definition of "documents."¹⁵⁴ A charge ticket for overseas calls which a telephone operator has to prepare for accounting purposes is a document.¹⁵⁵

-
151. *Ishwarlal Girdharilal Parekh v State Of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 (SC).
152. *Ramaswami Ayyar v State*, (1917) 41 Mad 589. *Boraiah v State*, 2003 Cr LJ 1031 (Kant), post mortem report which was marked without objection was allowed to be read in evidence without its author being produced.
153. *Krishtappa*, (1925) 27 Bom LR 599 .The definition includes anything done by pen, by engraving, by printing or otherwise, whereby, it is made on paper, parchment, wood or other substance. Similar definitions of the word 'document' are found in **Section 3, Evidence Act**, and also in Section 3 (16), **General Clauses Act**. *L K Siddappa v Lalithamma* 1954 Cr LJ 1235 (Mys).
154. *Shyama Charan*, AIR 1962 Tripura 50 .
155. *RV Sharma*, (1990) 2 All ER 602 (CA).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

156. [s 29A] "Electronic record."

The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.]

COMMENT—

This section has been inserted by the [Information Technology Act 2000](#) (Act No. 21 of 2000), which came into force on 17 October, 2000. With the on-going electronic and communicational developments, electronic commerce requires the use of electronic record. Section 29A simply refers to the definition of 'electronic record' as the meaning assigned to these words in clause (t) of sub-section (1) of [section 2 of the Information Technology Act 2000](#). It reads thus;

"(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated microfiche;"

While giving meaning to the words "electronic record" and its definition under section 29A one has to resort to the meaning of the words "computer" and "data" as given in sections 2(1)(i) and 2(1)(o) of the [Information Technology Act 2000](#). The words "electronic form" used in the definition of electronic record have further been defined in [section 2\(1\)\(r\) of the Information Technology Act](#), which reads thus,

"2(1)(r) "electronic form" with reference to informations, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated microfiche or similar device."

156. Ins. by Act 21 of 2000, section 91 and Sch. I (w.e.f. 17-10-2000).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

156. [s 29A] "Electronic record."

The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.]

COMMENT—

This section has been inserted by the [Information Technology Act 2000](#) (Act No. 21 of 2000), which came into force on 17 October, 2000. With the on-going electronic and communicational developments, electronic commerce requires the use of electronic record. Section 29A simply refers to the definition of 'electronic record' as the meaning assigned to these words in clause (t) of sub-section (1) of [section 2 of the Information Technology Act 2000](#). It reads thus;

"(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated microfiche;"

While giving meaning to the words "electronic record" and its definition under section 29A one has to resort to the meaning of the words "computer" and "data" as given in sections 2(1)(i) and 2(1)(o) of the [Information Technology Act 2000](#). The words "electronic form" used in the definition of electronic record have further been defined in [section 2\(1\)\(r\) of the Information Technology Act](#), which reads thus,

"2(1)(r) "electronic form" with reference to informations, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated microfiche or similar device."

156. Ins. by Act 21 of 2000, section 91 and Sch. I (w.e.f. 17-10-2000).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 30] "Valuable security".

The words "valuable security" denote a document which is, or purports to be,¹ a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

ILLUSTRATION

A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

COMMENT—

The words "valuable security" also occurs in sections 329–331, 347, 348, 420, 467 and 471. Account books containing entries not signed by a party are not "valuable security".¹⁵⁷ A copy of a valuable security is not a valuable security.¹⁵⁸ An 'order of assessment' is a 'valuable security'.¹⁵⁹

1. **'Which is, or purports to be'.**—The use of the words "which is, or purports to be" indicates that a document which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immovable property, although a decree could not be passed upon the document, comes within the purview of this section.¹⁶⁰ The words "purports to be" are wide enough to include a document which is not in conformity with the provisions of the [Registration Act](#). Such a document though not otherwise receivable in evidence would still be receivable in evidence for the purpose of the [Indian Penal Code](#).¹⁶¹ However, certificates which the accused had forged in order to get admission in a college could not be described as "valuable security" and as such their conviction under section 471 read with section 467 had to be changed to one under [section 471](#) read with [section 465, IPC, 1860](#).¹⁶² A lottery ticket is a valuable security.¹⁶³

157. *Hari Prasad v State*, (1955) 1 All 749 ; *Moosa v State of Kerala*, AIR 1963 Ker. 68 .

158. *Gobinda Prasad v State*, AIR 1962 Cal 174 [LNIND 1961 CAL 76] .

159. *Ishwarlal Girdharilal Parekh v State Of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 (SC).
160. *Ram Harakh Pathak*, (1925) 48 All 140 .
161. *Kalimuddin v State*, 1977 Cr LJ NOC 261 (Cal).
162. *BK Patil v State of Maharashtra*, 1980 Cr LJ 1312 : AIR 1981 SC 80 ; *Noor Mohamad v State of Maharashtra*, 1980 Cr LJ 1345 AIR 1981 SC 297 ;
163. *Farzeen Sulthana v Government of Kerala*, 2012 (1) KLT 309 ; *Chacko v State of Kerala*, 1970 KLT358; **relied** on *Central Government of India v Krishnaji Parvatesh Kulkarni*, AIR 2006 SC 1744 [LNIND 2006 SC 253] : (2006) 4 SCC 275 [LNIND 2006 SC 253] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 31] "A will".

The words "a will" denote any testamentary document.

COMMENT—

'Will' is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.^{164.}

^{164.} The [Indian Succession Act](#) (XXXIX of 1925), section 2(h).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 32] Words referring to acts include illegal omissions.

In every part of this Code, except where a contrary intention appears from the context, words which refer to acts¹ done extend also to illegal omissions.²

COMMENT—

This section puts an illegal omission on the same footing as a positive act.

1. 'Acts'.—An 'act' generally means something voluntarily done by a person. 'Act' is a determination of the will, producing an effect in the sensible world. This word includes writing and speaking, or, in short, any external manifestation. In the Code it is not confined to its ordinary meaning of positive conduct of doing something, but includes also illegal omissions.

2. 'Omissions'.—Liability for an omission requires a legal duty to act; a moral duty to act is not sufficient. A duty arises from the former when an offence is defined in terms of omission. This is the situation where the legislature has made it an offence. A legal duty to act may also be created by a provision of either criminal or civil separate from the offence charged. Since there is no moral difference between (i) a positive act and (ii) an omission when a duty is established, it is to be borne in mind that cases of omissions, the liability should be exceptional and needs to be adequately justified in each instance. Secondly, when it is imposed this should be done by clear statutory language. Verbs primarily denoting (and forbidding) active conduct should not be construed to include omissions except when the statute contains a genuine implication to this effect.¹⁶⁵.

An 'act' generally means something voluntarily done by a person, but in [IPC, 1860](#) the term 'act' is not confined to its ordinary meaning of positive conduct of doing something but includes also illegal omission. The effect of [sections 32 and 33, IPC, 1860](#) taken together is that the term 'act' comprises one or more 'acts' or one or more illegal omissions. The Code ([IPC, 1860](#)) makes punishable omissions which have caused, which have been intended to cause or which have been known to be likely to cause certain evil effect in the same manner as it punishes acts provided they were illegal and when the law imposes on a person a duty to act, his illegal omission to act renders (him) in liable to punishment.¹⁶⁶.

[s 32.1] Penalty for omission.—

Maximum penalties applied to active wrongdoing should not automatically be transferred to corresponding omissions; penalties for omissions should be re-thought

in each case. Indeed, the [Indian Penal Code, 1860](#) does include explicitly the liability due to omissions. And even Indian courts have affirmed so.¹⁶⁷

165. *Dr PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [[LNIND 2013 SC 815](#)] .

166. *Raj Karan Singh v State of UP* 2000 Cr LJ 555 (All).

167. *Dr PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [[LNIND 2013 SC 815](#)] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 33] "Act" "Omission":

The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

COMMENT—

An omission is sometimes called a negative act, but this seems dangerous practice, for it too easily permits an omission to be substituted for an act without requiring the special requirement for omission liability such as legal duty and the physical capacity to perform the act. Criminal liability for an omission is also well accepted where the actor has a legal duty and the capacity to act. It is said that this rather fundamental exception to the act requirement is permitted because an actor's failure to perform a legal duty of which he is capable, satisfies the purposes of the act requirement or at least satisfies them as well as an act does. Specifically these two special requirements for omission liability help to exclude from liability cases of fantasizing and irresolute intentions, important purposes of the act requirement.¹⁶⁸ The effect of section 32 and this section taken together is that the term 'act' comprises one or more acts or one or more illegal omissions. The word 'act' does not mean only any particular, specific, instantaneous act of a person, but denotes, as well, a series of acts.¹⁶⁹

168. *Dr PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815].

169. *Om Parkash v State Of Punjab*, AIR 1961 SC 1782 [LNIND 1961 SC 201] : 1961 (2) Cr LJ 848

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

170. [s 34] Acts done by several persons in furtherance of common intention.

When a criminal act is done by several persons in furtherance of the common intention¹ of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

COMMENT—

Introduction.—Ordinarily, no man can be held responsible for an independent act and wrong committed by another. However, [section 34 of the IPC, 1860](#) makes an exception to this principle. It lays down a principle of joint liability in the doing of a [criminal act](#). The essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. It deals with the doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for the result of that as if he had done that act himself.¹⁷¹ The soul of [section 34, IPC, 1860](#) is the joint liability in doing a [criminal act](#).¹⁷²

[s 34.1] History.—

[Section 34 IPC, 1860](#) is part of the original Code of 1860 as drafted by Lord Macaulay. The original section as it stood was "When a [criminal act](#) is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone." However, on account of certain observations made by Sir Barnes Peacock, CJ, in *Queen v Gora Chand Gope*,¹⁷³ it was necessary to bring about a change in the wordings of the section. Accordingly, in the year 1870 an amendment was brought which introduced the following words after "when a [criminal act](#) is done by several persons..." "...in furtherance of the common intention...". After this change, the section has not been changed or amended ever.

[s 34.2] Object.—

The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v State of Punjab*,¹⁷⁴ the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with

commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.¹⁷⁵ *Barendra Kumar Ghosh v King Emperor*,¹⁷⁶ stated the true purport of section 34 as:

The words of s.34 are not to be eviscerated by reading them in this exceedingly limited sense. By s.33 a **criminal act** in s.34 includes a series of acts and, further, 'act' includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By s.37, when any offence is committed by means of several acts whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things 'they also serve who only stand and wait'.¹⁷⁷

[s 34.3] Principle.—

This section is only a rule of evidence and does not create a substantive offence. **Section 34 IPC, 1860** lays down the principle of constructive liability. The essence of **section 34 IPC, 1860** is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. **Section 34 IPC, 1860** stipulates that the act must have been done in furtherance of the common intention. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with section 34.¹⁷⁸ Therefore, **section 34, IPC, 1860**, would apply even if no charge is framed under that section provided of course from the evidence it becomes clear that there was pre-arranged plan to achieve the commonly intended object.¹⁷⁹ Thus, where six persons were charged under sections 148, 302/149 and 307/149, **IPC, 1860**, but two were acquitted, the remaining four accused could be convicted on the charges of murder and attempt to murder with the aid of **section 34 of the Penal Code**.¹⁸⁰ This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually.¹⁸¹ If the **criminal act** was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different **criminal act**.

[s 34.4] Scope, ambit and applicability.—

Section 34 of the Indian Penal Code recognises the principle of vicarious liability in criminal jurisprudence. The said principle enshrined under Section 34 of the Code would be attracted only if one or more than one accused person act conjointly in the commission of offence with others. It is not necessary that all such persons should be named and identified before the liability under **Section 34 of the Indian Penal Code** can be invoked. So long as the evidence brought by the prosecution would disclose that one or more accused persons had acted in concert with other persons not named or identified, the liability under Section 34 of the Code would still be attracted. Once the other accused stands acquitted in absence of said evidence, the vicarious liability under section 34 of the Code would not be attracted so as to hold the accused liable for the offence with the aid of Section 34 of the Code. However, the accused would still be liable for the offence if the injury or injuries leading to offence can be attributed to him.¹⁸² A bare reading of this section shows that the section could be dissected as follows:

- (a) **Criminal act** is done by several persons;
- (b) Such act is done in furtherance of the common intention of all; and
- (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.
- (d) But, it is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked.¹⁸³

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the **criminal act** and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The **criminal act**, according to [section 34 IPC, 1860](#) must be done by several persons. The emphasis in this part of the section is on the word "done".¹⁸⁴ The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate **criminal act**. If such an interpretation is accepted, the purpose of section 34 shall be rendered infructuous.¹⁸⁵ Under [section 34 of the Indian Penal Code](#), a pre-concert in the sense of a distinct previous plan is not necessary to be proved.¹⁸⁶ It is a well settled law that mere presence or association with other members is not *per se* sufficient to hold each of them criminally liable for the offences committed by the other members, unless there is sufficient evidence on record to show that one such member also intends to or knows the likelihood of commission of such an offending act.¹⁸⁷

[s 34.5] Three leading Cases.—

The case of *Barendra Kumar Ghosh v King Emperor*,¹⁸⁸ is a *locus classicus* and has been followed by number of High Courts and the Supreme Court in a large number of cases. In this case, the Judicial Committee dealt with the scope of section 34 dealing with the acts done in furtherance of the common intention, making all equally liable for the results of all the acts of others. It was observed that section 34 when it speaks of a **criminal act** done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the **criminal act**, that is to say, the totality of the series of acts which result in the offence. In the case of a person assaulted by many accused, the **criminal act** is the offence which finally results, though the achievement of that **criminal act** may be the result of the action of several persons.

In another celebrated case *Mehbub Shah v King-Emperor*,¹⁸⁹ the court held that:

Section 34 lays down a principle of joint liability in the doing of a **criminal act**. The section does not say "the common intentions of all," nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a **criminal act** in furtherance of such intention. To invoke the aid of s.34 successfully, it must be shown that the **criminal act** complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the **criminal act** was done in concert pursuant to the pre-arranged plan.

Approving the judgments of the Privy Council in *Barendra Kumar Ghosh (Barendra Kumar Ghosh v King Emperor)*,¹⁹⁰ and *Mahbub Shah* cases¹⁹¹ a three-Judge Bench of Supreme Court in *Pandurang v State of Hyderabad*,¹⁹² held that to attract the applicability of section 34 of the Code the prosecution is under an obligation to

establish that there existed a common intention which requires a pre-arranged plan because before a man can be vicariously convicted for the **criminal act** of another, the act must have been done in furtherance of the common intention of all. The Court had in mind the ultimate act done in furtherance of the common intention

[s 34.6] Common intention and *mens rea*.—

Under section 34, every individual offender is associated with the **criminal act** which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and *mens rea* as understood in criminal jurisprudence on the other. Common intention is not alike or identical to *mens rea*. The latter may be coincidental with or collateral to the former but they are distinct and different.¹⁹³.

[s 34.7] Participation.—

Participation of several persons in some action with the common intention of committing a crime is an essential ingredient; once such participation is established, section 34 is at once attracted.¹⁹⁴ Thus, the dominant feature of section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence.¹⁹⁵ The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time crime is actually being committed.¹⁹⁶

The Supreme Court has emphasised that proof of participation by acceptable evidence may in circumstances be a clue to the common intention and that it would not be fatal to the prosecution case that the culprits had no community of interests.¹⁹⁷

Sometimes, however, absence of actual participation may serve an important purpose as it happened, for example, where in a love triangle the paramour killed the woman's husband and she remained sitting with the dead body inside the house without opening the door. The main accused having been acquitted, the Supreme Court held that the woman alone could not be convicted under section 302 read with section 34 particularly in view of the fact that the nature of the injuries (*gandasa* blows with a heavy hand) made it explicit that they were the handiwork of masculine power and not that of feminine hands.¹⁹⁸ It is also necessary to remember that mere presence of the offender at the scene of murder without any participation to facilitate the offence is not enough.¹⁹⁹ By merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of **section 34, IPC, 1860**.²⁰⁰ The degree of participation is also an important factor.²⁰¹ The court restated the two ingredients for application of the section which are:

common intention to commit a crime, and

- (ii) participation by all the accused in the act or acts in furtherance of the common intention. These two things establish their joint liability.²⁰².

Where one of the accused persons focussed light on the victim with a torch so as to enable others to assault him, otherwise it is a dark night. The court said that his conduct prior and subsequent to the occurrence clearly showed that he shared the common intention so far as the assault on the deceased was concerned. Hence, he was rightly roped in under section 34.²⁰³. If participation is proved and common intention is absent, section 34 cannot be invoked.²⁰⁴. The co-accused was standing outside the house, where the incident took place, while the others committed the murder. There is no evidence of his having played any part in the crime. He did not even act as a guard; he did not prevent the witness from entering the house. There is no evidence of the formation or sharing of any common intention with the other accused. No weapon was seized from him, nor was any property connected with the crime, confiscated from him. It was therefore, held that, it was not safe to convict the co-accused of the offence of murder with the aid of sub-sections 34 and 120(B).²⁰⁵.

[s 34.8] Physical Presence not *sine qua non*.—

Physical presence at the very spot is not always a necessary ingredient to attract the action. The Supreme Court decision in *Shreekantiah Ramayya v State of Bombay*,²⁰⁶ is the authority for the aforesaid proposition. Vivian Bose, J, speaking for the Bench of three Judges stated thus:

He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape.

What is required is his actual participation in the commission of the offence in some way or other at the time when the crime is actually being committed. The participation need not in all cases be by physical presence. In offence involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case.²⁰⁷. Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract [section 34 of the IPC, 1860](#), e.g., the co-accused can remain a little away and supply weapons to the participating accused either by throwing or by catapulting them so that the participating accused can inflict injuries on the targeted person. There may be other provisions in the [IPC, 1860](#) like sub-sections 120B or 109 which could be invoked then to catch such non-participating accused. Thus, participation in the crime in furtherance of the common intention is *sine qua non* for [section 34 IPC, 1860](#). Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act.²⁰⁸.

The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.²⁰⁹.

[s 34.9] In furtherance of common intention.—

The Supreme Court referred to the Oxford English Dictionary where the word "furtherance" is defined as an "action of helping forward." Russell, in his book on Criminal Law adopted this definition and said:

It indicates some kind of aid or assistance proceeding an effect in future and that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting the felony." The Supreme Court has also construed the word "furtherance" as "advancement or promotion.²¹⁰

1. 'Common intention'.—The phrase 'common intention' means a pre-oriented plan and acting in pursuance to the plan. The common intention to give effect to a particular act may even develop at the spur of moment between a number of persons with reference to the facts of a given case.²¹¹ In *Amrik Singh's* case it has further been held that though common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.²¹² Before a Court can convict a person for any offence read with section 34, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence.²¹³ Where the act of murder by the main accused was facilitated by two others by catching hold of the victim but without knowing nor having the intention of causing death, it was held that the only common intention that could be inferred was that of causing grievous hurt.²¹⁴ Where the accused had inflicted *lathi* blows causing injuries only on the eyewitness and not on the deceased, he could not be said to have shared the common intention of committing murder of the deceased. He was acquitted for the charge of murder and was convicted under section 325.²¹⁵

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them.²¹⁶

What to speak of similar intention even same intention without sharing each other's intention is not enough for this section.²¹⁷ In a case like this each will be liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others.²¹⁸ In fine, if common intention cannot be inferred from the evidence of facts and circumstances of the case, [section 34, IPC, 1860](#), cannot be invoked.²¹⁹ A party of farmers was cutting their crop. The deceased took away a portion of the harvested crop. That night when he was returning from a *barat* 16 persons waited for him on the way. They came towards him and the convict who was carrying a knife gave him a stab wound on the neck which proved fatal. The others did not know that he had a knife and all of them being with bare hands, it could not be said that they had the common intention of causing death. They could as well have thought that after surrounding the accused he would be called upon to return or pay for the harvest taken away by him.²²⁰ A person gifted his land to one of his grandsons. His other son along with his wife fully armed, the man with a *lathi* and the woman with a *gandasa* came to protest. The man lost control and both grandson and his father intervened to save the situation but they received *lathi* blows and died. The woman struck only her brother-in-law with the *gandasa* causing a non-fatal injury. Her husband was convicted for murder but her punishment was reduced to causing grievous hurt because it appeared that the whole thing was a spot happening and not a planned affair.²²¹

Where the genesis of the verbal wrangle between the neighbours was not known, but it appeared to have arisen suddenly, there being no chance for common intention to be formulated, each attacker was held to be punishable for his individual acts.²²²

Where common intention was established the mere fact that one of the culprits distanced himself from the scene could not absolve him from liability.²²³

It is not necessary for bringing a case within the scope of section 34 to find as to who in fact inflicted the fatal blow. A conviction under the section read with the relevant substantive provision can be made when the ingredients required by the section are satisfied and it is not necessary to mention the section number in the judgment.²²⁴ Death of two persons was caused by unprovoked firing by appellants who are police officials and grievous gunshot injuries to another person. It was not necessary to assign a specific role to each individual appellant as the firing at the Car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of common intention of all the appellants. The accused were liable to conviction under [section 302/34 IPC, 1860](#).²²⁵ The acts of all the accused need not be the same or identically similar. All that is necessary is that they all must be actuated by the one and the same common intention. The fact that two of them caused injuries at the back of their victim and the injury at the head which proved to be fatal was caused by the third person, the two co-accused could not claim to be absolved of liability for murder.²²⁶

It is not necessary for bringing about the conviction of the co-accused to show that he also committed an overt act for the achievement of their object. The absence of any overt act or possession of weapon cannot be singularly determinative of absence of common intention. If common intention by meeting of minds is established in the facts and circumstances of the case there need not be an overt act or possession of weapon required, to establish common intention.²²⁷

The accused caught hold of the victim and exhorted the main accused to strike him. On such exhortation the main accused inflicted a *Kirpan* wound. The victim died. It was held that the instigation was only to strike. It could not be said that the accused shared the intention of the main accused to kill. The conviction was altered from under sections 202/34 to one under section 324.²²⁸ The victim woman was murdered by her father-in-law and brother-in-law. The third person helped them to conceal the dead body to screen them. The conviction of the two accused for murder was upheld but that of the third one only for concealment of evidence under sections 201/34.²²⁹

[s 34.10] Common Intention: How Proved.—

The common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident.²³⁰ Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula.²³¹ The Court has to examine the prosecution evidence in regard to application of section 34 cumulatively and if the ingredients are satisfied, the consequences must follow. It is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend on the facts and circumstances of the given case whether the person involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together.²³² Courts, in most cases, have to infer the intention from the act(s) or conduct of the accused or other relevant circumstances of the case. However, an inference as to the common intention shall not be readily drawn; the criminal liability

can arise only when such inference can be drawn with a certain degree of assurance.²³³ In most cases it has to be inferred from the act or conduct or other relevant circumstances of the case in hand.²³⁴ This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance all of them left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence of which they could be convicted.²³⁵ Manner of attack shows the common intention of accused.²³⁶ The Supreme Court has reiterated:

We reiterate that for common intention, there could rarely be direct evidence. The ultimate decision, at any rate would invariably depend upon the inference deducible from the circumstances of each case. It is settled law that the common intention or the intention of the individuals concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties.²³⁷

[s 34.11] Complaint.—

In order to attract [section 34 of the IPC, 1860](#), the complaint must, *prima facie*, reflect a common prior concert or planning amongst all the accused.²³⁸

[s 34.12] Effect of no charge under section 34.—

Even if section 34 has not been included in a charge framed for the offence under [section 302 IPC, 1860](#) against the accused, a conviction for the offence under section 302 with the aid of section 34 is not bad as no prejudice would be caused to him.²³⁹ Where the appellants caused injuries not enough to cause the death but the same were caused by another, in the absence of a charge under section 34, they were found to be guilty under [section 326 of IPC, 1860](#).²⁴⁰

[Sections 34, 114 and 149 of the IPC, 1860](#) provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by five Judge [Constitution Bench](#) of in *Willie Slavey v The State of MP*,²⁴¹ the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.²⁴² But before a court can convict a person under section 302, read with section 34, of the [Indian Penal Code](#), it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of section 34 on different situations.

(1) A, B, C and D are charged under section 302, read with section 34, of the [Indian Penal Code](#), for committing the murder of E. The evidence is directed to establish that the said four persons have taken part in the murder.

(2) A, B, C and D and unnamed others are charged under the said sections. But evidence is adduced to prove that the said persons, along with others, named or unnamed, participated jointly in the commission of that offence.

(3) A, B, C and D are charged under the said sections. But the evidence is directed to prove that A, B, C and D, along with 3 others, have jointly committed the offence. As regards the third illustration, a Court is certainly entitled to come to the conclusion that one of the named accused is guilty of murder under section 302, read with section 34, of the [Indian Penal Code](#), though the other three named accused are acquitted, if it accepts the evidence that the said accused acted in concert along with persons, named or unnamed, other than those acquitted, in the commission of the offence. In the second illustration the Court can come to the same conclusion and convict one of the named accused if it is satisfied that no prejudice has been caused to the accused by the defect in the charge. But in the first illustration the Court certainly can convict two or more of the named accused if it accepts the evidence that they acted conjointly in committing the offence. But what is the position if the Court acquits 3 of the 4 accused either because it rejects the prosecution evidence or because it gives the benefit of doubt to the said accused? Can it hold, in the absence of a charge as well as evidence, that though the three accused are acquitted, some other unidentified persons acted conjointly along with one of the named persons? If the Court could do so, it would be making out a new case for the prosecution: it would be deciding contrary to the evidence adduced in the case. A Court cannot obviously make out a case for the prosecution which is not disclosed either in the charge or in regard to which there is no basis in the evidence. There must be some foundation in the evidence that persons other than those named have taken part in the commission of the offence and if there is such a basis the case will be covered by the third illustration.²⁴³. Absence of charge under section 34 is not fatal by itself unless prejudice to the accused is shown.²⁴⁴.

[s 34.13] Alternative Charge.—

The trial Court framed charges under sections 302/307 r/w 120B [IPC, 1860](#) and an alternative charge under sections 302/307 r/w [section 34 IPC, 1860](#) without opining on the alternative charge, convicted the accused under sections 302/307 r/w 120B, The contention that accused is deemed to be acquitted for charges under sections 302/307/34 [IPC, 1860](#) of the charge of common intention of committing murder and there was no appeal by the State against the deemed acquittal against that charge, it was not open to the High Court to alter or modify the conviction under sections 302/307/34 [IPC, 1860](#), repelled by holding that charges had indeed been framed in the alternative and for cognate offences having similar ingredients as the main allegation of murder.²⁴⁵.

[s 34.14] Distinction between sections 34 and 149, [IPC, 1860](#).—

Though both these sections relate to the doctrine of vicarious liability and sometimes overlap each other there are substantial points of difference between the two. They are as under:—

- (i) Section 34 does not by itself create any specific offence, whereas [section 149, IPC, 1860](#), does so (see discussion under sub-para "principle" ante).
- (ii) Some active participation, especially in a crime involving physical violence is necessary under section 34 but [section 149, IPC, 1860](#), does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation at all in the preparation and commission of the crime.
- (iii) Section 34 speaks of common intention but [section 149, IPC, 1860](#),

contemplates common object which is undoubtedly wider in its scope and amplitude than intention. If the offence committed by a member of an unlawful assembly is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, all other members of the unlawful assembly would be guilty of that offence under [section 149, IPC, 1860](#), although they may not have intended to do it or participated in the actual commission of that offence.²⁴⁶.

- (iv) Section 34 does not fix a minimum number of persons who must share the common intention, whereas [section 149, IPC, 1860](#), requires that there must be at least five persons who must have the same common object (see also discussion under sub-head "Sections 34 and 149" under [section 149, IPC, 1860, infra](#)).²⁴⁷.

[s 34.15] Effect of conviction or acquittal of one or more or others.—

Several persons involved in a criminal adventure may be guilty of different offences depending upon their respective acts. If the act is done in furtherance of their common intention, all of them become equally liable for the act. Similarly, if they are members of an unlawful assembly, an act done by any one in prosecution of the common object or any act which the members knew could happen in such prosecution, every member would be liable for the act. If any one of them happens to be wrongly acquitted and no appeal has been filed against it, it would not *ipso facto* impede the conviction of others. Likewise, the conviction of any one or more of them does not automatically result in the conviction of others.²⁴⁸.

[s 34.16] Substitution of conviction from section 149 to section 34.—

Following some earlier rulings,²⁴⁹ the Supreme Court has stated the law in the following terms:²⁵⁰

It is true that there was no charge under s. 302 read with s. 34... but the facts of the case are such that the accused could have been charged alternatively either under s. 302 read with s. 149 or under s. 302 read with s. 34 and one of the accused having been acquitted, the conviction under s. 302/149 can be substituted with one under s. 302/34. No prejudice is likely to be caused to the accused whose appeal is being dismissed.²⁵¹.

[s 34.17] Robbery.—

Provision under section 397 inevitably negates the use of the principles of constructive or vicarious liability engrafted under section 34. The sentence for offence under [section 397 of the IPC, 1860](#) cannot be awarded to those of the members of the group of dacoits who did not use any deadly weapon. A plain reading of [section 397 of the IPC, 1860](#) would make it clear that such guilt can be attributed only to that offender who uses any deadly weapon or causes grievous hurt to any person during course of the commission of the robbery. The provision postulates that only the individual act of accused will be relevant to attract [section 397 of the IPC, 1860](#).²⁵² In a sudden quarrel over payment, person sitting inside the car pulled the petrol pump attendant into the car and drove away. The occupants of the car escaped punishment. It was held that the driver alone could not be held guilty of the offence of robbery and abduction with the aid of section 34.²⁵³ In a serial highway robbery and murder in which same persons

were involved, it was found as a fact that the self-same two persons were seen by a witness together in a different town before the occurrence. One of their victims survived and he also testified that he saw both of them together. Both of them were held to be guilty of successive crimes and convicted for murder with the aid of section 34 without any need of knowing who played what part.²⁵⁴.

[s 34.18] Mob action.—

A mob of 200 persons armed with different weapons came to the field with the object of preventing the prosecution party from carrying on transplantation operations. Some of them caused death of a person at the spur of the moment for some spot reason. The whole mob could not be convicted for it.²⁵⁵ A mob chased the members of the rival community up to their locality. A part of the mob started burning their houses and the other part kept on chasing and caused deaths. The court said that the two parts of the mob could not be said to have shared the intention of burning or causing death.²⁵⁶.

[s 34.19] Misappropriation.—

Where the accused the Sarpanch and Secretary of a Gram Panchayat misappropriated the funds of the Panchayat and the circumstances and evidence showed patent dishonest intention on the part of the accused persons, the conviction and sentence of the accused under section 409/34, was not interfered with.²⁵⁷.

[s 34.20] Rape cases.—

In Gang Rape it is not necessary that the intention should exists from the beginning. It can be developed at the last minute before the commission of the offence.²⁵⁸.

[s 34.21] Exhortation.—

One of the accused exhorted while the other immobilised the deceased and the third accused delivered the fatal injuries. It was held that each one shared a common intention.²⁵⁹. Section 34 was held to have been rightly applied where two of the accused persons caught hold of the deceased and on their exhortation the third accused shot him on the right temple resulting in death.²⁶⁰.

Mere exhortation by one of the accused persons saying that they would not leave the victim till he died was held to be not a basis for roping into the common intention of the others.²⁶¹. The only allegation against the appellant was her exhortation. Enmity between the family of the deceased and that of the accused proved. In such a situation, where the eye witnesses have not narrated any specific role carried by the appellant, rather the specific role of assaulting with the sword has been attributed to the co-accused, it cannot be ruled out that the name of the appellant has been added due to enmity with the main accused.²⁶².

[s 34.22] Pre-conceived common intention.—

Only when a court with some certainty holds that a particular accused must have pre-conceived or pre-meditated the result which ensued or acted in concert with others in order to bring about that result, that section 34 may be applied.²⁶³

[s 34.23] Common intention and private defence.—

If two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of that common intention, all of them would be guilty of murder. [Section 96 IPC, 1860](#) says that nothing is an offence which is done in the exercise of the right of private defence. Though all the accused would be liable for committing the murder of a person by doing an act or acts in furtherance of the common intention, they would not be liable for the act or acts if they had the right of private defence to voluntarily cause death of that person. Common intention, therefore, has relevance only to the offence and not to the right of private defence. What would be an offence by reason of constructive liability would cease to be one if the act constituting the offence was done in exercise of the right of private defence.

If the voluntary causing of death is not permissible under the right of private defence under section 96, then the common intention in regard thereto will lead to the result that the accused persons must be held guilty by reason of constructive liability under the relevant section (in this case section 304 Part I [IPC, 1860](#)). If, however, the common intention was only to commit an act which was permissible within the confines of s. 96 read with s. 98, then constructive liability under section 34 cannot be said to have been accrued to the accused. If the right of private defence was exceeded by some persons, the guilt of each of the accused proved to have exceeded the right of private defence would have to be dealt with separately. The instant case came under the former situation, and hence, such persons were guilty under section 304, Part I [IPC, 1860](#). They, therefore, must be held to have had a common object for causing death of P. They were sentenced to undergo ten years' rigorous imprisonment each.²⁶⁴

170. Subs. by Act 27 of 1870, section 1, for section 34.

171. *Goudappa v State of Karnataka*, (2013) 3 SCC 675 [LNIND 2013 SC 177] ; *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011SC 1748 : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ. 2908 ; *Abdul Sayeed v State of MP*, 2010 (10) SCC 259 [LNIND 2010 SC 872] : 2010(9) Scale 379 : (2010) 3 SCC (Cr) 1262.

172. *Kuria v State of Rajasthan*, AIR 2013 SC 1085 [LNIND 2012 SC 678] : (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC).

173. *Queen v Gora Chand Gope*, (1866) 5 South WR (Cr) 45.

174. *Ashok Kumar v State of Punjab*, AIR 1977 SC 109 : (1977)1 SCC 746 .

175. *Babulal Bhagwan Khandare v State Of Maharashtra* AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .

176. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .

177. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

178. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
179. *Garib Singh v State of Punjab*, 1972 Cr LJ 1286 : AIR 1973 SC 460 [LNIND 1972 SC 187] . See also *Yogendra v State of Bihar*, 1984 Cr LJ 386 (SC).
180. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] relied in *Thoti Manohar v State of AP* 2012, (7) Scale 215 : (2012) 7 SCC 723 [LNIND 2012 SC 365] : 2012 Cr LJ 3492 ; see also *Amar Singh v State of Haryana*, 1973 Cr LJ 1409 : AIR 1973 SC 2221 ; *Dharam Pal v State of UP*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *Amir Hussain v State of UP*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 *State of Rajasthan v Arjun Singh*, (2011) 9 SCC 115 [LNIND 2011 SC 855] : AIR 2011 SC 3380 [LNIND 2011 SC 855] .
181. *BN Srikantiah v State of Mysore*, AIR 1958 SC 672 [LNIND 1958 SC 49] : 1958 Cr LJ 1251 .
182. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
183. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
184. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] ; *Baldeo Singh v State of Bihar*, AIR 1972 SC 464 : 1972 Cr LJ 262 ; *Rana Pratap v State of Haryana*, AIR 1983 SC 680 [LNIND 1983 SC 157] : 1983 Cr LJ 1272 : (1983) 3 SCC 327 [LNIND 1983 SC 157] ,
185. *Syed Yousuf Hussain v State of AP*, AIR 2013 SC 1677 [LNIND 2013 SC 275] : 2013 Cr LJ 2172 : 2013 (5) Scale 346 [LNIND 2013 SC 275] , (2013) 4 SCC 517 [LNIND 2013 SC 275] ; *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] ; *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
186. *Sudip Kr. Sen v State of WB*, AIR 2016 SC 310 [LNIND 2016 SC 10] : 2016 Cr LJ 1121 .
187. *Nagesar v State of Chhattisgarh*, 2014 Cr LJ 2948 .
188. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .
189. *Mehbub Shah v King-Emperor*, AIR 1945 PC 148 .
190. Supra.191.Supra.
192. *Pandurang v State of Hyderabad*, AIR 1955 SC 216 [LNIND 1954 SC 171] : 1955 Cr LJ 572 .
193. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
194. *Vijendra Singh v State of UP*, AIR 2017 SC 860 [LNIND 2017 SC 16] ; *Bharwad Mepa Dana v State of Bombay*, AIR 1960SC 289.
195. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
196. *Shreekantiah Ramayya*, (1954) 57 Bom LR 632 (SC); *Shiv Prasad*, AIR 1965 SC 264 [LNIND 1964 SC 51] : (1965) 1 CrLJ 249 .
197. *Baba Lodhi v State of UP*, (1987) 2 SCC 352 : AIR 1987 SC 1268 : 1987 Cr LJ 1119 ; *MA AbdullaKunhi v State of Kerala*, AIR 1991 SC 452 [LNIND 1991 SC 24] : 1991 Cr LJ 525 : (1991) 2 SCC 225 [LNIND 1991 SC 24] ; *Noor v State of Karnataka*, (2007) 12 SCC 84 [LNIND 2007 SC 639] : (2008) 2 SCC Cr 221 : 2007 Cr LJ 4299 .
198. *Tara Devi v State of UP*, (1990) 4 SCC 144 : AIR 1991 SC 342 . See also *Hem Raj v State Delhi Admn.*, 1990 Cr LJ 2665 : 1990 Supp SCC 291 : AIR 1990 SC 2252 , one of the accused alone proved to have given the fatal blow, the participation of others not proved, others not convicted under section 302/34.
199. *Bishan Singh v State of Punjab*, 1983 Cr LJ 973 : AIR 1983 SC 748 : 1983 Cr LJ (SC) 327 : 1983 SCC (Cr) 578; *Ghanshyam v State of UP*, 1983 Cr LJ 439 (SC) : AIR 1983 SC 293 : (1982) 2

SCC 400 .

200. *Dasrathlal v State of Gujarat*, 1979 Cr LJ 1078 (SC) : AIR 1979 SC 1342 . See further *Rangaswami v State of TN*, AIR 1989 SC 1137 : 1989 Cr LJ 875 : 1989 SCC (Cr) 617 : 1989 Supp (1) SCC 686 . *Gulshan v State of Punjab*, 1989 Cr LJ 120 : AIR 1988 SC 2110 : 1990 Supp SCC 682 .
201. *Jarnail Singh v State of Punjab*, (1996) 1 SCC 527 [LNIND 1995 SC 1172] : AIR 1996 SC 755 [LNIND 1995 SC 1172] : 1996 Cr LJ 1139 .
202. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd* (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 ; *Chandrakant Muryappa Umrani v State of Maharashtra*, 1998 SCC (Cr) 698; *Hamlet @ Sasi. v State of Kerala*, (2003) 10 SCC 108 [LNIND 2003 SC 688] ; *Surendra Chauhan v State of MP*, (2000) 4 SCC 110 [LNIND 2000 SC 515] : AIR 2000 SC 1436 [LNIND 2000 SC 515] ; *Ramjee Rai v State of Bihar*, (2006) 13 SCC 229 [LNIND 2006 SC 647] : 2006 Cr LJ 4630 ; *Prakash v State of MP*, (2006) 13 SCC 508 [LNIND 2006 SC 1071] : 2007 Cr LJ 798 ; *Sham Shankar Kankaria v State of Maharashtra*, (2006) 13 SCC 165 [LNIND 2006 SC 684] ; *Manik Das v State of Assam*, (2007) 11 SCC 403 [LNIND 2007 SC 769] : AIR 2007 SC 2274 [LNIND 2007 SC 769] , participation proved.
203. *Chacko v State of Kerala*, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] ; *Abdul Wahid v State of Rajasthan*, (2004) 11 SCC 241 [LNIND 2004 SC 1454] : AIR 2004 SC 3211 [LNIND 2004 SC 1454] : 2004 Cr LJ 2850 ; *Janak Singh v State of UP*, (2004) 11 SCC 385 [LNIND 2004 SC 515] : AIR 2004 SC 2495 [LNIND 2004 SC 515] : 2004 Cr LJ 2533 ; *Parsuram Pandey v State of Bihar*, 2005 SCC (Cr) 113 : AIR 2004 SC 5068 [LNIND 2004 SC 1075] .
204. *Suresh Sakhararam Nangare v State of Maharashtra*, 2012 (9) Scale 245 [LNIND 2012 SC 574] : (2012) 9 SCC 249 [LNIND 2012 SC 574] .
205. *Raju v State of Chhattisgarh*, 2014 Cr LJ 4425 .
206. *Shreekantiah Ramayya v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 SCR (1) 1177 .
207. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 ; *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 ; *Jaikrishnadas Desai*, (1960) 3 SCR 319 [LNIND 1960 SC 79] : AIR 1960 SC 889 [LNIND 1960 SC 79] : 1960 Cr LJ 1250 ; *Dani Singh v State of Bihar*, AIR 2004 SC 4570 [LNIND 2004 SC 1490] : (2004) 13 SCC 203 [LNIND 2004 SC 1490] .
208. *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] : AIR 2001 SC 1344 [LNIND 2001 SC 623] ; *Ramaswami Ayyangar v State of TN*, AIR 1976 SC 2027 [LNIND 1976 SC 128] : 1976 Cr LJ 1536 (the presence of those who in one way or the other facilitate the execution of the common design itself tantamounts to actual participation in the "criminal act").
209. *Rajkishore Purohit v State of Madhya Pradesh*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .
210. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 , citing *Shankarlal Kacharabhai*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : 1965 (2) Cr LJ 226 .
211. *Dharnidhar v State of UP*, (2010) 7 SCC 759 [LNIND 2010 SC 584] : 2010 (7) Scale 12 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] .
212. *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC) : (1972) 4 SCC (N) 42 (SC).
213. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1964 (1) SCR 678 [LNIND 1963 SC 12] : 1963 Cr LJ 351 (SC); *State of Maharashtra v Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659 [LNIND 2004 SC 862] : AIR 2004 SC 4412 [LNIND 2004 SC 862] , the prosecution is not required to prove in every case a pre-arranged plan or prior concert.

Preetam Singh v State of Rajasthan, (2003) 12 SCC 594 , prior concert can be inferred, common intention can develop on the spot.

214. *Harbans Nonia v State of Bihar*, AIR 1992 SC 125 : 1992 Cr LJ 105 .

215. *Dharam Pal v State of UP*, AIR 1995 SC 1988 [LNIND 1995 SC 198] : 1995 Cr LJ 3642 .

216. *Hanuman Prasad v State of Rajasthan*, (2009) 1 SCC 507 [LNIND 2008 SC 2256] : (2009) 1 SCC Cr 564, the Supreme Court distinguishes common intention from similar intention and also explains the meaning and applicability of the expression.

217. *Dajya Moshaya Bhil v State of Maharashtra*, 1984 Cr LJ 1728 : AIR 1984 SC 1717 : 1984 Supp SCC 373 . The Supreme Court applied the distinction between common intention and similar intention in *State of UP v Rohan Singh*, (1996) Cr LJ 2884 (SC) : AIR 1996 SCW 2612 . In *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] it was held that persons having similar intention which is not the result of pre-concerted plan cannot be held guilty for the "criminal act" with the aid of Section 34.

218. *Parichhat v State of MP*, 1972 Cr LJ 322 : AIR 1972 SC 535 ; *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC). **Followed** in *Khem Karan v State of UP*, 1991 Cr LJ 2138 All where each accused hit differently at the behest of one of them, hence, no common intention.

219. *Mitter Sen v State of UP*, 1976 Cr LJ 857 : AIR 1976 SC 1156 ; see also *Gajjan Singh v State of Punjab*, 1976 Cr LJ 1640 : AIR 1976 SC 2069 [LNIND 1976 SC 72] ; *Jarnail Singh v State of Punjab*, 1982 Cr LJ 386 : AIR 1982 SC 70 (SC).

220. *Rambilas Singh v State of Bihar*, AIR 1989 SC 1593 [LNIND 1989 SC 216] : (1989) 3 SCC 605 [LNIND 1989 SC 216] : 1989 Cr LJ 1782 . The conviction under sub-sections 34/149 and 34/302 was set aside.

221. *Tripta v State of Haryana*, AIR 1992 SC 948 : 1992 Cr LJ 3944 . See also *Major Singh v State of Punjab*, AIR 2003 SC 342 [LNIND 2002 SC 742] : 2003 Cr LJ 473 : (2002) 10 SCC 60 [LNIND 2002 SC 742] ; *Balram Singh v State of Punjab*, AIR 2003 SC 2213 [LNIND 2003 SC 514] : (2003) SCC 286 .

222. *Devaramani v State of Karnataka*, (1995) 2 Cr LJ 1534 SC. See also *Gopi Nath v State of UP*, AIR 2001 SC 2493 : 2001 Cr LJ 3514 ; *Pal Singh v State of Punjab*, AIR 1999 SC 2548 [LNIND 1999 SC 604] : 1999 Cr LJ 3962 ;*Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 ; *Muni Singh v State of Bihar*, AIR 2002 SC 3640 ;*Mahesh Mahto v State of Bihar*, AIR 1997 SC 3567 [LNIND 1997 SC 1103] : 1997 Cr LJ 4402 .

223. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

224. *Narinder Singh v State of Punjab*, AIR 2000 SC 2212 [LNIND 2000 SC 615] : 2000 Cr LJ 3462 , *Sheelam Ramesh v State of AP*, AIR 2000 SC 118 [LNIND 1999 SC 926] : 2000 Cr LJ 51 ; *State of Haryana v Bhagirath*, AIR 1999 SC 2005 [LNIND 1999 SC 541] : 1999 Cr LJ 2898 ; *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3561 .

225. *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 .

226. *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] : AIR 2003 SC 2978 [LNIND 2003 SC 587] : 2003 Cr LJ 3705 .

227. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .

228. *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : 1998 Cr LJ 4599 . See also *State of Karnataka v Maruthi*, AIR 1997 SC 3797 : 1997 Cr LJ 4407 ; *Bhupinder Singh v State of Haryana*, AIR 1997 SC 642 : 1997 Cr LJ 958 .

229. *State of UP v Balkrishna Das*, AIR 1997 SC 225 [LNIND 1996 SC 1753] : 1997 Cr LJ 73 .

230. *State of AP v M Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).

231. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] ; *State of AP v M. Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).
232. *Kuria v State of Rajasthan*, (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC); *Hemchand Jha v State of Bihar*, (2008) 11 SCC 303 [LNIND 2008 SC 1299] : (2008) Cr LJ 3203 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Nand Kishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
233. *Bengai Mandal v State of Bihar*, AIR 2010 SC 686 [LNIND 2010 SC 39] : (2010) 2 SCC 91 [LNIND 2010 SC 39] .
234. *Maqsoodan v State of UP*, 1983 Cr LJ 218 : AIR 1983 SC 126 [LNIND 1982 SC 199] : (1983) 1 SCC 218 [LNIND 1982 SC 199] ; *Aizaz v State of UP*, (2008) 12 SCC 198 [LNIND 2008 SC 1621] : 2008 Cr LJ 4374 , *Lala Ram v State of Rajasthan*, (2007) 10 SCC 225 [LNIND 2007 SC 803] : (2007) 3 SCC Cr 634, *Harbans Kaur v State of Haryana*, AIR 2005 SC 2989 [LNIND 2005 SC 211] : 2005 Cr LJ 2199 (SC), *Dani Singh v State of Bihar*, 2004 (13) SCC 203 [LNIND 2004 SC 1490] : 2004 Cr LJ 3328 (SC).
235. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] ; see also *Nitya Sen v State of WB*, 1978 Cr LJ 481 : AIR 1978 SC 383 ; *Sivam v State of Kerala*, 1978 Cr LJ 1609 : AIR 1978 SC 1529 ; *Jagdeo Singh v State of Maharashtra*, 1981 Cr LJ 166 : AIR 1981 SC 648 (SC); *Aher Pitha Vajshi v State of Gujarat*, 1983 Cr LJ 1049 : AIR 1983 SC 599 [LNIND 1983 SC 98] : 1983 SCC (Cr) 607; *Manju Gupta v MS Paintal*, AIR 1982 SC 1181 [LNIND 1982 DEL 128] : 1982 Cr LJ 1393 : (1982) 2 SCC 412 . Another instance of failed prosecution under the Act is *Harendra Narayan Singh v State of Bihar*, AIR 1991 SC 1842 [LNIND 1991 SC 307] : 1991 Cr LJ 2666 . *Ghana Pradhan v State of Orissa*, AIR 1991 SC 1133 : 1991 Cr LJ 1178 . Common intention not established even when the two accused were striking the same person in their own ways.
236. *Raju @ Rajendra v State of Rajasthan*, 2013 Cr LJ 1248 (SC) : (2013) 2 SCC 233 [LNIND 2013 SC 25] .
237. *Jhinku Nai v State of UP*, AIR 2001 SC 2815 [LNIND 2001 SC 1587] at p. 2817. See also *Jagga Singh v State of Punjab*, (2011) 3 SCC 137 [LNINDORD 2011 SC 288] : AIR 2011 SC 960 [LNINDORD 2011 SC 288] .
238. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
239. *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] : (2005) 12 SCC 615 [LNIND 2005 SC 887] .
240. *Vijay Singh v State of MP*, 2014 Cr LJ 2158 .
241. *Willie Slavey v The State of MP*, 1955 (2) SCR 1140 [LNIND 1955 SC 90] at p 1189 : AIR 1956 SC 116 [LNIND 1955 SC 90] .
242. *Santosh Kumari v State of J&K*, (2011) 9 SCC 234 [LNIND 2011 SC 901] : AIR 2011 SC 3402 [LNIND 2011 SC 901] : (2011) 3 SCC (Cr) 657.
243. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1963 Cr LJ 351 relied in *Chinnam Kameswara Rao v State of AP* 2013 Cr LJ 1540 : JT 2013 (2) SC 398 [LNIND 2013 SC 57] : 2013 (1) Scale 643 [LNIND 2013 SC 57] .
244. *Anil Sharma v State of Jharkhand*, (2004) 5 SCC 679 [LNIND 2004 SC 590] : AIR 2004 SC 2294 [LNIND 2004 SC 590] : 2004 Cr LJ 2527 .
245. *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 .
246. *Barendra Kumar Ghosh v Emp.*, AIR 1925 PC 1 [LNIND 1924 BOM 206] (7) : 26 Cr LJ 431; *Nanak Chand v State of Punjab*, 1955 Cr LJ 721 (SC); *Anam Pradhan v State*, 1982 Cr LJ 1585

- (Ori). *Chittaramal v State of Rajasthan*, (2003) 2 SCC 266 [LNIND 2003 SC 14] : AIR 2003 SC 796 [LNIND 2003 SC 14] : 2003 Cr LJ 889 , points of similarity and distinction explained in the case.
247. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
248. *Surinder Singh v State of Punjab*, (2003) 10 SCC 66 [LNIND 2003 SC 652] .
249. *Lachman Singh v The State*, 1952 SCR 839 [LNIND 1952 SC 21] : AIR 1952 SC 167 [LNIND 1952 SC 21] : 1952 Cr LJ 863 and *Karnail Singh v State of Punjab*, 1954 SCR 904 [LNIND 1953 SC 126] : AIR 1954 SC 204 [LNIND 1953 SC 126] : 1954 Cr LJ 580 .
250. *Sangappa Sanganabasappa v State of Karnataka* (2010) 11 SCC 782 [LNIND 2010 SC 866] : (2011) 1 SCC (Cr) 256; *Baital Singh v State of UP*, AIR 1990 SC 1982 : 1990 Cr LJ 2091 : 1990 Supp SCC 804 ; *Ramdeo Rao Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1983 .
251. *Dahari v State of UP*, AIR 2013 SC 308 2012 (10) Scale 160, (2012) 10 SCC 256 [LNIND 2012 SC 638] ; *Jivan Lal v State of MP*, 1997 (9) SCC 119 [LNIND 1996 SC 2679] ; and *Hamlet @ Sasi v State of Kerala*, AIR 2003 SC 3682 [LNIND 2003 SC 688] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] ; *Sanichar Sahni v State of Bihar*, AIR 2010 SC 3786 [LNIND 2009 SC 1350] ; *S Ganesan v Rama Raghuraman*, 2011 (2) SCC 83 [LNIND 2011 SC 5] ; *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] : JT 2012 (8) SC 530 [LNIND 2012 SC 545] .
252. *Manik Shankarrao Dhotre v State of Maharashtra*, 2008 Cr LJ 1505 (Kar); *State of Maharashtra v Mahipal Singh Satyanarayan Singh*, 1996 Cr LJ 2485 .
253. *Brahmjit Singh v State*, 1992 Cr LJ 408 (Del).
254. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Bom).
255. *Dukhmochan Pandey v State of Bihar*, AIR 1998 SC 40 [LNIND 1997 SC 1255] : 1998 Cr LJ 66 .
256. *State of Gujarat v Chandubhai Malubhai Parmar*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 (SC).
257. *Ghoura Chandra Naik v State of Orissa*, 1992 Cr LJ 275 (Ori). See *Rameshchandra Bhogilal Patel v State of Gujarat*, 2011 Cr LJ 1395 (Guj) (Section 420/34).
258. *Dev Cyrus Colabawala v State of Maharashtra*, 2010 Cr LJ 758 (Bom).
259. *Atambir Singh v State of Delhi*, 2016 Cr LJ 568 (Del).
260. *Vinay Kumar Rai v State of Bihar*, (2008) 12 SCC 202 [LNIND 2008 SC 1646] : 2008 Cr LJ 4319 : AIR 2008 SC 3276 [LNIND 2008 SC 1646] .
261. *Nagaraja v State of Karnataka*, (2008) 17 SCC 277 [LNIND 2008 SC 2484] : AIR 2009 SC 1522 [LNIND 2008 SC 2484] : one accused struck on the road with an iron rod, two others used fists and kicks, there was nothing more common, the two could be convicted under section 323. See also *Mohan Singh v State of MP* AIR 1999 SC 883 [LNIND 1999 SC 69] : (1999) 2 SCC 428 [LNIND 1999 SC 69] , *Abdul Wahid v State of Rajasthan*, AIR 2004 SC 3211 [LNIND 2004 SC 1454] : (2004) 11 SCC 241 [LNIND 2004 SC 1454] ; *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : (1999) 1 SCC 174 [LNIND 1998 SC 879] .
262. *Chandra Kaur v State of Rajasthan*, 2016 Cr LJ 3346 : AIR 2016 SC 2926 [LNIND 2015 SC 139] .
263. *Suresh v State of UP* AIR 2001 SC 1344 [LNIND 2001 SC 623] : (2001) 3 SCC 673 [LNIND 2001 SC 623] quoted from *Shatrughan Patar v Emperor*. See also *Sewa Ram v State of UP*, 2008 Cr LJ 802 : AIR 2008 SC 682 [LNIND 2007 SC 1452] ; *Abaram v State of MP*, (2007) 12 SCC 105 [LNIND 2007 SC 546] : (2008) 2 SCC Cr 243 : 2007 Cr LJ 2743 .
264. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] ; *Vajrapu Sambayya Naidu v State of AP*, AIR 2003 SC 3706 [LNIND 2003 SC 176] : (2004) 10 SCC 152 [LNIND 2003 SC 176] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

170. [s 34] Acts done by several persons in furtherance of common intention.

When a criminal act is done by several persons in furtherance of the common intention¹ of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

COMMENT—

Introduction.—Ordinarily, no man can be held responsible for an independent act and wrong committed by another. However, [section 34 of the IPC, 1860](#) makes an exception to this principle. It lays down a principle of joint liability in the doing of a [criminal act](#). The essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. It deals with the doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for the result of that as if he had done that act himself.¹⁷¹ The soul of [section 34, IPC, 1860](#) is the joint liability in doing a [criminal act](#).¹⁷²

[s 34.1] **History.**—

[Section 34 IPC, 1860](#) is part of the original Code of 1860 as drafted by Lord Macaulay. The original section as it stood was "When a [criminal act](#) is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone." However, on account of certain observations made by Sir Barnes Peacock, CJ, in *Queen v Gora Chand Gope*,¹⁷³ it was necessary to bring about a change in the wordings of the section. Accordingly, in the year 1870 an amendment was brought which introduced the following words after "when a [criminal act](#) is done by several persons..." "...in furtherance of the common intention...". After this change, the section has not been changed or amended ever.

[s 34.2] **Object.**—

The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v State of Punjab*,¹⁷⁴ the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common

intention in order to attract the provision.¹⁷⁵ *Barendra Kumar Ghosh v King Emperor*,¹⁷⁶ stated the true purport of section 34 as:

The words of s.34 are not to be eviscerated by reading them in this exceedingly limited sense. By s.33 a **criminal act** in s.34 includes a series of acts and, further, 'act' includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By s.37, when any offence is committed by means of several acts whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things 'they also serve who only stand and wait'.¹⁷⁷

[s 34.3] Principle.—

This section is only a rule of evidence and does not create a substantive offence. **Section 34 IPC, 1860** lays down the principle of constructive liability. The essence of **section 34 IPC, 1860** is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. **Section 34 IPC, 1860** stipulates that the act must have been done in furtherance of the common intention. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with section 34.¹⁷⁸ Therefore, **section 34, IPC, 1860**, would apply even if no charge is framed under that section provided of course from the evidence it becomes clear that there was pre-arranged plan to achieve the commonly intended object.¹⁷⁹ Thus, where six persons were charged under sections 148, 302/149 and 307/149, **IPC, 1860**, but two were acquitted, the remaining four accused could be convicted on the charges of murder and attempt to murder with the aid of **section 34 of the Penal Code**.¹⁸⁰ This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually.¹⁸¹ If the **criminal act** was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different **criminal act**.

[s 34.4] Scope, ambit and applicability.—

Section 34 of the Indian Penal Code recognises the principle of vicarious liability in criminal jurisprudence. The said principle enshrined under Section 34 of the Code would be attracted only if one or more than one accused person act conjointly in the commission of offence with others. It is not necessary that all such persons should be named and identified before the liability under **Section 34 of the Indian Penal Code** can be invoked. So long as the evidence brought by the prosecution would disclose that one or more accused persons had acted in concert with other persons not named or identified, the liability under Section 34 of the Code would still be attracted. Once the other accused stands acquitted in absence of said evidence, the vicarious liability under section 34 of the Code would not be attracted so as to hold the accused liable for the offence with the aid of Section 34 of the Code. However, the accused would still be liable for the offence if the injury or injuries leading to offence can be attributed to him.¹⁸² A bare reading of this section shows that the section could be dissected as follows:

- (a) **Criminal act** is done by several persons;
- (b) Such act is done in furtherance of the common intention of all; and
- (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

(d) But, it is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked.¹⁸³

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the [criminal act](#) and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The [criminal act](#), according to [section 34 IPC, 1860](#) must be done by several persons. The emphasis in this part of the section is on the word "done".¹⁸⁴ The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate [criminal act](#). If such an interpretation is accepted, the purpose of section 34 shall be rendered infructuous.¹⁸⁵ Under [section 34 of the Indian Penal Code](#), a pre-concert in the sense of a distinct previous plan is not necessary to be proved.¹⁸⁶ It is a well settled law that mere presence or association with other members is not *per se* sufficient to hold each of them criminally liable for the offences committed by the other members, unless there is sufficient evidence on record to show that one such member also intends to or knows the likelihood of commission of such an offending act.¹⁸⁷

[s 34.5] Three leading Cases.—

The case of *Barendra Kumar Ghosh v King Emperor*,¹⁸⁸ is a *locus classicus* and has been followed by number of High Courts and the Supreme Court in a large number of cases. In this case, the Judicial Committee dealt with the scope of section 34 dealing with the acts done in furtherance of the common intention, making all equally liable for the results of all the acts of others. It was observed that section 34 when it speaks of a [criminal act](#) done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the [criminal act](#), that is to say, the totality of the series of acts which result in the offence. In the case of a person assaulted by many accused, the [criminal act](#) is the offence which finally results, though the achievement of that [criminal act](#) may be the result of the action of several persons.

In another celebrated case *Mehbub Shah v King-Emperor*,¹⁸⁹ the court held that:

Section 34 lays down a principle of joint liability in the doing of a [criminal act](#). The section does not say "the common intentions of all," nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. To invoke the aid of s.34 successfully, it must be shown that the [criminal act](#) complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the [criminal act](#) was done in concert pursuant to the pre-arranged plan.

Approving the judgments of the Privy Council in *Barendra Kumar Ghosh (Barendra Kumar Ghosh v King Emperor)*,¹⁹⁰ and *Mahbub Shah* cases¹⁹¹ a three-Judge Bench of Supreme Court in *Pandurang v State of Hyderabad*,¹⁹² held that to attract the applicability of section 34 of the Code the prosecution is under an obligation to establish that there existed a common intention which requires a pre-arranged plan because before a man can be vicariously convicted for the [criminal act](#) of another, the act must have been done in furtherance of the common intention of all. The Court had in mind the ultimate act done in furtherance of the common intention

[s 34.6] Common intention and *mens rea*.—

Under section 34, every individual offender is associated with the [criminal act](#) which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and *mens rea* as understood in criminal jurisprudence on the other. Common intention is not alike or identical to *mens rea*. The latter may be coincidental with or collateral to the former but they are distinct and different.¹⁹³.

[s 34.7] Participation.—

Participation of several persons in some action with the common intention of committing a crime is an essential ingredient; once such participation is established, section 34 is at once attracted.¹⁹⁴ Thus, the dominant feature of section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence.¹⁹⁵ The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time crime is actually being committed.¹⁹⁶

The Supreme Court has emphasised that proof of participation by acceptable evidence may in circumstances be a clue to the common intention and that it would not be fatal to the prosecution case that the culprits had no community of interests.¹⁹⁷

Sometimes, however, absence of actual participation may serve an important purpose as it happened, for example, where in a love triangle the paramour killed the woman's husband and she remained sitting with the dead body inside the house without opening the door. The main accused having been acquitted, the Supreme Court held that the woman alone could not be convicted under section 302 read with section 34 particularly in view of the fact that the nature of the injuries (*gandasa* blows with a heavy hand) made it explicit that they were the handiwork of masculine power and not that of feminine hands.¹⁹⁸ It is also necessary to remember that mere presence of the offender at the scene of murder without any participation to facilitate the offence is not enough.¹⁹⁹ By merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of [section 34, IPC, 1860](#).²⁰⁰ The degree of participation is also an important factor.²⁰¹ The court restated the two ingredients for application of the section which are:

- (i) common intention to commit a crime, and
- (ii) participation by all the accused in the act or acts in furtherance of the common intention. These two things establish their joint liability.²⁰²

Where one of the accused persons focussed light on the victim with a torch so as to enable others to assault him, otherwise it is a dark night. The court said that his conduct prior and subsequent to the occurrence clearly showed that he shared the common intention so far as the assault on the deceased was concerned. Hence, he was rightly roped in under section 34.²⁰³ If participation is proved and common intention is absent, section 34 cannot be invoked.²⁰⁴ The co-accused was standing outside the house, where the incident took place, while the others committed the

murder. There is no evidence of his having played any part in the crime. He did not even act as a guard; he did not prevent the witness from entering the house. There is no evidence of the formation or sharing of any common intention with the other accused. No weapon was seized from him, nor was any property connected with the crime, confiscated from him. It was therefore, held that, it was not safe to convict the co-accused of the offence of murder with the aid of sub-sections 34 and 120(B).²⁰⁵.

[s 34.8] Physical Presence not *sine qua non*.—

Physical presence at the very spot is not always a necessary ingredient to attract the action. The Supreme Court decision in *Shreekantiah Ramayya v State of Bombay*,²⁰⁶ is the authority for the aforesaid proposition. Vivian Bose, J, speaking for the Bench of three Judges stated thus:

He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape.

What is required is his actual participation in the commission of the offence in some way or other at the time when the crime is actually being committed. The participation need not in all cases be by physical presence. In offence involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case.²⁰⁷ Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract [section 34 of the IPC, 1860](#), e.g., the co-accused can remain a little away and supply weapons to the participating accused either by throwing or by catapulting them so that the participating accused can inflict injuries on the targeted person. There may be other provisions in the [IPC, 1860](#) like sub-sections 120B or 109 which could be invoked then to catch such non-participating accused. Thus, participation in the crime in furtherance of the common intention is *sine qua non* for [section 34 IPC, 1860](#). Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act.²⁰⁸.

The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.²⁰⁹.

[s 34.9] In furtherance of common intention.—

The Supreme Court referred to the Oxford English Dictionary where the word "furtherance" is defined as an "action of helping forward." Russell, in his book on Criminal Law adopted this definition and said:

It indicates some kind of aid or assistance proceeding an effect in future and that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting the felony." The Supreme Court has also construed the word "furtherance" as "advancement or promotion.²¹⁰.

1. 'Common intention'.—The phrase 'common intention' means a pre-oriented plan and acting in pursuance to the plan. The common intention to give effect to a particular act may even develop at the spur of moment between a number of persons with reference to the facts of a given case.²¹¹ In *Amrik Singh's* case it has further been held that though common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.²¹² Before a Court can convict a person for any offence read with section 34, it should come to a definite conclusion

that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence.²¹³ Where the act of murder by the main accused was facilitated by two others by catching hold of the victim but without knowing nor having the intention of causing death, it was held that the only common intention that could be inferred was that of causing grievous hurt.²¹⁴ Where the accused had inflicted *lathi* blows causing injuries only on the eyewitness and not on the deceased, he could not be said to have shared the common intention of committing murder of the deceased. He was acquitted for the charge of murder and was convicted under section 325.²¹⁵

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them.²¹⁶

What to speak of similar intention even same intention without sharing each other's intention is not enough for this section.²¹⁷ In a case like this each will be liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others.²¹⁸ In fine, if common intention cannot be inferred from the evidence of facts and circumstances of the case, [section 34, IPC, 1860](#), cannot be invoked.²¹⁹ A party of farmers was cutting their crop. The deceased took away a portion of the harvested crop. That night when he was returning from a *barat* 16 persons waited for him on the way. They came towards him and the convict who was carrying a knife gave him a stab wound on the neck which proved fatal. The others did not know that he had a knife and all of them being with bare hands, it could not be said that they had the common intention of causing death. They could as well have thought that after surrounding the accused he would be called upon to return or pay for the harvest taken away by him.²²⁰ A person gifted his land to one of his grandsons. His other son along with his wife fully armed, the man with a *lathi* and the woman with a *gandasa* came to protest. The man lost control and both grandson and his father intervened to save the situation but they received *lathi* blows and died. The woman struck only her brother-in-law with the *gandasa* causing a non-fatal injury. Her husband was convicted for murder but her punishment was reduced to causing grievous hurt because it appeared that the whole thing was a spot happening and not a planned affair.²²¹

Where the genesis of the verbal wrangle between the neighbours was not known, but it appeared to have arisen suddenly, there being no chance for common intention to be formulated, each attacker was held to be punishable for his individual acts.²²²

Where common intention was established the mere fact that one of the culprits distanced himself from the scene could not absolve him from liability.²²³

It is not necessary for bringing a case within the scope of section 34 to find as to who in fact inflicted the fatal blow. A conviction under the section read with the relevant substantive provision can be made when the ingredients required by the section are satisfied and it is not necessary to mention the section number in the judgment.²²⁴ Death of two persons was caused by unprovoked firing by appellants who are police officials and grievous gunshot injuries to another person. It was not necessary to assign a specific role to each individual appellant as the firing at the Car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of common intention of all the appellants. The accused were liable to conviction under [section 302/34 IPC, 1860](#).²²⁵ The acts of all the accused need not be the same or identically similar. All that is necessary is that they all must be actuated by the one and the same common intention. The fact that two of them caused injuries at the back of their victim and the injury at the head which proved to be fatal was caused

by the third person, the two co-accused could not claim to be absolved of liability for murder.²²⁶

It is not necessary for bringing about the conviction of the co-accused to show that he also committed an *overt act* for the achievement of their object. The absence of any overt act or possession of weapon cannot be singularly determinative of absence of common intention. If common intention by meeting of minds is established in the facts and circumstances of the case there need not be an overt act or possession of weapon required, to establish common intention.²²⁷

The accused caught hold of the victim and exhorted the main accused to strike him. On such exhortation the main accused inflicted a *Kirpan* wound. The victim died. It was held that the instigation was only to strike. It could not be said that the accused shared the intention of the main accused to kill. The conviction was altered from under sections 202/34 to one under section 324.²²⁸ The victim woman was murdered by her father-in-law and brother-in-law. The third person helped them to conceal the dead body to screen them. The conviction of the two accused for murder was upheld but that of the third one only for concealment of evidence under sections 201/34.²²⁹

[s 34.10] Common Intention: How Proved.—

The common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident.²³⁰ Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula.²³¹ The Court has to examine the prosecution evidence in regard to application of section 34 cumulatively and if the ingredients are satisfied, the consequences must follow. It is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend on the facts and circumstances of the given case whether the person involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together.²³² Courts, in most cases, have to infer the intention from the act(s) or conduct of the accused or other relevant circumstances of the case. However, an inference as to the common intention shall not be readily drawn; the criminal liability can arise only when such inference can be drawn with a certain degree of assurance.²³³ In most cases it has to be inferred from the act or conduct or other relevant circumstances of the case in hand.²³⁴ This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance all of them left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence of which they could be convicted.²³⁵ Manner of attack shows the common intention of accused.²³⁶ The Supreme Court has reiterated:

We reiterate that for common intention, there could rarely be direct evidence. The ultimate decision, at any rate would invariably depend upon the inference deducible from the circumstances of each case. It is settled law that the common intention or the intention of the individuals concerned in furtherance of the common intention could be proved either

from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties.²³⁷

[s 34.11] **Complaint.**—

In order to attract [section 34 of the IPC, 1860](#), the complaint must, *prima facie*, reflect a common prior concert or planning amongst all the accused.²³⁸

[s 34.12] **Effect of no charge under section 34.**—

Even if section 34 has not been included in a charge framed for the offence under [section 302 IPC, 1860](#) against the accused, a conviction for the offence under section 302 with the aid of section 34 is not bad as no prejudice would be caused to him.²³⁹ Where the appellants caused injuries not enough to cause the death but the same were caused by another, in the absence of a charge under section 34, they were found to be guilty under [section 326 of IPC, 1860](#).²⁴⁰

[Sections 34, 114 and 149 of the IPC, 1860](#) provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by five Judge [Constitution Bench](#) of in *Willie Slavey v The State of MP*,²⁴¹ the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.²⁴² But before a court can convict a person under section 302, read with section 34, of the [Indian Penal Code](#), it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of section 34 on different situations.

(1) A, B, C and D are charged under section 302, read with section 34, of the [Indian Penal Code](#), for committing the murder of E. The evidence is directed to establish that the said four persons have taken part in the murder.

(2) A, B, C and D and unnamed others are charged under the said sections. But evidence is adduced to prove that the said persons, along with others, named or unnamed, participated jointly in the commission of that offence.

(3) A, B, C and D are charged under the said sections. But the evidence is directed to prove that A, B, C and D, along with 3 others, have jointly committed the offence. As regards the third illustration, a Court is certainly entitled to come to the conclusion that one of the named accused is guilty of murder under section 302, read with section 34, of the [Indian Penal Code](#), though the other three named accused are acquitted, if it accepts the evidence that the said accused acted in concert along with persons, named or unnamed, other than those acquitted, in the commission of the offence. In the second illustration the Court can come to the same conclusion and convict one of the named accused if it is satisfied that no prejudice has been caused to the accused by the defect in the charge. But in the first illustration the Court certainly can convict two or more of the named accused if it accepts the evidence that they acted conjointly in committing the offence. But what is the position if the Court acquits 3 of the 4 accused either because it rejects the prosecution evidence or because it gives the benefit of doubt to the said accused? Can it hold, in the absence of a charge as well as evidence, that though the three accused are acquitted, some other unidentified persons acted conjointly along with one of the named persons? If the Court could do so, it would be making out a new case for the prosecution: it would be deciding contrary to the evidence adduced in the case. A Court cannot obviously make out a case for the prosecution which is not disclosed either in the charge or in regard to which there is no basis in the evidence. There must be some foundation in the evidence that persons other than those named have taken part in the commission of the offence and if there

is such a basis the case will be covered by the third illustration.²⁴³ Absence of charge under section 34 is not fatal by itself unless prejudice to the accused is shown.²⁴⁴

[s 34.13] Alternative Charge.—

The trial Court framed charges under sections 302/307 r/w 120B [IPC, 1860](#) and an alternative charge under sections 302/307 r/w [section 34 IPC, 1860](#) without opining on the alternative charge, convicted the accused under sections 302/307 r/w 120B. The contention that accused is deemed to be acquitted for charges under sections 302/307/34 [IPC, 1860](#) of the charge of common intention of committing murder and there was no appeal by the State against the deemed acquittal against that charge, it was not open to the High Court to alter or modify the conviction under sections 302/307/34 [IPC, 1860](#), repelled by holding that charges had indeed been framed in the alternative and for cognate offences having similar ingredients as the main allegation of murder.²⁴⁵

[s 34.14] Distinction between sections 34 and 149, [IPC, 1860](#).—

Though both these sections relate to the doctrine of vicarious liability and sometimes overlap each other there are substantial points of difference between the two. They are as under:—

- (i) Section 34 does not by itself create any specific offence, whereas [section 149, IPC, 1860](#), does so (see discussion under sub-para "principle" ante).
- (ii) Some active participation, especially in a crime involving physical violence is necessary under section 34 but [section 149, IPC, 1860](#), does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation at all in the preparation and commission of the crime.
- (iii) Section 34 speaks of common intention but [section 149, IPC, 1860](#), contemplates common object which is undoubtedly wider in its scope and amplitude than intention. If the offence committed by a member of an unlawful assembly is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, all other members of the unlawful assembly would be guilty of that offence under [section 149, IPC, 1860](#), although they may not have intended to do it or participated in the actual commission of that offence.²⁴⁶
- (iv) Section 34 does not fix a minimum number of persons who must share the common intention, whereas [section 149, IPC, 1860](#), requires that there must be at least five persons who must have the same common object (see also discussion under sub-head "Sections 34 and 149" under [section 149, IPC, 1860, infra](#)).²⁴⁷

[s 34.15] Effect of conviction or acquittal of one or more or others.—

Several persons involved in a criminal adventure may be guilty of different offences depending upon their respective acts. If the act is done in furtherance of their common intention, all of them become equally liable for the act. Similarly, if they are members of an unlawful assembly, an act done by any one in prosecution of the common object or any act which the members knew could happen in such prosecution, every member would be liable for the act. If any one of them happens to be wrongly acquitted and no appeal has been filed against it, it would not *ipso facto* impede the conviction of others.

Likewise, the conviction of any one or more them does not automatically result in the conviction of others.²⁴⁸

[s 34.16] Substitution of conviction from section 149 to section 34.—

Following some earlier rulings,²⁴⁹ the Supreme Court has stated the law in the following terms:²⁵⁰

It is true that there was no charge under s. 302 read with s. 34... but the facts of the case are such that the accused could have been charged alternatively either under s. 302 read with s. 149 or under s. 302 read with s. 34 and one of the accused having been acquitted, the conviction under s. 302/149 can be substituted with one under s. 302/34. No prejudice is likely to be caused to the accused whose appeal is being dismissed.²⁵¹

[s 34.17] Robbery.—

Provision under section 397 inevitably negates the use of the principles of constructive or vicarious liability engrafted under section 34. The sentence for offence under [section 397 of the IPC, 1860](#) cannot be awarded to those of the members of the group of dacoits who did not use any deadly weapon. A plain reading of [section 397 of the IPC, 1860](#) would make it clear that such guilt can be attributed only to that offender who uses any deadly weapon or causes grievous hurt to any person during course of the commission of the robbery. The provision postulates that only the individual act of accused will be relevant to attract [section 397 of the IPC, 1860](#).²⁵² In a sudden quarrel over payment, person sitting inside the car pulled the petrol pump attendant into the car and drove away. The occupants of the car escaped punishment. It was held that the driver alone could not be held guilty of the offence of robbery and abduction with the aid of section 34.²⁵³ In a serial highway robbery and murder in which same persons were involved, it was found as a fact that the self-same two persons were seen by a witness together in a different town before the occurrence. One of their victims survived and he also testified that he saw both of them together. Both of them were held to be guilty of successive crimes and convicted for murder with the aid of section 34 without any need of knowing who played what part.²⁵⁴

[s 34.18] Mob action.—

A mob of 200 persons armed with different weapons came to the field with the object of preventing the prosecution party from carrying on transplantation operations. Some of them caused death of a person at the spur of the moment for some spot reason. The whole mob could not be convicted for it.²⁵⁵ A mob chased the members of the rival community up to their locality. A part of the mob started burning their houses and the other part kept on chasing and caused deaths. The court said that the two parts of the mob could not be said to have shared the intention of burning or causing death.²⁵⁶

[s 34.19] Misappropriation.—

Where the accused the Sarpanch and Secretary of a Gram Panchayat misappropriated the funds of the Panchayat and the circumstances and evidence showed patent dishonest intention on the part of the accused persons, the conviction and sentence of the accused under section 409/34, was not interfered with.²⁵⁷

[s 34.20] Rape cases.—

In Gang Rape it is not necessary that the intention should exists from the beginning. It can be developed at the last minute before the commission of the offence.²⁵⁸

[s 34.21] Exhortation.—

One of the accused exhorted while the other immobilised the deceased and the third accused delivered the fatal injuries. It was held that each one shared a common intention.²⁵⁹. Section 34 was held to have been rightly applied where two of the accused persons caught hold of the deceased and on their exhortation the third accused shot him on the right temple resulting in death.²⁶⁰.

Mere exhortation by one of the accused persons saying that they would not leave the victim till he died was held to be not a basis for roping into the common intention of the others.²⁶¹. The only allegation against the appellant was her exhortation. Enmity between the family of the deceased and that of the accused proved. In such a situation, where the eye witnesses have not narrated any specific role carried by the appellant, rather the specific role of assaulting with the sword has been attributed to the co-accused, it cannot be ruled out that the name of the appellant has been added due to enmity with the main accused.²⁶².

[s 34.22] Pre-conceived common intention.—

Only when a court with some certainty holds that a particular accused must have pre-conceived or pre-meditated the result which ensued or acted in concert with others in order to bring about that result, that section 34 may be applied.²⁶³.

[s 34.23] Common intention and private defence.—

If two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of that common intention, all of them would be guilty of murder. [Section 96 IPC, 1860](#) says that nothing is an offence which is done in the exercise of the right of private defence. Though all the accused would be liable for committing the murder of a person by doing an act or acts in furtherance of the common intention, they would not be liable for the act or acts if they had the right of private defence to voluntarily cause death of that person. Common intention, therefore, has relevance only to the offence and not to the right of private defence. What would be an offence by reason of constructive liability would cease to be one if the act constituting the offence was done in exercise of the right of private defence.

If the voluntary causing of death is not permissible under the right of private defence under section 96, then the common intention in regard thereto will lead to the result that the accused persons must be held guilty by reason of constructive liability under the relevant section (in this case section 304 Part I [IPC, 1860](#)). If, however, the common intention was only to commit an act which was permissible within the confines of s. 96 read with s. 98, then constructive liability under section 34 cannot be said to have been accrued to the accused. If the right of private defence was exceeded by some persons, the guilt of each of the accused proved to have exceeded the right of private defence would have to be dealt with separately. The instant case came under the former situation, and hence, such persons were guilty under section 304, Part I [IPC, 1860](#). They, therefore, must be held to have had a common object for causing death of P. They were sentenced to undergo ten years' rigorous imprisonment each.²⁶⁴.

170. Subs. by Act 27 of 1870, section 1, for section 34.

171. *Goudappa v State of Karnataka*, ([2013](#)) 3 SCC 675 [LNIND 2013 SC 177] ; *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011SC 1748 : ([2011](#)) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ.

- 2908 ; *Abdul Sayeed v State of MP*, 2010 (10) SCC 259 [LNIND 2010 SC 872] : 2010(9) Scale 379 : (2010) 3 SCC (Cr) 1262.
172. *Kuria v State of Rajasthan*, AIR 2013 SC 1085 [LNIND 2012 SC 678] : (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC).
173. *Queen v Gora Chand Gope*, (1866) 5 South WR (Cr) 45.
174. *Ashok Kumar v State of Punjab*, AIR 1977 SC 109 : (1977) 1 SCC 746 .
175. *Babulal Bhagwan Khandare v State Of Maharashtra* AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .
176. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .
177. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
178. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
179. *Garib Singh v State of Punjab*, 1972 Cr LJ 1286 : AIR 1973 SC 460 [LNIND 1972 SC 187] .
See also *Yogendra v State of Bihar*, 1984 Cr LJ 386 (SC).
180. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] relied in *Thoti Manohar v State of AP*, 2012, (7) Scale 215 : (2012) 7 SCC 723 [LNIND 2012 SC 365] : 2012 Cr LJ 3492 ; see also *Amar Singh v State of Haryana*, 1973 Cr LJ 1409 : AIR 1973 SC 2221 ; *Dharam Pal v State of UP*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *Amir Hussain v State of UP*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 *State of Rajasthan v Arjun Singh*, (2011) 9 SCC 115 [LNIND 2011 SC 855] : AIR 2011 SC 3380 [LNIND 2011 SC 855] .
181. *BN Srikantiah v State of Mysore*, AIR 1958 SC 672 [LNIND 1958 SC 49] : 1958 Cr LJ 1251 .
182. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
183. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
184. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] ; *Baldeo Singh v State of Bihar*, AIR 1972 SC 464 : 1972 Cr LJ 262 ; *Rana Pratap v State of Haryana*, AIR 1983 SC 680 [LNIND 1983 SC 157] : 1983 Cr LJ 1272 : (1983) 3 SCC 327 [LNIND 1983 SC 157] ,
185. *Syed Yousuf Hussain v State of AP*, AIR 2013 SC 1677 [LNIND 2013 SC 275] : 2013 Cr LJ 2172 : 2013 (5) Scale 346 [LNIND 2013 SC 275] , (2013) 4 SCC 517 [LNIND 2013 SC 275] ; *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] ; *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
186. *Sudip Kr. Sen v State of WB*, AIR 2016 SC 310 [LNIND 2016 SC 10] : 2016 Cr LJ 1121 .
187. *Nagesar v State of Chhattisgarh*, 2014 Cr LJ 2948 .
188. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .
189. *Mehbub Shah v King-Emperor*, AIR 1945 PC 148 .
190. *Supra*.191.*Supra*.
192. *Pandurang v State of Hyderabad*, AIR 1955 SC 216 [LNIND 1954 SC 171] : 1955 Cr LJ 572 .
193. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
194. *Vijendra Singh v State of UP*, AIR 2017 SC 860 [LNIND 2017 SC 16] ; *Bharwad Mepa Dana v State of Bombay*, AIR 1960SC 289.
195. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .

196. Shreekantiah Ramayya, (1954) 57 Bom LR 632 (SC); Shiv Prasad, AIR 1965 SC 264 [LNIND 1964 SC 51] : (1965) 1 CrLJ 249 .
197. Baba Lodhi v State of UP, (1987) 2 SCC 352 : AIR 1987 SC 1268 : 1987 Cr LJ 1119 ; MA AbdullaKunhi v State of Kerala, AIR 1991 SC 452 [LNIND 1991 SC 24] : 1991 Cr LJ 525 : (1991) 2 SCC 225 [LNIND 1991 SC 24] ; Noor v State of Karnataka, (2007) 12 SCC 84 [LNIND 2007 SC 639] : (2008) 2 SCC Cr 221 : 2007 Cr LJ 4299 .
198. Tara Devi v State of UP (1990) 4 SCC 144 : AIR 1991 SC 342 . See also Hem Raj v State Delhi Admn., 1990 Cr LJ 2665 : 1990 Supp SCC 291 : AIR 1990 SC 2252 , one of the accused alone proved to have given the fatal blow, the participation of others not proved, others not convicted under section 302/34.
199. Bishan Singh v State of Punjab, 1983 Cr LJ 973 : AIR 1983 SC 748 : 1983 Cr LJ (SC) 327 : 1983 SCC (Cr) 578; Ghanshyam v State of UP, 1983 Cr LJ 439 (SC) : AIR 1983 SC 293 : (1982) 2 SCC 400 .
200. Dasrathlal v State of Gujarat, 1979 Cr LJ 1078 (SC) : AIR 1979 SC 1342 . See further Rangaswami v State of TN, AIR 1989 SC 1137 : 1989 Cr LJ 875 : 1989 SCC (Cr) 617 : 1989 Supp (1) SCC 686 . Gulshan v State of Punjab, 1989 Cr LJ 120 : AIR 1988 SC 2110 : 1990 Supp SCC 682 .
201. Jarnail Singh v State of Punjab, (1996) 1 SCC 527 [LNIND 1995 SC 1172] : AIR 1996 SC 755 [LNIND 1995 SC 1172] : 1996 Cr LJ 1139 .
202. Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 ; Chandrakant Muryappa Umrani v State of Maharashtra, 1998 SCC (Cr) 698; Hamlet @ Sasi. v State of Kerala, (2003) 10 SCC 108 [LNIND 2003 SC 688] ; Surendra Chauhan v State of MP, (2000) 4 SCC 110 [LNIND 2000 SC 515] : AIR 2000 SC 1436 [LNIND 2000 SC 515] ; Ramjee Rai v State of Bihar, (2006) 13 SCC 229 [LNIND 2006 SC 647] : 2006 Cr LJ 4630 ; Prakash v State of MP, (2006) 13 SCC 508 [LNIND 2006 SC 1071] : 2007 Cr LJ 798 ; Sham Shankar Kankaria v State of Maharashtra, (2006) 13 SCC 165 [LNIND 2006 SC 684] ; Manik Das v State of Assam, (2007) 11 SCC 403 [LNIND 2007 SC 769] : AIR 2007 SC 2274 [LNIND 2007 SC 769] , participation proved.
203. Chacko v State of Kerala, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] ; Abdul Wahid v State of Rajasthan, (2004) 11 SCC 241 [LNIND 2004 SC 1454] : AIR 2004 SC 3211 [LNIND 2004 SC 1454] : 2004 Cr LJ 2850 ; Janak Singh v State of UP, (2004) 11 SCC 385 [LNIND 2004 SC 515] : AIR 2004 SC 2495 [LNIND 2004 SC 515] : 2004 Cr LJ 2533 ; Parsuram Pandey v State of Bihar, 2005 SCC (Cr) 113 : AIR 2004 SC 5068 [LNIND 2004 SC 1075] .
204. Suresh Sakhararam Nangare v State of Maharashtra, 2012 (9) Scale 245 [LNIND 2012 SC 574] : (2012) 9 SCC 249 [LNIND 2012 SC 574] .
205. Raju v State of Chhattisgarh, 2014 Cr LJ 4425 .
206. Shreekantiah Ramayya v State of Bombay, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 SCR (1) 1177 .
207. Parasa Raja Manikyala Rao v State of AP, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 ; Virendra Singh v State of MP, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 ; Jaikrishnadas Desai, (1960) 3 SCR 319 [LNIND 1960 SC 79] : AIR 1960 SC 889 [LNIND 1960 SC 79] : 1960 Cr LJ 1250 ; Dani Singh v State of Bihar, AIR 2004 SC 4570 [LNIND 2004 SC 1490] : (2004) 13 SCC 203 [LNIND 2004 SC 1490] .
208. Suresh v State of UP, 2001 (3) SCC 673 [LNIND 2001 SC 623] : AIR 2001 SC 1344 [LNIND 2001 SC 623] ; Ramaswami Ayyangar v State of TN, AIR 1976 SC 2027 [LNIND 1976 SC 128] : 1976 Cr LJ 1536 (the presence of those who in one way or the other facilitate the execution of the common design itself tantamounts to actual participation in the "criminal act").

209. *Rajkishore Purohit v State of Madhya Pradesh*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .
210. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 , citing *Shankarlal Kacharabhai*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : 1965 (2) Cr LJ 226 .
211. *Dharnidhar v State of UP*, (2010) 7 SCC 759 [LNIND 2010 SC 584] : 2010 (7) Scale 12 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] .
212. *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC) : (1972) 4 SCC (N) 42 (SC).
213. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1964 (1) SCR 678 [LNIND 1963 SC 12] : 1963 Cr LJ 351 (SC); *State of Maharashtra v Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659 [LNIND 2004 SC 862] : AIR 2004 SC 4412 [LNIND 2004 SC 862] , the prosecution is not required to prove in every case a pre-arranged plan or prior concert. *Preetam Singh v State of Rajasthan*, (2003) 12 SCC 594 , prior concert can be inferred, common intention can develop on the spot.
214. *Harbans Nonia v State of Bihar*, AIR 1992 SC 125 : 1992 Cr LJ 105 .
215. *Dharam Pal v State of UP*, AIR 1995 SC 1988 [LNIND 1995 SC 198] : 1995 Cr LJ 3642 .
216. *Hanuman Prasad v State of Rajasthan*, (2009) 1 SCC 507 [LNIND 2008 SC 2256] : (2009) 1 SCC Cr 564, the Supreme Court distinguishes common intention from similar intention and also explains the meaning and applicability of the expression.
217. *Dajya Moshaya Bhil v State of Maharashtra*, 1984 Cr LJ 1728 : AIR 1984 SC 1717 : 1984 Supp SCC 373 . The Supreme Court applied the distinction between common intention and similar intention in *State of UP v Rohan Singh*, (1996) Cr LJ 2884 (SC) : AIR 1996 SCW 2612 . In *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] it was held that persons having similar intention which is not the result of pre-concerted plan cannot be held guilty for the "criminal act" with the aid of Section 34.
218. *Parichhat v State of MP*, 1972 Cr LJ 322 : AIR 1972 SC 535 ; *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC). Followed in *Khem Karan v State of UP*, 1991 Cr LJ 2138 All where each accused hit differently at the behest of one of them, hence, no common intention.
219. *Mitter Sen v State of UP*, 1976 Cr LJ 857 : AIR 1976 SC 1156 ; see also *Gajjan Singh v State of Punjab*, 1976 Cr LJ 1640 : AIR 1976 SC 2069 [LNIND 1976 SC 72] ; *Jarnail Singh v State of Punjab*, 1982 Cr LJ 386 : AIR 1982 SC 70 (SC).
220. *Rambilas Singh v State of Bihar*, AIR 1989 SC 1593 [LNIND 1989 SC 216] : (1989) 3 SCC 605 [LNIND 1989 SC 216] : 1989 Cr LJ 1782 . The conviction under sub-sections 34/149 and 34/302 was set aside.
221. *Tripta v State of Haryana*, AIR 1992 SC 948 : 1992 Cr LJ 3944 . See also *Major Singh v State of Punjab*, AIR 2003 SC 342 [LNIND 2002 SC 742] : 2003 Cr LJ 473 : (2002) 10 SCC 60 [LNIND 2002 SC 742] ; *Balram Singh v State of Punjab*, AIR 2003 SC 2213 [LNIND 2003 SC 514] : (2003) SCC 286 .
222. *Devaraman v State of Karnataka*, (1995) 2 Cr LJ 1534 SC. See also *Gopi Nath v State of UP*, AIR 2001 SC 2493 : 2001 Cr LJ 3514 ; *Pal Singh v State of Punjab*, AIR 1999 SC 2548 [LNIND 1999 SC 604] : 1999 Cr LJ 3962 ;*Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 ; *Muni Singh v State of Bihar*, AIR 2002 SC 3640 ;*Mahesh Mahto v State of Bihar*, AIR 1997 SC 3567 [LNIND 1997 SC 1103] : 1997 Cr LJ 4402 .
223. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
224. *Narinder Singh v State of Punjab*, AIR 2000 SC 2212 [LNIND 2000 SC 615] : 2000 Cr LJ 3462 , *Sheelam Ramesh v State of AP*, AIR 2000 SC 118 [LNIND 1999 SC 926] : 2000 Cr LJ 51 ; *State of*

- Haryana v Bhagirath*, AIR 1999 SC 2005 [LNIND 1999 SC 541] : 1999 CrLJ 2898 ; *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3561 .
225. *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 .
226. *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] : AIR 2003 SC 2978 [LNIND 2003 SC 587] : 2003 Cr LJ 3705 .
227. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .
228. *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : 1998 Cr LJ 4599 . See also *State of Karnatakav Maruthi*, AIR 1997 SC 3797 : 1997 Cr LJ 4407 ; *Bhupinder Singh v State of Haryana*, AIR 1997 SC 642 : 1997 Cr LJ 958 .
229. *State of UP v Balkrishna Das*, AIR 1997 SC 225 [LNIND 1996 SC 1753] : 1997 Cr LJ 73 .
230. *State of AP v M Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).
231. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] ; *State of AP v M. Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).
232. *Kuria v State of Rajasthan*, (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC); *Hemchand Jha v State of Bihar*, (2008) 11 SCC 303 [LNIND 2008 SC 1299] : (2008) Cr LJ 3203 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Nand Kishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
233. *Bengai Mandal v State of Bihar*, AIR 2010 SC 686 [LNIND 2010 SC 39] : (2010) 2 SCC 91 [LNIND 2010 SC 39] .
234. *Maqsoodan v State of UP*, 1983 Cr LJ 218 : AIR 1983 SC 126 [LNIND 1982 SC 199] : (1983) 1 SCC 218 [LNIND 1982 SC 199] ; *Aizaz v State of UP*, (2008) 12 SCC 198 [LNIND 2008 SC 1621] : 2008 Cr LJ 4374 , *Lala Ram v State of Rajasthan*, (2007) 10 SCC 225 [LNIND 2007 SC 803] : (2007) 3 SCC Cr 634, *Harbans Kaur v State of Haryana*, AIR 2005 SC 2989 [LNIND 2005 SC 211] : 2005 Cr LJ 2199 (SC), *Dani Singh v State of Bihar*, 2004 (13) SCC 203 [LNIND 2004 SC 1490] : 2004 Cr LJ 3328 (SC).
235. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] ; see also *Nitya Sen v State of WB*, 1978 Cr LJ 481 : AIR 1978 SC 383 ; *Sivam v State of Kerala*, 1978 Cr LJ 1609 : AIR 1978 SC 1529 ; *Jagdeo Singh v State of Maharashtra*, 1981 Cr LJ 166 : AIR 1981 SC 648 (SC); *Aher Pitha Vajshi v State of Gujarat*, 1983 Cr LJ 1049 : AIR 1983 SC 599 [LNIND 1983 SC 98] : 1983 SCC (Cr) 607; *Manju Gupta v MS Paintal*, AIR 1982 SC 1181 [LNIND 1982 DEL 128] : 1982 Cr LJ 1393 : (1982) 2 SCC 412 . Another instance of failed prosecution under the Act is *Harendra Narayan Singh v State of Bihar*, AIR 1991 SC 1842 [LNIND 1991 SC 307] : 1991 Cr LJ 2666 . *Ghana Pradhan v State of Orissa*, AIR 1991 SC 1133 : 1991 Cr LJ 1178 . Common intention not established even when the two accused were striking the same person in their own ways.
236. *Raju @ Rajendra v State of Rajasthan*, 2013 Cr LJ 1248 (SC) : (2013) 2 SCC 233 [LNIND 2013 SC 25] .
237. *Jhinku Nai v State of UP*, AIR 2001 SC 2815 [LNIND 2001 SC 1587] at p. 2817. See also *Jagga Singh v State of Punjab*, (2011) 3 SCC 137 [LNINDORD 2011 SC 288] : AIR 2011 SC 960 [LNINDORD 2011 SC 288] .
238. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
239. *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] : (2005) 12 SCC 615 [LNIND 2005 SC 887] .
240. *Vijay Singh v State of MP*, 2014 Cr LJ 2158 .

241. *Willie Slavey v The State of MP*, 1955 (2) SCR 1140 [LNIND 1955 SC 90] at p 1189 : AIR 1956 SC 116 [LNIND 1955 SC 90].
242. *Santosh Kumari v State of J&K*, (2011) 9 SCC 234 [LNIND 2011 SC 901] : AIR 2011 SC 3402 [LNIND 2011 SC 901] : (2011) 3 SCC (Cr) 657.
243. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1963 Cr LJ 351 relied in *Chinnam Kameswara Rao v State of AP* 2013 Cr LJ 1540 : JT 2013 (2) SC 398 [LNIND 2013 SC 57] : 2013 (1) Scale 643 [LNIND 2013 SC 57].
244. *Anil Sharma v State of Jharkhand*, (2004) 5 SCC 679 [LNIND 2004 SC 590] : AIR 2004 SC 2294 [LNIND 2004 SC 590] : 2004 Cr LJ 2527 .
245. *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 .
246. *Barendra Kumar Ghosh v Emp.*, AIR 1925 PC 1 [LNIND 1924 BOM 206] (7) : 26 Cr LJ 431; *Nanak Chand v State of Punjab*, 1955 Cr LJ 721 (SC); *Anam Pradhan v State*, 1982 Cr LJ 1585 (Ori). *Chittaramal v State of Rajasthan*, (2003) 2 SCC 266 [LNIND 2003 SC 14] : AIR 2003 SC 796 [LNIND 2003 SC 14] : 2003 Cr LJ 889 , points of similarity and distinction explained in the case.
247. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
248. *Surinder Singh v State of Punjab*, (2003) 10 SCC 66 [LNIND 2003 SC 652] .
249. *Lachman Singh v The State*, 1952 SCR 839 [LNIND 1952 SC 21] : AIR 1952 SC 167 [LNIND 1952 SC 21] : 1952 Cr LJ 863 and *Karnail Singh v State of Punjab*, 1954 SCR 904 [LNIND 1953 SC 126] : AIR 1954 SC 204 [LNIND 1953 SC 126] : 1954 Cr LJ 580 .
250. *Sangappa Sanganabasappa v State of Karnataka* (2010) 11 SCC 782 [LNIND 2010 SC 866] : (2011) 1 SCC (Cr) 256; *Baital Singh v State of UP*, AIR 1990 SC 1982 : 1990 Cr LJ 2091 : 1990 Supp SCC 804 ; *Ramdeo Rao Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1983 .
251. *Dahari v State of UP*, AIR 2013 SC 308 2012 (10) Scale 160, (2012) 10 SCC 256 [LNIND 2012 SC 638] ; *Jivan Lal v State of MP*, 1997 (9) SCC 119 [LNIND 1996 SC 2679] ; and *Hamlet @ Sasi v State of Kerala*, AIR 2003 SC 3682 [LNIND 2003 SC 688] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] ; *Sanichar Sahni v State of Bihar*, AIR 2010 SC 3786 [LNIND 2009 SC 1350] ; *S Ganesan v Rama Raghu Ramam*, 2011 (2) SCC 83 [LNIND 2011 SC 5] ; *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] : JT 2012 (8) SC 530 [LNIND 2012 SC 545] .
252. *Manik Shankarrao Dhotre v State of Maharashtra*, 2008 Cr LJ 1505 (Kar); *State of Maharashtra v Mahipal Singh Satyanarayan Singh*, 1996 Cr LJ 2485 .
253. *Brahmjit Singh v State*, 1992 Cr LJ 408 (Del).
254. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Bom).
255. *Dukhmochan Pandey v State of Bihar*, AIR 1998 SC 40 [LNIND 1997 SC 1255] : 1998 Cr LJ 66 .
256. *State of Gujarat v Chandubhai Malubhai Parmar*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 (SC).
257. *Ghaura Chandra Naik v State of Orissa*, 1992 Cr LJ 275 (Ori). See *Rameshchandra Bhogilal Patel v State Of Gujarat*, 2011 Cr LJ 1395 (Guj) (Section 420/34).
258. *Dev Cyrus Colabawala v State of Maharashtra*, 2010 Cr LJ 758 (Bom).
259. *Atambir Singh v State of Delhi*, 2016 Cr LJ 568 (Del).
260. *Vinay Kumar Rai v State of Bihar*, (2008) 12 SCC 202 [LNIND 2008 SC 1646] : 2008 Cr LJ 4319 : AIR 2008 SC 3276 [LNIND 2008 SC 1646] .
261. *Nagaraja v State of Karnataka*, (2008) 17 SCC 277 [LNIND 2008 SC 2484] : AIR 2009 SC 1522 [LNIND 2008 SC 2484] : one accused struck onthe road with an iron rod, two others used fists and kicks, there was nothing more common, the twocould be convicted under section 323.

See also *Mohan Singh v State of MP* AIR 1999 SC 883 [LNIND 1999 SC 69] : (1999) 2 SCC 428 [LNIND 1999 SC 69], *Abdul Wahid v State of Rajasthan*, AIR 2004 SC 3211 [LNIND 2004 SC 1454] : (2004) 11 SCC 241 [LNIND 2004 SC 1454]; *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : (1999) 1 SCC 174 [LNIND 1998 SC 879].

262. *Chandra Kaur v State of Rajasthan*, 2016 Cr LJ 3346 : AIR 2016 SC 2926 [LNINDU 2015 SC 139].

263. *Suresh v State of UP* AIR 2001 SC 1344 [LNIND 2001 SC 623] : (2001) 3 SCC 673 [LNIND 2001 SC 623] quoted from *Shatrughan Patar v Emperor*. See also *Sewa Ram v State of UP*, 2008 Cr LJ 802 : AIR 2008 SC 682 [LNIND 2007 SC 1452]; *Abaram v State of MP*, (2007) 12 SCC 105 [LNIND 2007 SC 546] : (2008) 2 SCC Cr 243 : 2007 Cr LJ 2743.

264. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246]; *Vajrapu Sambayya Naidu v State of AP*, AIR 2003 SC 3706 [LNIND 2003 SC 176] : (2004) 10 SCC 152 [LNIND 2003 SC 176].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 35] When such an act is criminal by reason of its being done with a criminal knowledge or intention.

Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

COMMENT—

The preceding section provided for a case in which a **criminal act** was done by several persons in furtherance of the common intention of all. Under this section several persons who actually perform the act must be shown to have the *particular* intent or knowledge, if the act is criminal only by reason of its being done with a criminal knowledge or intention. If several persons, having one and the same criminal intention or knowledge, jointly commit murder or an assault, each is liable for the offence as if he has acted alone; but if several persons join in an act, each having a different intention or knowledge from the others, each is liable according to his own criminal intention or knowledge, and he is not liable further. If an act which is an offence in itself and without reference to any criminal knowledge or intention on the part of the doers is done by several persons, each of such persons is liable for the offence.

Neither section 34 nor this section provides that those who take part in the act are jointly liable for the same offence. They merely provide that each of the performers shall be liable for the act in the same manner as if the act were done by him alone. In this section also, the responsibility is shared by each offender individually if the act which is criminal only by reason of certain criminal knowledge or intention is done by each person sharing that knowledge or intention.²⁶⁵ A mere look at that section shows that if the act alleged against these accused becomes criminal on account of their sharing common knowledge about the defective running of Plant at Bhopal by the remaining accused who represented them on the spot and who had to carry out their directions from them and who were otherwise required to supervise their activity. [Section 35 of the Indian Penal Code](#) could at least *prima facie* be invoked against accused 2, 3, 4 and 12 to be read with [section 304-A Indian Penal Code](#).²⁶⁶

265. *Afrahim Sheikh v State of WB*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : 1964 Cr LJ 350 ; *State v Bhimshankar Siddannappa Thobde*, 1968 Cr LJ 898 (Bom).
266. *Keshub Mahindra v State of MP*, (1996) 6 SCC 129 [LNIND 1996 SC 2462] : JT 1996 (8) SC 136 [LNIND 1996 SC 2462] (1996) 1 SCC (Cri) 1124 (Bhopal Gas Tragedy case) against which a curative petition was filed by the CBI and it was dismissed by the Constitution bench in *CBI v Keshub Mahindra*, AIR 2011 SC 2037 [LNINDORD 2011 SC 209] : (2011) 6 SCC 216 [LNIND 2011 SC 514].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 36] Effect caused partly by act and partly by omission.

Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

ILLUSTRATION

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

COMMENT—

This section follows as a corollary from section 32. The legal consequences of an 'act' and of an 'omission' being the same, if an offence is committed partly by an act and partly by an omission the consequences will be the same as if the offence was committed by an 'act' or by an 'omission' alone. Fire in the transformer installed in a cinema hall led to multiple deaths but was not the *causa causans* of the tragedy. The absence of rapid dispersal facilities, various acts of omission and commission, violation of rules and bye-laws meant for public safety were other causes which contributed to the tragedy in equal proportion. A charge under this section was held to be justifiable.²⁶⁷

²⁶⁷. *Sushil Ansal v State*, 2002 Cr LJ 1369 . Also see *Association of Victims of Uphaar Tragedy v Gopal Ansal*, (2008) 14 SCC 611 [LNIND 2008 SC 1818] : (2009) 2 SCC (Cr) 878.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 37] Co-operation by doing one of several acts constituting an offence.

When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

ILLUSTRATIONS

- (a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.
- (b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose, Z dies of hunger. Both A and B are guilty of the murder of Z.
- (c) A, a jailor, has the charge of a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

COMMENT—

This section follows as a corollary from section 35 as appears from the illustrations. It provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence.²⁶⁸ By co-operating in the doing of several acts which together constitute a single **criminal act**, each person who co-operates in the commission of that offence by doing any one of the acts is either singly or jointly liable for that offence.²⁶⁹ If common intention is the hub of section 34, intentional cooperation is the spindle of **section 37 of the Penal Code**. One who shares common intention can as well cooperate in the commission of the offence

intentionally. In that sense the two sections are not contradictory to each other. The former does not necessarily exclude the latter. Co-operation in the commission of the offence need not be for the entire gamut of the offence committed. It is enough if he cooperates in one of the several acts which constitute the offence. Sections 34–38 of the [Penal Code](#) delineate the parameters of constructive or vicarious penal liability in different situations. Therefore, it is not imperative that the charge should contain the particular section of the [Penal Code](#) with which constructive liability is fastened.²⁷⁰.

268. *Barendra Kumar Ghosh*, (1924) 52 IA 40 : 52 Cal 197 : 211, 27 Bom LR 148.

269. *Afrahim Sheikh v State of WB*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : 1964 (6) SCR 172 [LNIND 1964 SC 1] : 1964 Cr LJ 350 .

270. *Justus v State*, 1987 (2) KLT 330 [LNIND 1987 KER 337] : ILR 1988 (1) Ker 98 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 38] Persons concerned in criminal act may be guilty of different offences.

Where several persons are engaged or concerned in the commission of a [criminal act](#), they may be guilty of different offences by means of that act.

ILLUSTRATION

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

COMMENT—

Section 38 provides that the responsibility for the completed [criminal act](#) may be of different grades according to the share taken by the different accused in the completion of the [criminal act](#) and this section does not mention anything about intention common or otherwise or knowledge.²⁷¹

Sections 34–38 lay down principles similar to the English law of 'principals in the first and second degrees.' See Comment on section 107.

The basic principle which runs through sections 32 to 38 is that in certain circumstances an entire act is attributed to a person who may have performed only a fractional part of it. This axiom is laid down in section 34 in which emphasis are on the act. Sections 35–38 take up this axiom as the basis of a further rule by which the criminal liability of the doer of a fractional part (who is to be taken as the doer of the entire act) is to be adjudged in different situations of *mens rea*. Without the axiom itself, however, the other sections would not work, inasmuch as it is the foundation on which they all stand.²⁷²

This section provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a [criminal act](#) are set in motion by the one intention or by the other.²⁷³ The section applies where a [criminal act](#) jointly done by several persons and the several persons have different intentions or states of knowledge in doing the joint act.²⁷⁴ Where three accused assaulted the deceased but only two used their weapons in a determined manner which clearly showed their common intention to kill the deceased and the third accused who had a *lathi* in his hand did not even use it to cause any injury to the victim, it was held that the former two were liable to be convicted under [section 302](#) read with [section 34, IPC, 1860](#), and the third accused was only liable under [section 304](#), Part II read with [section 38, IPC, 1860](#), as he had intentionally joined the

other two in the commission of the act with the knowledge that the assault was likely to cause death of the deceased even though he did not have the intention to kill him.²⁷⁵.

271. *Afrahim Sheikh v State of WB*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : 1964 (6) SCR 172 [LNIND 1964 SC 1] : 1964 Cr LJ 350 .

272. *Ibra Akanda*, (1944) 2 Cal 405 .

273. *Barendra Kumar Ghosh*, (1924) 52 IA 40 : 52 Cal 197 211 : 27 Bom LR 148.

274. *State v Bhimshankar Siddannappa Thobde*, 1968 Cr LJ 898 (Bom).

275. *Bhaba Nanda v State of Assam*, 1977 Cr LJ 1930 : AIR 1977 SC 2252 [LNIND 1977 SC 291] .

Mano Dutt v State of UP, JT 2012 (2) SC 573 : 2012 (3) Scale 219 [LNIND 2012 SC 160] : (2012) 4 SCC 79 [LNIND 2012 SC 160] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 39] "Voluntarily".

A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

ILLUSTRATION

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

COMMENT—

Bare reading of this section shows that a person need not intend to cause a certain effect. If an act is the probable consequence of the means used by him, he is said to have caused it voluntarily whether he really means to cause it or not. Section implicitly lays down the principle that a man is presumed to intend the probable consequences of his act.²⁷⁶. Following this it has been held that if the accused was not aware that the person whom they confined was a public servant, section 332 (voluntarily causing hurt to deter public servant from his duty) would not be attracted. The accused would be guilty of causing hurt under section 323.²⁷⁷. The Supreme Court has given a new meaning to the word "voluntary" by holding in *Olga Tellis v Bombay MC*,²⁷⁸ that the act of slum dwellers putting up their huts on public footpaths and pavements cannot be described to be "voluntary" for the purposes of the definition of "criminal trespass" in section 441, it being the result of utter helplessness and their moral right of survival.

276. *Dr.Meenu Bhatia Prasad v State*, 2002 Cr LJ 1674 (Del).

277. *Abdul Majeed v State of Kerala*, (1994) 2 Cr LJ 1404 (Ker).

278. *Olga Tellis v. Bombay MC*, (1985) 3 SCC 545 [LNIND 1985 SC 215] : 1986 CrLR (SC) 23 : AIR 1986 SC 180 [LNIND 1985 SC 215].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

279. [s 40] "Offence".

Except in the 280. [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, 281. [Chapter VA] and in the following sections, namely, sections 282. [64, 65, 66, 283. [67], 71], 109, 110, 112, 114, 115, 116, 117, 284. [118, 119, 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

COMMENT—

"Offence" means 'an act or instance of offending'; 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'. "Offence" has to be read and understood in the context as it has been prescribed under the provisions of sub-section 40, 41 and 42 IPC, 1860 which cover the offences punishable under IPC, 1860 or under special or local law or as defined under [section 2\(n\) Cr PC, 1973](#) or [section 3\(38\) of the General Clauses Act 1897](#). There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under [section 497 IPC, 1860](#).²⁸⁵ In *Joseph Shine v UOI*²⁸⁶, a five judge Constitution bench of the Supreme Court struck down [section 497 of the Indian Penal Code](#) as manifestly discriminatory and arbitrary. Section 2(n) of [Cr PC, 1973](#) defines offence as any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be under [section 20 of the Cattle Trespass Act 1871](#) (1 of 1871). Thus, the definition of 'offence' under section 2(n), [Cr PC, 1973](#), is wider enough to enable the police to investigate into offences under other enactments also, apart from those under the [IPC, 1860](#).²⁸⁷ An offence seldom consists of a single act. It is usually composed of several elements and, as a rule; a whole series of acts must be proved before it can be established.²⁸⁸ There is a basic difference between the offences under the [Penal Code](#) and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, *mens rea* is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the [Penal Code](#), the

traditional rule of existence of *mens rea* is to be followed.²⁸⁹ In the absence of a definition in a special act, the term 'offence' should be understood in the context of [section 40 of the Indian Penal Code](#) as an act that is criminally punishable and [section 3\(38\) of the General Clauses Act](#) as an act made punishable by any law and the essential ingredient is that it should be a [criminal act](#) as understood.²⁹⁰ In *Naz Foundation v NCT Delhi*,²⁹¹ [section 377 of IPC, 1860](#) in so far it criminalised consensual sexual acts of adults in private, was held violative of [Article 21, Article 14](#) and [Article 15 of the Constitution](#) by the Delhi High Court.²⁹² This judgement of the Delhi High Court was later overruled by the Supreme Court on 12 December 2013 in *Suresh Kumar Koushal* case.²⁹³ Finally in *Navtej Singh Johar v UOI*,²⁹⁴ a five-judge bench of the Supreme Court declared [section 377 of the Indian Penal Code](#) unconstitutional, insofar as it criminalises consensual sexual acts of adults of same sex in private. However, other parts of Section 377 relating to sex with minors and bestiality remain in force.

[s 40.1] Offences under Special law.—

A plain reading of this provision of law makes it crystal clear that the effect of clause (2) of section 40 is to make everything punishable under the special law as an offence within the meaning of the [Indian Penal Code](#). The offences under the [NDPS Act](#) thus, become offences under the [Indian Penal Code](#) as the term "offence" in certain cases is extended to the things made punishable under any special or local law.²⁹⁵

[s 40.2] Article 20(1).—

The word 'offence' under [Article 20](#) sub-clause (1) of the [Constitution](#) has not been defined under the [Constitution](#). But [Article 367 of the Constitution](#) states that unless the context otherwise requires, the [General Clauses Act 1897](#) shall apply for the interpretation of the [Constitution](#) as it does for the interpretation of an Act.²⁹⁶

[s 40.3] Offence and breach of duty distinguished.—

Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the [Evidence Act](#). Converse is the case of departmental enquiry. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.²⁹⁷

[s 40.4] Suicide.—

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.²⁹⁸

[s 40.5] Euthanasia.—

In India active euthanasia is illegal and a crime under section 302 or at least [section 304 IPC, 1860](#). Physician assisted suicide is a crime under [section 306 IPC, 1860](#) (abetment to suicide).²⁹⁹ But in *Aruna Ramchandra Shanbaug v UOI*,³⁰⁰ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution](#) Bench of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.³⁰¹

[s 40.6] Sections 40 and 141 IPC, 1860.—

Section 40 specifically mentions as to how the term 'offence' will have to be construed. In the main clause of the said section it has been clearly set out that the word "offence" denotes a thing made punishable by this Code except the chapters and sections mentioned in clauses 2 and 3 of the said section. Therefore, going by the main clause of section 40, the word "offence" since denotes the thing made punishable under the Code, 'other offence' mentioned in section 141 'third', can only denote to offences, which are punishable under any of the provisions of the Code. Therefore, by applying the main clause of section 40, it can be straight away held that all offences referred to in any of the provisions of the Code for which the punishment is provided for would automatically fall within the expression "other offence", which has been used in section 141 'third'. Therefore, a conspectus reading of section 40 makes the position abundantly clear that for all offences punishable under the [Indian Penal Code](#), the main clause of section 40 would straight away apply in which event the expression "other offence" used in section 141 'third', will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whosoever is proceeded against for any offence punishable under the provisions of the [Indian Penal Code](#), [section 40](#) sub-clause 1 would straight away apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of sub-clause 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against. Therefore, having regard to sub-clause 1 of section 40 of the Code read along with section 141 'third', the argument of learned senior counsel for the Appellants will have to be rejected. Only such a construction would be in tune with the purport and intent of the law makers while defining an unlawful assembly for commission of an offence with a common object, as specified under section 141 of the Code.³⁰²

^{279.} Subs. by Act 27 of 1870, section 1, for section 40.

^{280.} Subs. by Act 8 of 1930, section 2 and Sch I, for "Chapter".

^{281.} Ins. by Act 8 of 1913, section 2.

^{282.} Ins. by Act 8 of 1882, section 1.

^{283.} Ins. by Act 10 of 1886, section 21(1).

^{284.} Ins. by Act 10 of 2009, section 51(b) (w.e.f. 27-10-2009).

^{285.} *S Khushboo v Kanniammal*, ([2010](#)) 5 SCC 600 [[LNIND 2010 SC 411](#)] : AIR [2010](#) SC 3196

[[LNIND 2010 SC 411](#)] : ([2010](#)) 2 SCC (Cr) 1299; *Vijay Singh v State of UP*, ([2012](#)) 5 SCC 242

[[LNIND 2012 SC 1216](#)] : AIR [2012](#) SC 2840 [[LNINDORD 2012 SC 356](#)].

286. *Joseph Shine v UOI*, decided by Hon'ble Supreme Court of India.
287. *Dharma Reddy v State*, 1990 Cr LJ 1476 . (AP); *Director of Enforcement v MCT M Corporation PvtLtd*, AIR 1996 SC 1100 [LNIND 1996 SC 63] : (1996) 2 SCC 471 [LNIND 1996 SC 63].
288. *Shreekantiah Ramayya Munipalli v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 (1) SCR 1177 [LNIND 1954 SC 180] : 1955Cr LJ 857.
289. *Radhey Shyam Khemka v State of Bihar*, (1993) 3 SCC 54 [LNIND 1993 SC 276] : 1993 Cr LJ 2888 .
290. *Standard Chartered Bank v Directorate of Enforcement*, AIR 2006 SC 1301 [LNIND 2006 SC 145] : (2006) 4 SCC 278 [LNIND 2006 SC 145] .
291. *Naz Foundation v NCT Delhi*, 2010 Cr LJ 94 (Del).
292. *Naz Foundation v NCT Delhi*, 2010 Cr LJ 94 (Del).
293. *Suresh Kumar Koushal v Naz Foundation*, (2014) 1 SCC 1 [LNIND 2013 SC 1059] .
294. *Navtej Singh Johar v UOI*, 2018 (10) Scale 386 [LNIND 2018 SC 451] .
295. *Daulat Raghunath Derale v State of Maharashtra*, 1991 Cr LJ 817 (Bom).
296. *SEBI v Ajay Agarwal*, AIR 2010 SC 3466 [LNIND 2010 SC 203] : (2010) 3 SCC 765 [LNIND 2010 SC 203] .
297. *Depot Manager, AP State Road Transport Corporation v Mohd. Yousuf Miya*, AIR 1997 SC 2232 [LNINDORD 1996 SC 4] : (1997) 2 SCC 699 [LNINDORD 1996 SC 4] .
298. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653] .
299. The Constitution Bench in *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] held that both euthanasiaand assisted suicide are not lawful in India, overruling the two Judge Bench decision of the SupremeCourt in *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] . The Court held that the right tolife under Article 21 of the Constitution does not include the right to die.
300. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
301. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [LNIND 2018 SC 87] .
302. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 (SC).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

279. [s 40] "Offence".

Except in the 280. [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, 281. [Chapter VA] and in the following sections, namely, sections 282. [64, 65, 66, 283. [67], 71], 109, 110, 112, 114, 115, 116, 117, 284. [118, 119, 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

COMMENT—

"Offence" means 'an act or instance of offending'; 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'. "Offence" has to be read and understood in the context as it has been prescribed under the provisions of sub-section 40, 41 and 42 IPC, 1860 which cover the offences punishable under IPC, 1860 or under special or local law or as defined under [section 2\(n\) Cr PC, 1973](#) or [section 3\(38\) of the General Clauses Act 1897](#). There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under [section 497 IPC, 1860](#).²⁸⁵ In *Joseph Shine v UOI*²⁸⁶, a five judge Constitution bench of the Supreme Court struck down [section 497 of the Indian Penal Code](#) as manifestly discriminatory and arbitrary. Section 2(n) of [Cr PC, 1973](#) defines offence as any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be under [section 20 of the Cattle Trespass Act 1871](#) (1 of 1871). Thus, the definition of 'offence' under section 2(n), [Cr PC, 1973](#), is wider enough to enable the police to investigate into offences under other enactments also, apart from those under the [IPC, 1860](#).²⁸⁷ An offence seldom consists of a single act. It is usually composed of several elements and, as a rule; a whole series of acts must be proved before it can be established.²⁸⁸ There is a basic difference between the offences under the [Penal Code](#) and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, *mens rea* is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the [Penal Code](#), the

traditional rule of existence of *mens rea* is to be followed.²⁸⁹ In the absence of a definition in a special act, the term 'offence' should be understood in the context of [section 40 of the Indian Penal Code](#) as an act that is criminally punishable and [section 3\(38\) of the General Clauses Act](#) as an act made punishable by any law and the essential ingredient is that it should be a [criminal act](#) as understood.²⁹⁰ In *Naz Foundation v NCT Delhi*,²⁹¹ [section 377 of IPC, 1860](#) in so far it criminalised consensual sexual acts of adults in private, was held violative of [Article 21, Article 14](#) and [Article 15 of the Constitution](#) by the Delhi High Court.²⁹² This judgement of the Delhi High Court was later overruled by the Supreme Court on 12 December 2013 in *Suresh Kumar Koushal* case.²⁹³ Finally in *Navtej Singh Johar v UOI*,²⁹⁴ a five-judge bench of the Supreme Court declared [section 377 of the Indian Penal Code](#) unconstitutional, insofar as it criminalises consensual sexual acts of adults of same sex in private. However, other parts of Section 377 relating to sex with minors and bestiality remain in force.

[s 40.1] Offences under Special law.—

A plain reading of this provision of law makes it crystal clear that the effect of clause (2) of section 40 is to make everything punishable under the special law as an offence within the meaning of the [Indian Penal Code](#). The offences under the [NDPS Act](#) thus, become offences under the [Indian Penal Code](#) as the term "offence" in certain cases is extended to the things made punishable under any special or local law.²⁹⁵

[s 40.2] Article 20(1).—

The word 'offence' under [Article 20](#) sub-clause (1) of the [Constitution](#) has not been defined under the [Constitution](#). But [Article 367 of the Constitution](#) states that unless the context otherwise requires, the [General Clauses Act 1897](#) shall apply for the interpretation of the [Constitution](#) as it does for the interpretation of an Act.²⁹⁶

[s 40.3] Offence and breach of duty distinguished.—

Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the [Evidence Act](#). Converse is the case of departmental enquiry. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.²⁹⁷

[s 40.4] Suicide.—

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.²⁹⁸

[s 40.5] Euthanasia.—

In India active euthanasia is illegal and a crime under section 302 or at least [section 304 IPC, 1860](#). Physician assisted suicide is a crime under [section 306 IPC, 1860](#) (abetment to suicide).²⁹⁹ But in *Aruna Ramchandra Shanbaug v UOI*,³⁰⁰ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution Bench](#) of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.³⁰¹

[s 40.6] Sections 40 and 141 IPC, 1860.—

Section 40 specifically mentions as to how the term 'offence' will have to be construed. In the main clause of the said section it has been clearly set out that the word "offence" denotes a thing made punishable by this Code except the chapters and sections mentioned in clauses 2 and 3 of the said section. Therefore, going by the main clause of section 40, the word "offence" since denotes the thing made punishable under the Code, 'other offence' mentioned in section 141 'third', can only denote to offences, which are punishable under any of the provisions of the Code. Therefore, by applying the main clause of section 40, it can be straight away held that all offences referred to in any of the provisions of the Code for which the punishment is provided for would automatically fall within the expression "other offence", which has been used in section 141 'third'. Therefore, a conspectus reading of section 40 makes the position abundantly clear that for all offences punishable under the [Indian Penal Code](#), the main clause of section 40 would straight away apply in which event the expression "other offence" used in section 141 'third', will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whosoever is proceeded against for any offence punishable under the provisions of the [Indian Penal Code](#), [section 40](#) sub-clause 1 would straight away apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of sub-clause 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against. Therefore, having regard to sub-clause 1 of section 40 of the Code read along with section 141 'third', the argument of learned senior counsel for the Appellants will have to be rejected. Only such a construction would be in tune with the purport and intent of the law makers while defining an unlawful assembly for commission of an offence with a common object, as specified under section 141 of the Code. [302.](#)

[279.](#) Subs. by Act 27 of 1870, section 1, for section 40.

[280.](#) Subs. by Act 8 of 1930, section 2 and Sch I, for "Chapter".

[281.](#) Ins. by Act 8 of 1913, section 2.

[282.](#) Ins. by Act 8 of 1882, section 1.

[283.](#) Ins. by Act 10 of 1886, section 21(1).

[284.](#) Ins. by Act 10 of 2009, section 51(b) (w.e.f. 27-10-2009).

[285.](#) *S Khushboo v Kanniammal*, [\(2010\) 5 SCC 600 \[LNIND 2010 SC 411\]](#) : AIR 2010 SC 3196
[LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299; *VijaySingh v State of UP*, [\(2012\) 5 SCC 242](#)
[LNIND 2012 SC 1216] : AIR 2012 SC 2840 [LNINDORD 2012 SC 356].

[286.](#) *Joseph Shine v UOI*, decided by Hon'ble Supreme Court of India.

[287.](#) *Dharma Reddy v State*, [1990 Cr LJ 1476](#) . (AP); *Director of Enforcement v MCT M Corporation PvtLtd*, [AIR 1996 SC 1100 \[LNIND 1996 SC 63\]](#) : (1996) 2 SCC 471 [LNIND 1996 SC 63] .

[288.](#) *Shreekantiah Ramayya Munipalli v State of Bombay*, [AIR 1955 SC 287 \[LNIND 1954 SC 180\]](#) :
[1955 \(1\) SCR 1177 \[LNIND 1954 SC 180\]](#) : 1955Cr LJ 857.

[289.](#) *Radhey Shyam Khemka v State of Bihar*, [\(1993\) 3 SCC 54 \[LNIND 1993 SC 276\]](#) : 1993 Cr LJ 2888 .

[290.](#) *Standard Chartered Bank v Directorate of Enforcement*, [AIR 2006 SC 1301 \[LNIND 2006 SC 145\]](#) : (2006) 4 SCC 278 [LNIND 2006 SC 145].

[291.](#) *Naz Foundation v NCT Delhi*, [2010 Cr LJ 94](#) (Del).

[292.](#) *Naz Foundation v NCT Delhi*, [2010 Cr LJ 94](#) (Del).

293. *Suresh Kumar Koushal v Naz Foundation*, (2014) 1 SCC 1 [LNIND 2013 SC 1059] .
294. *Navtej Singh Johar v UOI*, 2018 (10) Scale 386 [LNIND 2018 SC 451] .
295. *Daulat Raghunath Derale v State of Maharashtra*, 1991 Cr LJ 817 (Bom).
296. *SEBI v Ajay Agarwal*, AIR 2010 SC 3466 [LNIND 2010 SC 203] : (2010) 3 SCC 765 [LNIND 2010 SC 203] .
297. *Depot Manager, AP State Road Transport Corporation v Mohd. Yousuf Miya*, AIR 1997 SC 2232 [LNINDORD 1996 SC 4] : (1997) 2 SCC 699 [LNINDORD 1996 SC 4] .
298. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653] .
299. The Constitution Bench in *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] held that both euthanasia and assisted suicide are not lawful in India, overruling the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] . The Court held that the right to life under Article 21 of the Constitution does not include the right to die.
300. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
301. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [LNIND 2018 SC 87] .
302. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 (SC).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 41] "Special law".

A "special law" is a law applicable to a particular subject.

COMMENT—

Laws dealing with special subjects are called special laws. The special laws contemplated in section 40 and this section are only laws, such as the Excise, Opium, Cattle Trespass, Gambling and Railway Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the [Penal Code](#). [Negotiable Instruments Act](#) being a special statute has overriding effect over the provisions of [Cr PC, 1973](#).³⁰³ Since nothing in [Factories Act \(Special Law\)](#) which prescribes punishment for rash and negligent act of occupier or manager of factory which resulted into death of any worker or any other person, the general Law, i.e., [IPC, 1860](#) will apply.³⁰⁴

303. *Rajan K Moorthy v M Vijayan*, 2008 Cr LJ 1254 (Mad).

304. *Ejas Ahmed v State of Jharkhand*, 2010 Cr LJ 1953 (Jha) also see the comments under [Section 5 of IPC, 1860](#).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 42] "Local law".

A "local law" is a law applicable only to a particular part of ^{305.}~~306.~~^{307.} [India].

COMMENT—

Laws applicable to a particular locality only are termed local laws, e.g., Port Trust Acts.

^{305.} Subs. by the A.O. 1948, for "British India".

^{306.} The words "the territories comprised in" omitted by Act 48 of 1952, section 3 and Sch II (w.e.f. 2-8-1952).

^{307.} Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 3-4-1951). Earlier the words "the States" were substituted by the A.O. 1950, for "the Provinces".

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 43] "Illegal." "Legally bound to do."

The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

COMMENT—

The word 'illegal' in the section has been given a very wide meaning. It consists of three ingredients: (1) everything which is an offence; (2) everything which is prohibited by law and (3) everything which furnishes ground for civil action.³⁰⁸ The words "legally bound" do not necessarily only mean the law made by the legislature or statutory law. [Section 43 IPC, 1860](#) contains a definition of a person being legally bound to do, that is, a person is stated to be legally bound to do whatever it is illegal in him to omit.³⁰⁹

The expression "legally bound to do" carries very wide meaning where any ground for civil action can be founded on the basis of any act or omission on the part of a person, his act may be held to be illegal or it may be held that he was legally bound to do an act which he had omitted to do. If a person breaches a departmental order, he may be held guilty as he was legally bound to act in terms of the order.³¹⁰

Sexual contact between two persons with consent but out of marriage does not amount to an illegal act.³¹¹

[s 43.1] "Ground for civil action."—

In order to constitute a ground for a civil action there must be the right in a party which can be enforced. It may be breach of a contract or a claim for damages or any such similar right accruing under the law. There is no law which debars the Chief Minister from participating in a sale conducted by any Government Department or any of the corporation or any public sector undertaking affording a cause for civil action particularly when no fraud or illegal gain is involved. There was nothing in the charge to indicate, nor did the prosecution take a specific stand that the purchase of the property of the Government company furnished a ground for a civil action. The nature of the civil action should not be left to a guess work. The accused could not be expected to meet such a case at any subsequent stage.³¹²

[s 43.2] "Illegal" and "unlawful".—

The expression "illegal" and "unlawful" are synonymous and convey the same idea in language - ordinary and legal. But when a statute employs an expression with intention of conveying a special meaning and with the said purpose defines the expression in such statute as the expression "illegal" is defined in [section 43 of the IPC, 1860](#), such meaning is to be ascertained for that expression specially and specifically for such a statute and for the purpose of such statute. Merely because two expressions mean the same ordinarily in language and law, both cannot be held to have the same meaning when one of them is specially and specifically defined and explained in one statute. So reckoned, it cannot be accepted that the definition of the expression "illegal" in [section 43 of the IPC, 1860](#) must straightaway be mechanically imported into [section 98 of the Cr PC, 1973](#) when we consider the ambit and play of the expression "unlawful" in [section 98 of the Cr PC, 1973](#).³¹³

308. *R Venkatakrishnan v Central Bureau of Investigation*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] : AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2010) 1 SCC (Cr) 164.

309. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023] : JT 2003 (9) SC 343 [LNIND 2003 SC 1023].

310. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646 : AIR 2009 SC 480 [LNIND 2008 SC 2235].

311. *S Khushboo v Kanniammal*, (2010) 5 SCC 600 [LNIND 2010 SC 411] : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC(Cr) 1299; *Mailsami v State*, (1994) 2 Cr LJ 2238 (Mad).

312. *R Sai Bharathi v J Jayalalitha*, (2004) 2 SCC 9 [LNIND 2003 SC 1023] : AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286.

313. *Zeenath v Khadeeja*, 2007 Cr LJ 600 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 44] "Injury".

The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

COMMENT—

'Injury' is an act contrary to law.³¹⁴ It will include any tortious act.

A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by a rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed. It was held that compensation could not be given to her for she did not suffer any injury as here defined.³¹⁵ It may, however, be argued that nothing could be more harmful to the mind of a woman than the death of her husband, and the section speaks of harm to the mind as 'injury'. The former Chief Court of the Punjab held that loss of her husband's support affected a widow prejudicially in a legal right, and was therefore, an injury as defined in the [Penal Code](#).³¹⁶ The context of section 125(1)(c) does not require reference to the definition of 'injury' rendered in [section 44 IPC, 1860](#). The words "physical or mental abnormality" will *prima facie* take in congenital defects while 'injury' leading to inability to maintain itself can have reference, be at any point of time even after the attaining of majority. It may even be possible to take in all cases of physical or mental abnormality which need not necessarily be congenital.³¹⁷ As defined in [section 44 IPC, 1860](#), "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation or property. Now, if a person wants to save himself from injury, such as conviction in a criminal case, it does not mean that he caused injury to another.³¹⁸ Harm caused to a reputation has been held to constitute an injury, within the purview of section 44.³¹⁹

³¹⁴. *Svami Nayudu v Subramania Mudali*, [\(1864\) 2 MHC 158](#).

³¹⁵. *Yalla Gangulu v Mamidi Dali*, (1897) 21 Mad 74 (FB).

³¹⁶. *Saif Ali v State*, (1989) PR No. 17 of 1898 (FB).

³¹⁷. *TPSH Selva Saroja v TPSH Sasinathana*, [1989 Cr LJ 2032](#) (Mad).

³¹⁸. *Prayag Das v State*, [1963 \(1\) Cr LJ 279](#).

³¹⁹. *Subramanian Swamy v UOI*, [2016 Cr LJ 3214](#).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 45] "Life".

The word "life" denotes the life of a human being, unless the contrary appears from the context.

COMMENT—

Section 45 of the IPC, 1860 defines life as denoting the life of a human being, unless the contrary appears from the context. Therefore, when a punishment for murder is awarded under section 302 of the IPC, 1860, it might be imprisonment for life, where life denotes the life of the convict or death. The term of sentence spanning the life of the convict, can be curtailed by the appropriate Government for good and valid reasons in exercise of its powers under section 432 of the Cr PC, 1973.³²⁰ Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life.³²¹ The expression 'imprisonment for life' must be read in the context of section 45, IPC, 1860.³²² The Court may feel that the punishment more just and proper, in the facts of the case, would be imprisonment for life with life given its normal meaning and as defined in section 45 of the Indian Penal Code.³²³

[s 45.1] Imprisonment for the remainder of Accused's natural life.—

As per the Criminal Law (Amendment) Act 2013³²⁴, the punishment for rape (section 376) is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, *which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine*. In sub-sections 370, 376(A), 376(D), 376(E) also it is specifically mentioned that 'Life' shall mean imprisonment for the remainder of that person's natural life. Parliament has enacted the Criminal Law (Amendment) Act, 2018 which provides for enhanced punishment in rape cases. The Amendment Act provides stringent punishment for perpetrators of rape particularly of girls below 12 years. Gang rape of a girl under 12 years of age is now made punishable with a jail term for remainder of guilty person's natural life or death.³²⁵

The right to claim remission, commutation, reprieve, etc., as provided under Article 72 or Article 161 of the Constitution will always be available, being guaranteed Constitutional remedies, which are untouchable by the Court.³²⁶

320. *Sangeet v State Of Haryana*, (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .
321. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC); *Life Convict Bengal @Khoka @Prasanta Sen v BK Srivastava*, 2013 Cr LJ 1446 (SC) : AIR 2013 SC 1163 , JT 2013 (3) SC20 : 2013 (2) Scale 467 : (2013) 3 SCC 425 [LNINDORD 2013 SC 6760] ; *Zahid Hussein v State of WB*, AIR 2001 SC 1312 [LNIND 2001 SC 692] : (2001)3 SCC 750 [LNIND 2001 SC 692] ; *Munna v UOI*, AIR 2005 SC 3440 [LNIND 2005 SC 701] : (2005) 7 SCC 417 [LNIND 2005 SC 701] - A plea for premature release after 21 years of imprisonment rejected.
322. *Ashok Kumar v UOI*, (1991) 3 SCC 498 [LNIND 1991 SC 288] : 1991 SCC (Cr) 845 (3 Judge Bench); *Gopal Vinayak Godse v State of Maharashtra*, 1961 (3) SCR 440 [LNIND 1961 SC 11] : AIR 1961 SC (Const. Bench) : But a two judgebench in *Ramraj v State of Chhattisgarh*, (2010) 1 SCC 573 [LNIND 2009 SC 2093] : AIR 2010 SC 420 [LNIND 2009 SC 2093] held that lifeimprisonment is not to be interpreted as being imprisonment for the whole of a convict's natural lifewithin the scope of Section 45.
323. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 CrLJ 3911 .
324. Act No. 13 of 2013 w.e.f 2-4-2013.
325. Refer Chapter XVI infra.
326. *UOI v V Sriharan*, (2016) 7 SCC 1 [LNIND 2015 SC 677] : 2016 Cr LJ 845 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 46] "Death."

The word "death" denotes the death of a human being, unless the contrary appears from the context.

COMMENT—

A present day understanding of death as the irreversible end of life must imply total brain failure, such that neither breathing, nor circulation is possible any more.³²⁷.

³²⁷. Aruna ramchandra Shanbaug v UOI, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265].

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 47] "Animal".

The word "animal" denotes any living creature, other than a human being.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 48] "Vessel".

The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

COMMENT—

The word "vessel" has been defined in [section 48 of the Indian Penal Code](#) to denote anything made for the conveyance by water of human beings or of property. The train compartment is not a building, tent or vessel used as a human building neither a place for worship nor a place used for the custody of property.^{328.}

^{328.} *P Balaraman v The State*, [1991 Cr LJ 166](#) (Mad).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 49] "Year." "Month."

Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

COMMENT—

A person sentenced to imprisonment for the space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect.³²⁹ The day on which a sentence is passed on a prisoner is calculated as a whole day.

³²⁹. *Migotti v Colvill*, (1879) 4 CPD 233 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 50] "Section".

The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 51] "Oath."

The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

COMMENT—

An oath is a religious asseveration, by which a person renounces the mercy, and imprecates the vengeance of heaven, if he does not speak the truth.³³⁰ The form of oath differs according to the religious persuasion of the swearer. A Christian swears on the Bible, a Jew upon the Pentateuch, a Mahomedan upon the Koran, and a Hindu on the Gita. A Hindu or a Mahomedan has the statutory right to be affirmed instead of taking an oath.

^{330.} *White v White*, (1786) 1 Leach 430; *U Vali Basha v Mohd. Bashu*, (2008) Cr LJ 1011 (Karn).

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 52] "Good faith".

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

COMMENT—

The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. See the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable care" is explained as "such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act".³³¹ The element of honesty which is introduced by the definition prescribed by the [General Clauses Act](#) is not introduced by the definition of the [Penal Code](#); and we are governed by the definition prescribed by section 52 of that Code.³³² Nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not by reason of mistake of law, in good faith, believes himself to be justified by law, in doing it.³³³

Some parents made poisonous propaganda against an educational institution. The court said that this could not have been done by them in good faith. Hence, the exception to section 499 was not attracted. The complaint of defamation against them could not be quashed.³³⁴

[s 52.1] Burden of proof.—

The burden is on the accused to prove this fact. Whether a person took due care and attention before he made the imputation is a matter most often within the personal knowledge of that person himself. The accused must prove that he made due enquiries before he published the imputation. It is not enough to say that he made a formal enquiry in a slipshod manner. The words 'due care and attention' imply that the accused must have made the enquiry in a reasonable manner with all circumspection. It is true that the accused is not bound to prove that the enquiry made by him was fool-proof or without the possibility of any error or chance of mistake. However, the accused must show that he got the information from proper source and he had reasonable grounds to

believe the truth of the statement he made. The accused must prove by preponderance of probability that there was good faith on his part. The accused also should show that there was no malice on his part, that is to say, that there was no ill-will or spite towards the person against whom he made the imputation. What must ultimately be decided is the honesty of the accused in publishing the words complained of. So also the accused are not entitled to exception 9 of [section 499, IPC, 1860](#) merely on the reason that the publications were not made in good faith.³³⁵.

Good faith is a question of fact to be considered and decided on the facts of each case. [Section 52 of the Penal Code](#) emphasizes due care and attention in relation to the good faith. In the [General Clauses Act](#) emphasis is laid on honesty.³³⁶ The meaning of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. So, before a person proposes to make an imputation, he must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation. If he does not do so he cannot claim that what he did was bona fide i.e. done in good faith. Thus, a contemner, if he is to establish "good faith" has to say that he conducted a reasonable and proper enquiry before making an imputation.³³⁷ The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. 'Good faith' requires not logical infallibility but due care and attention.³³⁸.

331. *Re: SK Sundaram*, [AIR 2001 SC 2374 \[LNIND 2000 KER 575\]](#) : [\(2001\) 2 SCC 171 \[LNIND 2000 SC 1889\]](#) .

332. *Harbhajan Singh v State of Punjab*, [AIR 1966 SC 97 \[LNIND 1965 SC 65\]](#) : [1966 Cr LJ 82](#) .

333. [Section 79 IPC, 1860](#).

334. *Dogar Singh v Shobha Gupta*, [1998 Cr LJ 1541 \(P&H\)](#).

335. *Damodra Shenoi v Public Prosecutor, Ernakulam*, [1989 Cr LJ 2398](#) at 2400 (Ker). A declaration in newspapers 2½ months; after selling land by registered sale deed that the sale was under compulsion was held to be not made in good faith. The defence of exception 9 to section 499 (defamation) was not available. *P Swaminathan v Lakshmanan*, [1992 Cr LJ 990 \(Mad\)](#).

336. *R K Mohammed Ubaidullah v Hajee C Abdul Wahab*, [AIR 2001 SC 1658 \[LNIND 2000 SC 924\]](#) : [\(2000\) 6 SCC 402 \[LNIND 2000 SC 924\]](#) See *Assistant Commissioner Anti Evasion Commercial Taxes Bharatpur v Amtek India Ltd*, [\(2007\) 11 SCC 407 \[LNIND 2007 SC 210\]](#) : [JT 2007 \(4\) SC 297 \[LNIND 2007 SC 210\]](#) for definition of "good faith" in various enactments.

337. *In the matter of R Karuppan*, [2004 Cr LJ 4284 \(Mad\)\(FB\)](#).

338. *State of Orissa v Bhagaban Barik*, [AIR 1987 SC 1265 \[LNIND 1987 SC 366\]](#) : [\(1987\) 2 SCC 498 \[LNIND 1987 SC 366\]](#) ; *Chaman Lal v State of Punjab*, [AIR 1970 SC 1372 \[LNIND 1970 SC 106\]](#) : [1970 Cr LJ 1266](#) .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

339. [s 52A] "Harbour."

Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

COMMENT—

There are two hurdles in the way to adopt the [IPC, 1860](#) definition of the word "harbour" as for TADA. First is that TADA permits reliance to be made only on the definitions included in the Procedure Code and not on the definitions in the [IPC, 1860](#). Second is, the word "harbour" as such has not been used in the Procedure Code and hence, the question of side-stepping to [Penal Code](#) definitions does not arise. [Sections 136](#) and [312](#) of [IPC, 1860](#) are the provisions incorporating two of the offences involving "harbour" in which the common words used are "whoever knowing or having reason to believe. Another offence in the [Penal Code](#) involving "harbour" is section 157 wherein also the words "whoever harbours knowing that such person etc." are available. It was contended that *mens rea* is explicitly indicated in the said provisions in the [Penal Code](#) whereas no such indication is made in section 3(4) of TADA and therefore, the element of *mens rea* must be deemed to have been excluded from the scope of section 3(4) of TADA. The word "harbours" used in TADA must be understood in its ordinary meaning as for penal provisions.³⁴⁰

^{339.} Ins. by Act 8 of 1942, section 2 (w.e.f. 14-2-1942).

^{340.} *Kalpnath Rai v State*, [AIR 1998 SC 201 \[LNIND 1997 SC 1396\]](#) : (1997) 8 SCC 732 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

339. [s 52A] "Harbour."

Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

COMMENT—

There are two hurdles in the way to adopt the [IPC, 1860](#) definition of the word "harbour" as for TADA. First is that TADA permits reliance to be made only on the definitions included in the Procedure Code and not on the definitions in the [IPC, 1860](#). Second is, the word "harbour" as such has not been used in the Procedure Code and hence, the question of side-stepping to [Penal Code](#) definitions does not arise. [Sections 136](#) and [312](#) of [IPC, 1860](#) are the provisions incorporating two of the offences involving "harbour" in which the common words used are "whoever knowing or having reason to believe. Another offence in the [Penal Code](#) involving "harbour" is section 157 wherein also the words "whoever harbours knowing that such person etc." are available. It was contended that *mens rea* is explicitly indicated in the said provisions in the [Penal Code](#) whereas no such indication is made in section 3(4) of TADA and therefore, the element of *mens rea* must be deemed to have been excluded from the scope of section 3(4) of TADA. The word "harbours" used in TADA must be understood in its ordinary meaning as for penal provisions.³⁴⁰

^{339.} Ins. by Act 8 of 1942, section 2 (w.e.f. 14-2-1942).

^{340.} *Kalpnath Rai v State*, [AIR 1998 SC 201 \[LNIND 1997 SC 1396\]](#) : (1997) 8 SCC 732 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 53] "Punishments".

The punishments to which offenders are liable under the provisions of this Code are—

First.—Death;

- 1. [Secondly.—Imprisonment for life;]**
- 2. [***]**

Fourthly.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

COMMENT—

The object of punishment in the scheme of modern social defence is correction of the wrongdoer and not wrecking gratuitous punitive vengeance on the criminal. Some attempts have been made to modernise our penal system through piecemeal legislation at best for the first offenders, the children and the juvenile delinquents example the [Probation of Offenders Act 1958](#), the [Juvenile Justice \(Care and Protection of Children\) Act 2000](#), [Juvenile Justice \(Care and Protection of Children\) Act, 2015](#) etc. In the [Indian Penal Code](#), there is no scope for individualising the punishment; rather these five forms of punishment have to be doled out to the offenders irrespective of their psycho-social problems and needs of individual offenders. Commenting on this unhappy aspect of our penal system *Krishna iyer, J.* observed in *Shivaji's case*³.

Two men in their twenties thus stand convicted of murder and have to suffer imprisonment for life because the punitive strategy of our [Penal Code](#) does not sufficiently reflect the modern trends in correctional treatment and personalised sentencing. When accused persons are of tender age then even in a murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation.

In *Inder Singh's case*⁴. the Supreme Court issued directions to the State Government to see that the young accused of the case are not given any degrading work and they are given the benefit of liberal parole every year if their behaviour shows responsibility and trustworthiness. Moreover, the Sessions Judge was directed to make jail visits to ensure compliance with these directions.

[s 53.1] Object of Punishment.—

One of the prime objectives of criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and

the manner in which the crime is done.⁵ Undue sympathy by means of imposing inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.⁶ The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.⁷ The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal.⁸

[s 53.2] Different Approaches.—

Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. On the commission of crime, three types of reactions may generate; the traditional reaction of universal nature which is termed as punitive approach. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults. The other approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment, while the third is the preventive approach, which seeks to eliminate those conditions from the society, which were responsible for crime causation. Under the punitive approach, the rationalisation of punishment is based on retributive and utilitarian theories. Deterrent theory, which is also part of the punitive approach, proceeds on the basis that the punishment should act as a deterrent not only to the offender, but also to others in the community. The therapeutic approach aims at curing the criminal tendencies, which were the product of a diseased psychology. Therapeutic approach has since been treated as an effective method of punishment, which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, may be a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that this Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy.⁹ Imposing a hard punishment on the accused serves a limited purpose, but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard.¹⁰ In *Dhannajoy Chatterjee v State of WB*,¹¹ the Supreme Court has observed that shockingly large number of criminals go unpunished, thereby increasingly encouraging the criminals and ultimately making justice suffer by weakening the system's credibility. Realising that it is not the brutality of punishment but its surety that serves as a greater deterrent, our Supreme Court held

that a barbaric crime does not have to be visited with a barbaric penalty such as public hanging which will be clearly violative of Article 21 of the Constitution.¹² With regards the question of punishment, it should be noted that punishment in one matter cannot be the guiding factor for punishment in another. Punishment has a co-relation with facts and in each case where punishment is imposed, the same must be the resultant effect of the acts complained of. More serious the violation, more severe is the punishment and that has been the accepted norm, in matters though, however, within the prescribed limits.¹³

[s 53.3] Reformation Theory.—

The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being.¹⁴ Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good but circumstances transform him into a criminal. The aphorism that "if every saint has a past every sinner has a future" is a tested philosophy concerning human life. VR Krishna Iyer, J, has taken pains to ornately fresco the reformative profile of the principles of sentencing in *Mohammad Giasuddin v State of AP*.¹⁵ Reformation should hence be the dominant objective of a punishment and during incarceration, every effort should be made to recreate the good man out of convicted prisoner. An assurance to him that his hard labour would eventually snowball into a handsome saving for his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigours of hard labour during the period of his jail life. Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence, they serve a public purpose.¹⁶ Punishment is also to reform such wrongdoers not to commit such offence in future.¹⁷

[s 53.4] Deterrence.—

Deterrence is one of the vital considerations of punishment. Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences. Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence.¹⁸ Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence built in the sentencing system.¹⁹ For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. However, an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence.²⁰ Protection of society and deterring the criminal is the avowed object of law and is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crimes like rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. To show mercy in the case of such a heinous crime would be a travesty of justice.²¹ To give a lesser punishment to the appellants would be to render the justice system of this country suspect. The common man will lose

faith in the Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.²² Punishment to an accused in criminal jurisprudence is not merely to punish the wrongdoer but also to strike warning to those who are in the same sphere of crime or to those intending to join in such crime.²³

[s 53.5] Principles of sentencing.—

Sentencing is an important task in the matters of crime. There is no straitjacket formula for sentencing an accused on proof of crime. In practice, there is much variance in the matter of sentencing. In many countries, there are laws prescribing sentencing guidelines, but there is no statutory sentencing policy in India.²⁴ The Indian Penal Code provides discretion to Indian Judges while awarding the sentence.²⁵ Courts have wide discretion in awarding sentence within the statutory limits.²⁶ The Courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction.²⁷ There are many philosophies behind sentencing justifying penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Anyone or a combination thereof can be the goal of sentencing. However, when it comes to sentencing a person for committing a heinous crime, the deterrence theory as a rationale for punishing the offender becomes more relevant. In such cases, the role of mercy, forgiveness and compassion becomes secondary and while determining the quantum of sentence, discretion lies with the Court. While exercising such a discretion, the Court has to govern itself by reason and fair play, and discretion is not to be exercised according to whim and caprice. It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. While considering as to what would be the appropriate quantum of imprisonment, the Court is empowered to take into consideration mitigating circumstances, as well as aggravating circumstances.²⁸ What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.²⁹ The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice, sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.³⁰ Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.³¹ The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence.

As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The Court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.³². Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.³³. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence keeping in mind the nature of the offence and the manner in which it was executed or committed etc. Thus, it is evident that Criminal Law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society.³⁴. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court.³⁵.

[s 53.6] Factors to be considered.—

These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without pre-meditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;

(j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(k) Number of other criminal cases pending against the accused;

(l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the Court. The endeavour of the Court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.³⁶ The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.³⁷

[s 53.7] Judicial Discretion:³⁸ Cases.—

A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences, only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly.³⁹ In case where for an offence, maximum imprisonment is prescribed and there is no provision for minimum imprisonment, the Court can exercise wide discretion imposing any imprisonment which may be from one day (or even till the rising of the court) to ten years/life.⁴⁰ However, the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender.⁴¹ Though punishment is the discretion of the Court, yet it must be exercised judicially and where circumstances call for a deterrent punishment, it ought to be awarded in an appropriate case.⁴² Thus where the accused, a young man of 22 committed multiple murders for sheer gain in a most cruel, callous and fiendish fashion, there was no way to show him any mercy as it was rarest of the rare cases where a sentence of death was fully justified.⁴³ In exercising this discretion, the Court must consider the gravity of the offence, the mitigating or the extenuating circumstances of the case which may justify the award of the lesser or maximum sentence.⁴⁴ Where the accused was a youth of 19, the Supreme Court while upholding conviction under section 304-Part I, [Indian Penal Code, 1860](#), ([IPC, 1860](#)) reduced his sentence to the period already undergone which was 18 and a half months in the instant case. The accused, a Government servant, who will lose pensionary benefits due to conviction, deserves to be treated leniently.

The Supreme Court has laid down that in cases of death in custody on account of third degree methods, deterrent punishment should be awarded.⁴⁵ Where certain police officials, who took a man illegally in their custody and gave him beating due to which he

died, were convicted under section 342, it was held that the facts that one of the accused was recipient of a medal from the President for saving a life, was awarded Rs. 5,000 by the State Government also and was suffering from T.B. and the other accused had acted on the direction of his superior, were not mitigating circumstances and the accused were liable to be punished with the maximum sentence.⁴⁶

Where due to dire poverty the accused killed his ailing wife, as he could not provide money for her operation and thereafter killed his two children, as they would be neglected after their mother's death, it was held the accused deserved to be awarded life imprisonment and not capital punishment.⁴⁷ Where the murder in question showed signs of ruthless, unrelenting and determined vindictiveness and though the accused was 55 at the time of occurrence and 70 at the time of this appeal, the Supreme Court did not think it necessary to modify his sentence of life imprisonment.⁴⁸ Similarly, where murders were committed for gain, the Supreme Court refused to interfere with death sentence only because the condemned prisoners were very young and their wives and children and aged parents were dependent on them. Such considerations, the Court said, are present in most cases.⁴⁹ Where, for the offence of dacoity under section 395, the trial Court awarded three years' R.I., the High Court acquitted the offenders, but the Supreme Court restored the conviction after a long gap during which they got married and had resumed normal life, the period already undergone was considered to be sufficient, but a fine of Rs. 3,000 was imposed on each of them.⁵⁰

Where a conviction under [section 161, IPC, 1860](#) read with [section 5\(2\) of the Prevention of Corruption Act, 1988](#) was confirmed, the Gujarat High Court modified the sentence of R.I. for one year and ordered that the appellant shall undergo sentence of R.I. for six months only. This was done in view of his age of 60 years and a number of illnesses he was suffering from.⁵¹ The accused had been out of job for nearly 16 years and had undergone the trial for a number of years. He was 65 years old but had received no pension and had a large family to maintain. Hence, the Supreme Court while confirming the conviction, reduced the sentence of one year R.I. each under section 161 and the [Prevention of Corruption Act](#) to 15 days R.I. on each count. The sentence of fine was however confirmed.⁵² Where the accused had accepted a very small amount of Rs. 30 as bribe about 16 years back and underwent the agony of trial for a long time and had to support his family, he had been in jail for some time during trial, considering these facts his sentence of imprisonment was reduced from three months R.I. to the period already undergone.⁵³

Imposition of proper and appropriate sentence is bounded obligation and duty of the Court. The endeavour of the Court must be to ensure that the accused received appropriate sentence. The sentence must be accorded to the gravity of the offence.⁵⁴

[s 53.8] Minimum Sentence.—

In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons, which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated.⁵⁵ Mere absence of provisions for minimum sentence is no reason or justification to treat the offence under the Act (NDPS) as any less serious.⁵⁶

For the offence of murder, minimum sentence is 'life imprisonment'. Thus, the High Court cannot modify the sentence of life imprisonment awarded by the Trial Court to the one already undergone.⁵⁷

To the five kinds of punishments in the section, two more were added by subsequent enactments, viz., whipping (now abolished) and detention in reformatories.

1. Death.—Death punishment is awarded for murder in rarest of the rare cases.⁵⁸ It may be awarded as punishment for the following offences:—

- (1) Waging war against the Government of India (section 121).
- (2) Abetting mutiny actually committed (section 132).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (section 194).
- (4) Threatening or inducing any person to give false evidence- if innocent person is convicted and sentenced in consequence of such false evidence, with death (195A-Part II)
- (5) Murder (section 302).
- (6) Abetment of suicide of a minor, or an insane or an intoxicated person (section 305).
- (7) Attempt to murder by life convicts (section 307-PartII)
- (8) Kidnapping for ransom, etc. (section 364A)
- (9) Causing death or resulting in persistent vegetative state of rape victim (section 376A)
- (10) Repeat offenders of offences punishable under section 376 or section 376A or section 376D (section 376E)
- (11) Dacoity accompanied with murder (section 396).
- (12) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (section 307). [For the detailed discussion on Death Penalty See Comments under [section 302 IPC](#)].

In addition to this, Death penalty can be imposed by virtue of [section 34](#), [149](#),[109](#) and [120B](#) of [IPC](#).

2. Imprisonment for life is now substituted for transportation. "Imprisonment for life" in the Code means "rigorous imprisonment for life" and not "simple imprisonment for life".⁵⁹

3. Imprisonment.—Imprisonment is of two kinds: (a) rigorous and (b) simple. In the case of rigorous imprisonment, the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting firewood, bowing wool, etc. In the case of simple imprisonment, the offender is confined to jail and is not put to any kind of work. Imposition of hard labour on prisoners undergoing rigorous imprisonment has been held to be legal.⁶⁰

The minimum term of imprisonment, however, is fixed in the following two cases: (1) If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, he is punished with imprisonment of not less than seven years (section 397).

(2) If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he is punished with imprisonment of not less than seven years (section 398).

The [Criminal Law \(Amendment\) Act 2013](#) [Act No. 13 of 2013 w.e.f 2 April 2013] provides minimum punishment for the following offences:

- (1) Public servant disobeying direction under law- Imprisonment for a term, which shall not be less than six months. (section 166A)
- (2) Voluntarily causing grievous hurt by use of acid, etc.- Imprisonment for not less than ten years. (section 326A)
- (3) Outraging the modesty of a woman- Imprisonment of either description for a term which shall not be less than one year (section 354)
- (4) Assault or use of criminal force to woman with intent to disrobe- Imprisonment of not less than three years. (section 354B)
- (5) Voyeurism- Imprisonment of not less than one year. (section 354C)
- (6) Trafficking of person- Seven years [section 370(2)], ten years [sections 370(3), (4)], 14 years [section 370(5)],
- (7) Exploitation of a trafficked child- Imprisonment of not less than five years but which may extend to seven years and with fine. (section 370A)
- (8) Rape- Seven years [section 376(1)], ten years [section 376(2)].
- (9) Causing death or resulting in persistent vegetative state of victim- Imprisonment for a term which shall not be less than 20 years (section 376A)
- (10) Sexual intercourse by husband upon his wife during separation- Imprisonment of either description for a term which shall not be less than two years (section 376B)
- (11) Sexual intercourse by a person in authority- Imprisonment of either description for a term which shall not be less than five years. (section 376C)
- (12) Gang rape- Imprisonment for a term, which shall not be less than 20 years. (section 376D).

The Criminal Law (Amendment) Act, 2018 has further amended the [Indian Penal Code 1860](#). The Criminal Law (Amendment) Act, 2018 has increased the minimum sentence in section 376(1) from seven years to ten years. The 2018 Amendment Act has inserted sections 376AB, 376DA and 376DB which provide for enhanced punishment in certain aggravated forms of rape. Refer Chapter XVI *infra*.

An offender is punished with rigorous imprisonment without the alternative of simple imprisonment, in the cases of—

- (1) Giving or fabricating false evidence with intent to procure conviction of an offence, which is capital by this Code (section 194).
- (2) Rape (sections 376, 376A, 376AB, 376C, 376D, 376DA, 376DB and 376E)
- (3) House-trespass in order to the commission of an offence punishable with death (section 449).

The following offences are punishable with simple imprisonment only:—

- (1) Public servant unlawfully engaging in trade; or unlawfully buying or bidding for property (sections 168, 169).
- (2) A person absconding to avoid service of summons or other proceedings from a public servant or preventing service of summons or other proceedings, or preventing

publication thereof; or not attending in obedience to an order from a public servant (sections 172, 173, 174).

(3) Intentional omission to produce a document to a public servant by a person legally bound to produce such document; or intentional omission to give notice or information to a public servant by a person legally bound to give; or intentional omission to assist a public servant when bound by law to give assistance (sections 175, 176, 187).

(4) Refusing oath when duly required to take oath by a public servant; or refusing to answer a public servant authorised to question or refusing to sign any statement made by a person himself before a public servant (sections 178, 179, 180).

(5) Disobedience to an order duly promulgated by a public servant if such disobedience causes obstruction, annoyance, or injury (section 188).

(6) Escape from confinement negligently suffered by a public servant; or negligent omission to apprehend, or negligent sufferance of escape, on the part of a public servant in cases not otherwise provided for (sections 223, 225-A).

(7) Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (section 228).

(8) Continuance of nuisance after injunction to discontinue (section 291).

(9) Wrongful restraint (section 341).

(10) Defamation: printing or selling defamatory matter known to be so (sections 500, 501, 502).

(11) Uttering any word, or making any sound or gesture, with an intention to insult the modesty of a woman (section 509).

(12) Misconduct in a public place by a drunken person (section 510).⁶¹

[s 53.9] Imprisonment for the remainder of the Accused's natural life.—

As per the [Criminal Law \(Amendment\) Act, 2013](#),⁶² the punishment for rape (section 376) is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, *which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine*. In sections 370, 376(A), 376(D), 376(E) it is also specifically mentioned that 'Life' shall mean imprisonment for the remainder of that person's natural life. The Criminal Law (Amendment) Act, 2018 has increased the minimum sentence in section 376(1) from seven years to ten years as well as inserted sections 376AB, 376DA and 376DB which provide for enhanced punishment in certain aggravated forms of rape. Refer Chapter XVI *infra*.

Spending 13 and half years in jail does not mean that the petitioner has undergone a sentence for life.⁶³

4. Forfeiture.—The punishment of absolute forfeiture of all property of the offender is now abolished. [Sections 61 and 62](#) of the [IPC, 1860](#) dealing with such forfeiture are repealed by Act XVI of 1921.

There are, however, three offences in which the offender is liable to forfeiture of specific property. They are sections 126, 127 and 169 of the Code.⁶⁴

5. Fine.—Fine is the only punishment in the following cases:—

- (1) A person in charge of a merchant vessel, negligently allowing a deserter from the Army or Navy or Air Force to obtain concealment in such vessel, is liable to a fine not exceeding Rs. 500 (section 137).
- (2) The owner or occupier of land on which a riot is committed or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with a fine not exceeding Rs. 1,000 (section 154).
- (3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (section 155).
- (4) The agent or manager of such person under like circumstances (section 156).
- (5) False statements in connection with an election (section 171-G).
- (6) Illegal payments in connection with an election (section 171-H).
- (7) Failure to keep election accounts (section 171-I).
- (8) Voluntarily vitiating the atmosphere so as to render it noxious to the public health, is punishable with a fine up to Rs. 500 (section 278).
- (9) Obstructing a public way or line of navigation, is punishable with a fine not exceeding Rs. 200 (section 283).
- (10) Committing of a public nuisance not otherwise punishable is punishable with a fine not exceeding Rs. 200 (section 290).
- (11) Publication of a proposal regarding a lottery, is punishable with a fine not exceeding Rs. 1,000 (section 294-A).

Where the accused partners of a firm were acquitted on a charge under section 420 of making substantial gains for themselves and an appeal against their acquittal was decided against them 15 years after the acquittal, fine and not imprisonment was considered proper punishment.⁶⁵ Where the murder accused remained in prison for sometime and was on bail for 13 years, he was not committed to prison; a fine of Rs. 50,000 in addition to the imprisonment already undergone was imposed, he being a young man.⁶⁶ Where the accused along with others convicted under section 323 for six months' imprisonment had already undergone an imprisonment of one year and, looking at his good conduct inside jail and lest he should lose his service, he was given the benefit of [section 3 of the Probation of Offenders Act 1958](#) so to assure that his conviction should not affect his service.⁶⁷

[s 53.10] Rigorous and Simple imprisonment.—

[Section 53 of the IPC, 1860](#) defines five kinds of punishment which includes punishment for life and two other kinds of imprisonment, i.e., rigorous and simple imprisonment. Rigorous imprisonment is one which is required by law to be completed with hard labour. There are principally two categories of prisoners: (1) under trial prisoners and (2) convicted prisoners (Besides them there are those detained as preventive measure, and those undergoing detention for default of payment of fine). A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. However, the Jail officer who requires a prisoner

sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the Court.⁶⁸. Thus, while a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour. The under trials are not required to work in Jail.⁶⁹. [Section 60 of the Indian Penal Code](#) confers power on a sentencing Court to direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple." The sentence of "imprisonment for life" tagged along with a number of offences delineated in the [IPC, 1860](#) is interpreted as "rigorous imprisonment for life" and not simple imprisonment.⁷⁰.

Supreme Court Guidelines regarding employment of prisoners and wages.—

- (1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.
- (2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.
- (3) It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.
- (4) Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Governments to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.
- (5) We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

[*State of Gujarat v Hon'ble High Court of Gujarat.*⁷¹:

[s 53.11] Rights of Convicts.—

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the [Constitution](#) guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by [Article 21 of the Constitution](#) that he shall not be deprived of his life or personal liberty except according to procedure established by law.⁷².

[s 53.12] Cases of Leniency.—

In a given situation, where it is demonstrated that during the pendency of the proceedings the accused has undergone a lot of suffering such as where the accused was in custody or for that matter, in situations where the accused is suspended and is on a subsistence allowance or where as a result of the prosecution the consequences have been so disastrous that the accused has suffered virtual ruination, these aspects alone would be valid justification on which a plea for leniency could be based. On the other hand, one needs to bear in mind that the consequences of criminal acts catch up with the accused particularly when the crimes are against the society the ethical concept of forgive and forget merely because the incident took place in the distant past will not hold good in a Court of Law.⁷³ Where there was acquittal in the same year in which the crime was committed but the acquittal was reversed after eight years and conviction and jail terms were awarded and appeal against this order was disposed of in the 20th year of the crime, the Supreme Court reduced the sentence to the period already undergone and imposed a fine which if not paid, the original sentence was to be restored.⁷⁴ Where the guilt of the accused under sections 406 and 120-B were established beyond all reasonable doubt, the Supreme Court did not interfere with their conviction. However, in view of the fact that the accused had undergone proceedings for a period of two decades, their sentence was reduced to one already undergone.⁷⁵ Where the accused was convicted for criminal conspiracy and breach of trust and about 48 years had elapsed since the accused was charged for the offences, keeping in view his advanced age he was sentenced to imprisonment till rising of the Court with a fine of Rs. 5,000.⁷⁶ Where a man of 20 was convicted under section 324 and sentenced to undergo imprisonment for four months whereas he had already undergone imprisonment of one year and two months, his sentence was reduced to one already undergone.⁷⁷ Where the accused were convicted under section 326 for causing grievous hurt to the victim, considering the lapse of about six years from the incident, accused not being habitual criminals or previous convicts and there being no misuse of liberty during bail, the sentence was reduced to the period already undergone with a fine of Rs. 5,000 each.⁷⁸ Where the accused convicted and sentenced under sections 379 and 411, were found to be the sole earning member of their families and they had no past criminal records, the Court directed that one year's rigorous imprisonment instead of two would meet the ends of justice.⁷⁹ Where the accused seeing his wife in a compromising position with a man assaulted both of them as a result of grave and sudden provocation resulting in the death of both, his conviction under section 304, Part II was upheld but the sentence of five years' R.I. was reduced to one years' R.I. with the recommendation that the State Government might remit such a portion of sentence as it deemed fit and proper.⁸⁰

[s 53.13] Offences against women.—

Where the accused had outraged the modesty of a woman, his conviction under section 354 was upheld but considering the lapse of eight years, it was not found desirable to send him back to jail to be in midst of hardened criminals. He was sentenced to sit in the Court of Judicial Magistrate First Class for five days continuously, during the entire working hours.⁸¹ Where the accused, in his late fifties, betraying the confidence of the prosecutrix committed rape on her, it was held that he deserved no sympathy. However, as the accused remained in jail for eight years, the Court took a liberal view and considering his age and helplessness sentenced him to the period for which he had already been in jail.⁸² Where the victim of rape belonged to a tribal (Bhilla) community and the act of the accused did not cast any serious stigma on the girl and she was married to a different person sometime after the incident by her father, it was held that sentence much below the minimum sentence prescribed could be inflicted on the accused.⁸³ Where the conviction and sentence of the accused

husband to rigorous imprisonment for six months under section 498-A was substituted with a fine of Rs. 6,000, taking into consideration the age, occupation and family conditions of the husband, it was held that though the appellate Court was justified in substituting the jail sentence, the Court ought not have awarded a modest fine. The fine was raised to Rs. 30,000.⁸⁴. Where a person was married in childhood and was subjected to a second marriage under the pressure exerted by his parents as well as the woman who became his second wife, it was held that a lesser sentence of six months instead two years' R.I. and a fine of Rs. 2,000 to the accused husband and imprisonment till the rising of the Court and a fine of Rs. 1,500 to the accused parents and the second wife in place of the original sentence of six months' R.I. and a fine of Rs. 1,000 would meet the ends of justice.⁸⁵.

[s 53.14] Conversion of death sentence into life imprisonment.—

Where the accused, being dissatisfied with the partition of family property, committed ghastly murders of four members of his family and there was no evidence that the crime was pre-planned and the circumstances indicated that he was under the influence of some kind of extreme mental or emotional disturbance which impaired his capacity to appreciate criminality of his conduct, death sentence awarded to him was converted into imprisonment for life.⁸⁶. Where three accused persons conspired to kill the wife and two minor children of one of the accused but one of the accused was not a party to actual commission of murder and the part played by the other accused was not definitely proved, the sentence of death imposed on both the accused was commuted to that of life imprisonment. The death sentence of the main accused, the father, was not interfered with.⁸⁷. Where the accused shot his two younger brothers dead on a petty quarrel, as there was no pre-plan to commit murder, the death sentence awarded to the accused was altered into life imprisonment with a fine of Rs. 30,000.⁸⁸.

[s 53.15] Award of compensation.—

Power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system.⁸⁹. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other.⁹⁰.

In the BMW Case, the Supreme Court directed the accused to pay an amount of Rs. 50 lakh to the Union of India which will be utilized within for providing compensation to the victims of motor accidents, where the vehicles owner, driver etc. could not be traced, like victims of hit and run cases.⁹¹. Where a doctor was convicted for an attempt to cause miscarriage and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs. 5,000, the sentence of imprisonment was found to be excessive and was set aside but the fine was enhanced to Rs. 15,000 out of which, if realised Rs. 10,000 was to be paid to the mother of the deceased for the maintenance of the children of the deceased shown to be living with her.⁹². The accused, an agriculturist, assaulted his sister's husband with a knife giving a blow in his abdomen resulting in death. The accused was convicted and sentenced to imprisonment for life under section 302. However, on overall appraisal of material on record and the accused having no criminal antecedents, his conviction under section 302 was set aside and he

was convicted under section 304 and directed to undergo 10 years' R.I. But on special facts of the case an option was given to the accused to pay a fine of Rs. 40,000 in all and in default to undergo R.I. for seven years and, if the fine was paid within 12 weeks, jail sentence was to be reduced to three years' R.I. Out of the fine, if paid, Rs. 10,000 were to be given to the mother of the deceased and Rs. 30,000 utilised for the benefit of the three minor children of the deceased in sum of Rs. 10,000 each.⁹³ Where the accused caused a serious injury in the abdomen of a man and was convicted under section 307 but considering that he had a widowed mother and two children and was willing to compensate the victim substantially, sentence imposed upon him was modified into one of fine in the way of compensation of Rs. One lakh.⁹⁴ Where in a case under section 304, Part II the accused remained in custody for over a year after conviction by the High Court and also for sometime during investigation, the Apex Court reduced the sentence to the period already undergone but imposed a fine of Rs. 20,000 payable to the widow of the deceased as compensation.⁹⁵

[s 53.16] Reform and rehabilitation.—

Where the accused caused several incised injuries to a man, he was convicted under section 326 but as there was no previous enmity between the accused and the injured person and it was the first offence committed by him, besides 14 years had lapsed since the commission of the offence, he was given an opportunity to reform and rehabilitate in society and his sentence was reduced to the period already undergone.⁹⁶ Where the accused convicted under section 302 was only 15 years old at the time of offence and at the time of appeal he was over 30, he could not be sent to approved school or jail. His conviction was upheld but the sentence was quashed.⁹⁷

[s 53.17] Separate trial for child offender.—

One of the members of an unlawful assembly was of 13 years at the time of the incident. His trial was conducted along with other members who were not children. This was held to be illegal. The plea of child offender was not raised before the trial court or the High Court. The Supreme Court, therefore, confirmed the conviction but set aside the sentence imposed on him.⁹⁸

[s 53.18] Cases of no leniency.—

In a multiple murder case, it was argued that the accused had donated to the social organisations and that he was not a hardened criminal and not a menace to the society and at any rate by wiping him out the crime cannot be wiped out. The Supreme Court observed that the accused was involved in "organised criminal activity" and he had acquired social status through crime. The accused had no regard for the value of human life. It was held that there were no mitigating circumstances. The main cause of his conviction was illicit arrack business and brothel. The fact that for this reason he became the victim of police cruelty was also considered to be not a mitigating circumstance.⁹⁹ In a double murder case, the accused was awarded death sentence but the execution was postponed. It was held that pain, agony and horror suffered by the prisoner after he was informed about execution was no ground for substituting death sentence.¹⁰⁰ Where the accused constructed a water tank which collapsed due to use of low quality material resulting in the death of several persons and the accused was sentenced to the maximum of two years of R.I. provided under section 304A, it

was held that the sentence could not be reduced merely because the matter was more than seven years old and that it would also be a grave injustice to the victims of the crime.¹⁰¹ Where the accused formed an unlawful assembly with the common object of killing three members of a family and one of the accused killed all the three on the spot one after the other in few minutes while others caught hold of the victims, the sentence of life imprisonment awarded to them under sections 302/149 was confirmed but the High Court observed that it was a fit case to award the maximum penalty of death sentence as the accused had acted like a butcher in a slaughter house.¹⁰² Where the accused were convicted under section 328 r/w. section 34 for robbing a simple innocent lady of 50 years by administering a stupefying drug through sugarcane juice, the Court refused to take a lenient view and reduce the sentence.¹⁰³ Where the accused committed a high-handed and broad daylight robbery on a public road, the Court declined to take a lenient view.¹⁰⁴ Voluntary intoxication by itself neither absolves the offender of the consequences of his act nor does it makes him liable for lesser offence.¹⁰⁵ The mere fact that the accused inflicted a single injury resulting in death is not sufficient in itself to convert the offence from one under sections 300–304, Part II.¹⁰⁶ When the victim has sustained a grievous injury on a vital portion of the body and the injury is life-threatening imposition of sentence of six days only which was the period already undergone by the accused in confinement is too lenient. However, as the parties have forgotten their differences and are living peacefully since 25 years, the Court taking into consideration the aggravating as well as mitigating factors under the facts of this case, imposed a sentence of six months' R.I. and a fine of Rs. 25,000/- against the accused.¹⁰⁷

[s 53.19] No leniency—Offences against women.—

Where the accused committed rape on a woman and killed her and it was found that he had behaved like an animal, it was held that it was not a fit case for showing leniency.¹⁰⁸ Where in a case of bride burning, the mother-in-law of the victim was sentenced to life imprisonment, the Supreme Court refused to show any leniency on the ground that the accused mother-in-law had remained in jail for more than a decade. The Court observed that it would be a travesty of justice if sympathy was shown when a cruel act like bride burning is committed. It is rather strange that the mother-in-law who herself is a woman should resort to killing another woman. Undue sympathy would be harmful to the cause of justice.¹⁰⁹ Where the accused himself killed his wife by burning and made his two children motherless, no lenient view could be taken on the ground that he had two children.¹¹⁰

[s 53.20] Enhancement of sentence.—

Where in a group clash due to old enmity, the accused killed ten persons of a community indiscriminately within a span of two hours and accused took the leading part, sentence of life imprisonment imposed upon him was enhanced to death penalty in the facts and circumstances of the case but life imprisonment awarded to the co-accused under sections 302/149 was confirmed.¹¹¹

[s 53.21] Guidelines for sentencing policy.—

Currently, India does not have a structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. The Courts will have to take into account certain principles while exercising their wide discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender.¹¹² Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.¹¹³ Law regulates social interests, arbitrates conflicting claims and demand. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the Courts are required to mould the sentencing system to meet the challenges.¹¹⁴

The principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence.¹¹⁵ An offence, which affects the morale of the society, should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature (abduction and rape of minor), particularly when Parliament itself has laid down minimum sentence.

One of the principles that the judiciary had all along kept in its mind that rape being a violation with violence of the private person of a woman causes mental scar, thus, not only a physical injury but also a deep sense of some deathless shame is also inflicted.¹¹⁶

The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.¹¹⁷

6. Whipping.—This form of punishment is now abolished.

7. Detention in reformatories.—Juvenile offenders sentenced to imprisonment may be sentenced to, and detained in, a Reformatory School for a period of three–seven years.¹¹⁸

[s 53.22] Detention during trial.—

Every confinement of a person and every restraint of the liberty of a free man is imprisonment. Thus, "imprisonment" would include under trial detention. "Under trial detention of a prisoner is undoubtedly an imprisonment."¹¹⁹

[s 53.23] Postponement of sentence.—

Where all the members of the family of the deceased were convicted and nobody was left to take care of his daughter, the Court upheld the sentence of the daughter's

grandmother but granted her six months' time to arrange for the daughter and then to surrender to serve the sentence.¹²⁰

[s 53.24] Community Service for Avoiding Jail Sentence.—

Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community which he owes. Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to him, especially in a case where because of one's action and inaction, human lives have been lost. In the facts and circumstances of the case, where six human lives were lost, Court felt to adopt this method would be good for the society rather than incarcerating the convict further in jail. The Court ordered to do community service for two years, which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, the convict will have to undergo simple imprisonment for two years.¹²¹

[s 53.25] Probation.—

[Probation of Offenders Act, 1958](#) ('PO Act') is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of the criminal law is more to reform the individual offender than to punish him. Broadly stated that the PO Act distinguishes offenders below 21 years of age and those above that age, and offenders who are not guilty of having committed an offence punishable with death or that imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the Court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the PO Act. In case of offender below the age of 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under sections 3 and 4 of the PO Act.¹²² The PO Act introduced a very basic change in the criminal law of the country. At the same time, Courts were also to be careful about the impact on the society consequent on letting offenders on probation. Indiscriminate application of provisions of the PO Act to anti-social and white collar offenders may have an adverse effect on the security of the society. Application of the PO Act is specifically barred in some cases.¹²³ Provisions of the PO Act should be applied having regard to the nature of offence and age, character and antecedents of the offender.¹²⁴

1. Subs. by Act 26 of 1955, section 117 and Sch, for "Secondly—Transportation" (w.e.f. 1-1-1956).

2. Clause "Thirdly" omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949).

3. *Shivaji v State of Maharashtra*, 1973 Cr LJ 1783 : AIR 1973 SC 2622 [LNIND 1973 SC 249] .
4. *Inder Singh v State*, AIR 1978 SC 1091 : 1978 Cr LJ 766 (SC), see also *Ram Prasad*, 1980 Cr LJ 10 : AIR 1980 SC 83 [LNIND 1979 SC 404] ; *Ashok Kumar*, 1980 Cr LJ 444 : AIR 1980 SC 636 [LNIND 1980 SC 36] .
5. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
6. *State of Punjab v Bawa Singh*, 2015 Cr LJ 1701 .
7. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] ; *State of MP v Ghanshyam Singh*, JT 2003 (Supp.1) SC 129 : 2003 (8) SCC 13 [LNIND 2003 SC 772] ; *Jashubha Bharatsinh Gohil v State of Gujarat*, JT 1994 (3) SC 250 [LNIND 1994 SC 415] : 1994 (4) SCC 353 [LNIND 1994 SC 415] .
8. *BG Goswami v Delhi Administration*, 1974 (3) SCC 85 [LNIND 1973 SC 194] : AIR 1973 SC 1457 [LNIND 1973 SC 194] : 1973 SCC (Cr) 796 1974 Cr LJ 243 .
9. *TK Gopal alias Gopi v State of Karnataka*, AIR 2000 SC 1669 [LNIND 2000 SC 826] : (2000) 6 SCC 168 [LNIND 2000 SC 826] ; *JT 2000 (6) SC 177* [LNIND 2000 SC 826] : 2000 Cr LJ 2286 : *Sunil Batra (I) v Delhi Administration*, AIR 1978 SC 1675 [LNIND 1978 SC 215] : (1978) 4 SCC 494 [LNIND 1978 SC 215] : 1979 (1) SCR 392 [LNIND 1978 SC 215] : (1978 Cr LJ 1741) ; *Sunil Batra (II) v Delhi Administration*, AIR 1980 SC 1579 : (1980) 3 SCC 488 [LNIND 1978 SC 215] : 1980 (2) SCR 557 [LNIND 1978 SC 215] : (1980 Cr LJ 1099) ; *Charles Sobraj v Superintendent, Central Jail, Tihar*, AIR 1978 SC 1514 [LNIND 1978 SC 218] : (1978 Cr LJ 1534) and *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 [LNIND 1981 SC 27] : AIR 1981 SC 746 [LNIND 1981 SC 27] : 1981 (2) SCR 516 [LNIND 1981 SC 27] : (1981 Cr LJ 306) etc.
10. *Karamjit Singh v State*, AIR 2000 SC 3467 [LNIND 2000 SC 707] : (2001) 9 SCC 161 [LNIND 2000 SC 707] .
11. *Dhannajoy Chatterjee v State of WB*, (1994) (2) SCC 220 [LNIND 1994 SC 34] : 1994 (3) RCR (Cr) 359 (SC) .
12. *Attorney General of India v Lachma Devi*, 1986 Cr LJ 364 : AIR 1986 SC 467 .
13. *Murray and Co v Ashok Kr Newatia*, AIR 2000 SC 833 [LNIND 2000 SC 159] : (2000) 2 SCC 367 [LNIND 2000 SC 159] .
14. *Karamjit Singh v State*, AIR 2000 SC 3467 [LNIND 2000 SC 707] : (2001) 9 SCC 161 [LNIND 2000 SC 707] .
15. *Mohammad Giasuddin v State of AP*, (1977) 3 SCC 287 [LNIND 1977 SC 211] : AIR 1977 SC 1926 [LNIND 1977 SC 211] .
16. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] : JT 1998 (6) SC 530 : 1998 Cr LJ 4561 .
17. *Gurdeep Singh alias Deep v State*, AIR 1999 SC 3646 [LNIND 1999 SC 837] : (2000) 1 SCC 498 [LNIND 1999 SC 837] : JT 1999 (7) SC 191 [LNIND 1999 SC 837] : 1999 Cr LJ 4573 .
18. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .
19. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
20. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215 .
21. *State of Karnataka v Krishnappa*, 2000 Cr LJ 1793 : AIR 2000 SC 147 .
22. *Mahesh v State of MP*, AIR 1987 SC 1346 ; *State of Punjab v Rakesh Kumar*, AIR 2009 SC 391 [LNIND 2008 SC 1729] .
23. *Gurdeep Singh alias Deep v State*, AIR 1999 SC 3646 [LNIND 1999 SC 837] : (2000) 1 SCC 498 [LNIND 1999 SC 837] : JT 1999 (7) SC 191 [LNIND 1999 SC 837] : 1999 Cr LJ 4573 .

24. *Mohd Arif v The Registrar, Supreme Court of India*, AIR 2014 SC 4598 .
25. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
26. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
27. *Alister Anthony Pareira v State of Maharashtra*, AIR 2012 SC 3802 [LNIND 2012 SC 15] : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : 2012 Cr LJ 1160 .
28. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
29. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
30. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
31. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
32. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
33. *State of MP v Saleem alias Chamaru*, 2005 (5) SCC 554 [LNIND 2005 SC 1070] 61.
34. *C Muniappan v State of TN*, (2010) 9 SCC 567 [LNIND 2010 SC 809] : AIR 2010 SC 3718 [LNIND 2010 SC 809] : (2010) 10 SCR 262 [LNIND 2010 SC 809] : (2010) 3 SCC (Cr) 1402.
35. *Dinesh v State of Rajasthan*, 2006 (3) SCC 771 [LNIND 2006 SC 151] : AIR 2006 SCW 1123 : AIR 2006 SC 1267 [LNIND 2006 SC 151] .
36. *Gurmukh Singh v State of Haryana*, JT 2009 (11) SC 122 : 2009 (11) Scale 688 [LNIND 2009 SC 1725] .
37. *Jameel v State of UP*, 2010 Cr LJ 2106 : (2010) 12 SCC 532 [LNIND 2009 SC 1960] : AIR 2010 SC (Supp) 303 : (2011) 1 SCC (Cr) 582.
38. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] . Meaning of Judicial discretion explained.
39. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
40. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
41. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
42. *State v Narayan Bisoi*, 1975 Cr LJ 1399 (Ori).
43. *Javed Ahmed*, 1983 Cr LJ 960 : AIR 1983 SC 594 [LNIND 1983 SC 119] : (1983) 3 SCC 39 [LNIND 1983 SC 119] : 1983 SCC (Cr) 559; see also *Henry Westmuller*, 1985 Cr LJ 1079 : AIR 1985 SC 823 [LNIND 1985 SC 105] : (1985) 3 SCC 291 [LNIND 1985 SC 105] ; *Lok Pal Singh*, 1985 Cr LJ 1134 (SC) : AIR 1985 SC 823 [LNIND 1985 SC 105] .
44. *Munnalal*, 1977 Cr LJ NOC 108 (MP).
45. *Gauri Shanker Sharma v State of UP*, AIR 1990 SC 709 [LNIND 1990 SC 8] : 1990 (2) SCC 502 [LNIND 1990 SC 100] , the acquittal granted by the High Court was set aside and the sentence of 7-year RI restored.
46. *State v Balkrishna*, 1992 Cr LJ 1872 (Mad).
47. *State of UP v MK Anthony*, 1985 Cr LJ 493 : AIR 1985 SC 48 . For an account of the perplexities of criminal justice, see *S Venugopal Rao, Perplexities of Criminal Justice*, (1985) 27 JILI 458. See also *Pandurang Dhondu Bhuwad v State of Maharashtra*, 1991 Cr LJ 3177 Bom, domestic servants committing day-light robbery in an apartment resulting in the death of an inmate, life imprisonment, no concession for young age or poverty.
48. *Guvala China Venkatesu v State of AP*, AIR 1991 SC 1926 : 1991 Cr LJ 2326 .
49. *Sevaka Perumal v State of TN*, AIR 1991 SC 1463 [LNIND 1991 SC 269] : 1991 Cr LJ 1845 .
50. *State of Rajasthan v Sukhpal Singh*, (1983) 1 SCC 393 [LNIND 1982 SC 206] : 1983 SCC (Cr) 213 : AIR 1984 SC 207 [LNIND 1982 SC 206] ; *Philip Bhimsen Aind v State*, (1995) Cr LJ 1694 (Bom).
51. *Babarali Ahmedali Sayed v State of Gujarat*, 1991 Cr LJ 1269 Guj.

52. *TM Joseph v State of Kerala*, AIR 1992 SC 1922 : 1992 Cr LJ 3166 . The court referred to its own decision in *BC Goswami v Delhi Administration*, AIR 1973 SC 1457 [LNIND 1973 SC 194] : 1974 Cr LJ 243 .
53. *Ajit Kumar Vasantlal Zaveri v State of Gujarat*, AIR 1992 SC 2064 : 1992 Cr LJ 3593 .
54. *Gurmukh Singh v State of Haryana*, 2010 Cr LJ 450 : AIR 2009 SC 2697 [LNIND 2009 SC 847] .
- .
55. *State of MP v Sheikh Shahid*, AIR 2009 SC 2951 [LNIND 2009 SC 867] : (2009) 12 SCC 715 [LNIND 2009 SC 867] : (2010) 1 SCC (Cr) 704.
56. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
57. *Jitendra v State of Govt of NCT of Delhi*, AIR 2018 SC 5253 [LNIND 2018 SC 537] .
58. *Bachan Singh v State of Punjab*, 1980 Cr LJ 636 : AIR 1980 SC 898 [LNIND 1980 SC 260] . The minimum sentence awardable under section 302 being life imprisonment, it has been held that the sentence cannot be reduced. *Dori v State of UP*, 1991 Cr LJ 3139 (All); *Dadasaheb Misal v State of Maharashtra*, 1987 Cr LJ 1512 (Bom). See *Triveniben v State of Gujarat*, 1990 Cr LJ 273 (Guj); *Sham Sunder v Puran*, (1990) 4 SCC 731 [LNIND 1990 SC 994] : 1991 SCC (Cr) 38 : 1990 Cr LJ 2600 ; *Kannan v State of TN*, 1989 Cr LJ 825 : AIR 1989 SC 396 [LNIND 1982 SC 73] : 1989 Supp (1) SCC 81 .
59. *Laxman Naskar v State of WB*, 2000 Cr LJ 4017 : AIR 2000 SC 2762 [LNIND 2000 SC 1180] .
60. *State of Gujarat v Hon'ble High Court of Gujarat*, 1998 Cr LJ 4561 : AIR 1998 SC 3164 [LNIND 1998 SC 920] .
61. For an example of early release see *Iqbal Singh v State of Punjab*, 1990 Cr LJ 1460 .
62. Act No. 13 of 2013 w.e.f 2 April 2013.
63. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 : (2014) 9 SCC 737 [LNIND 2014 SC 769] .
64. *R S Joshi v Ajit Mills*, AIR 1977 SC 2279 [LNIND 1977 SC 260] : 1977 SCC (Tax) 536 : (1978) 1 SCJ 239 .
65. *State of Maharashtra v Chandra Prakash Keshavdeo*, 1991 Cr LJ 3187 (Bom).
66. *Kapoor Lal v State of UP*, 1991 Cr LJ 2159 (All).
67. *Rajbir v State of Haryana*, 1985 Cr LJ 1495 : 1985 Guj LH 117 : AIR 1985 SC 1278 . Referred to in *Dhansukh Chhotalal Joshi v State of Gujarat*, 1990 Cr LJ 2333 to reduce the sentence of a 19 year- old boy convicted under section 304-II to that already undergone who was a member of a party which caused death without any intention to do so.
68. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] See the box.
69. *Phool Kumari v Office of the Superintendent Central Jail, Tihar New Delhi*, (2012) 8 SCC 183 [LNINDORD 2012 SC 410] : 2012 Cr LJ 4261 : AIR 2012 SC 3198 [LNINDORD 2012 SC 410] .
70. *Constitution Bench in GV Godse v State*, AIR 1961 SC 600 [LNIND 1961 SC 11] and *Naib Singh v State of Punjab*, AIR 1983 SC 855 [LNIND 1983 SC 116] .
71. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] : JT 1998 (6) SC 530 : 1998 Cr LJ 4561 .
72. *Bhuvan Mohan Patnaik v State of AP*, (1975) 3 SCC 185 [LNIND 1974 SC 269] : AIR 1974 SC 2092 [LNIND 1974 SC 269] .
73. *State of Maharashtra v Jethmat Himatmal Jain*, 1994 Cr LJ 2613 (Bom).
74. *Chanda Lal v State of Rajasthan*, AIR 1992 SC 597 : 1992 Cr LJ 523 .
75. *Ramanlal Baldevdas Shah v State of Gujarat*, 1992 Cr LJ 3164 : AIR 1992 SC 1916 . See also *State of Karnataka v Bhojappa Hanamanthappa*, 1994 Cr LJ 1543 .

76. *Sushil Kumar Sanghi v State*, [1995 Cr LJ 3457](#) (Del).
77. *Babloo v State of MP*, [1995 Cr LJ 3534](#) (MP). *Jaya Mala v Home Secy, Govt of J&K*, [AIR 1982 SC 1297](#) [LNIND 1982 SC 109] : [1982 Cr LR \(SC\) 441](#) relied upon.
78. *Pratapsingh Rathod v State of Maharashtra*, [1996 Cr LJ 790](#) (Bom). Incident of causing stab wound taking place 24 years back and the injury being of simple nature, the sentence was reduced into one already undergone, *Pritam Singh v State*, [1996 Cr LJ 7](#) (Del).
79. *Rasananda Bindhani v State of Orissa*, [1992 Cr LJ 121](#) (Ori).
80. *BY Deshmukh v State of Maharashtra*, [1996 Cr LJ 1108](#) (Bom), relying on in *Re Vadivel Padayachi*, [1972 Cr LJ 1641](#) (Mad).
81. *Panchu Parida v State of Orissa*, [1993 Cr LJ 953](#) (Ori). The court referred to *Ippili Trinadha Rao v State of AP*, [1984 Cr LJ 1254](#).
82. *State of Orissa v Gangadhar Behuria*, [1992 Cr LJ 3814](#) (Ori).
83. *Dayaram v State of MP*, [1992 Cr LJ 3154](#) (MP).
84. *Madhuri Mukund Chitnis v Mukund Martand Chitnis*, [1992 Cr LJ 111](#) (Bom).
85. *Kashiram v Sonvati*, [1992 Cr LJ 760](#) (MP).
86. *MS Sheshappa v State of Karnataka*, [1994 Cr LJ 3372](#) (Kant).
87. *SC Bahri v State of Bihar*, [AIR 1994 SC 2020](#) : [1994 Cr LJ 3271](#).
88. *State v Banwari Lal*, [1996 Cr LJ 1078](#) (Raj).
89. *Manish Jalan v State of Karnataka*, [JT 2008 \(7\) SC 643](#) [LNIND 2008 SC 1396].
90. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, ((2007) 6 SCC 528 [LNIND 2007 SC 451] 65) See also *Alister Anthony Pareira v State of Maharashtra*, [2012 Cr LJ 1160](#) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : [AIR 2012 SC 3802](#) [LNIND 2012 SC 15].
91. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : [2012 Cr LJ 4174](#) : [AIR 2012 SC 3104](#) [LNIND 2012 SC 459].
92. *Akhil Kumar v State of MP*, [1992 Cr LJ 2029](#) (MP).
93. *Madhukar Chandar v State of Maharashtra*, [1993 Cr LJ 3281](#) (Bom).
94. *Joshi v State of Kerala*, [1996 Cr LJ 143](#) (Ker).
95. *Sarup Singh v State of Haryana*, [AIR 1995 SC 2452](#) : [1995 Cr LJ 4168](#).
96. *Raja Ram v State of Rajasthan*, [1993 Cr LJ 1016](#) (Raj).
97. *Lal Diwan v State of UP*, [1995 Cr LJ 3899](#) (All).
98. *Umesh Singh v State of Bihar*, [AIR 2000 SC 2111](#) [LNIND 2000 SC 871] : [2000 Cr LJ 6167](#).
99. *Shankar v State of TN*, (1994) 4 SCC 478 [LNIND 1994 SC 377] : [1994 Cr LJ 3071](#).
100. *Sharomani Akali Dal (Mann) v State of JK*, [1993 Cr LJ 927](#) (J&K).
101. *Bhimabhai Kalabhai v State of Gujarat*, [1992 Cr LJ 2585](#) (Guj).
102. *Arjunan v State*, [1993 Cr LJ 3113](#) (Mad).
103. *Madhukar Damu Patil v State of Maharashtra*, [1996 Cr LJ 1062](#) (Bom).
104. *Jaivir Singh v State of UP*, [1996 Cr LJ 1494](#) (All).
105. *Dedekula Khabala Saheb v State of AP*, [1996 Cr LJ 2196](#) (AP).
106. *Gochipathula Samudralu v State of AP*, [1992 Cr LJ 2488](#) (AP).
107. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#).
108. *Jagat Bahadur v State of HP*, [1994 Cr LJ 3396](#) (HP).
109. *Paniben v State of Gujarat*, [AIR 1992 SC 1817](#) [LNIND 1992 SC 248] : [1992 Cr LJ 2919](#).
110. *Venkappa K Chowdari v State of Karnataka*, [1996 Cr LJ 15](#) (Kant).
111. *Jodha Khoda Rabari v State of Gujarat*, [1992 Cr LJ 3298](#) (Guj).
112. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#).
113. *Jameel v State of UP*, [2010 Cr LJ 2106](#) : (2010) 12 SCC 532 [LNIND 2009 SC 1960] : AIR 2010 SC (Supp) 303 : (2011) 1 SCC (Cr) 582.

114. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056].
115. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
116. *State of MP v Babu Natt*, (2009) 2 SCC 272 [LNIND 2008 SC 2471] : (2009) 1 SCC (Cr) 713 : AIR 2009 SC 1810 [LNIND 2008 SC 2471] : (2009) 1 Ker LJ 686 : 2009 Cr LJ 1722 .
117. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
118. Act VIII of 1897, section 8. Where the accused was a child of 14 at the time of the incident and, therefore, the benefit of being sent to an approved school under the U.P. Children Act (1 of 1952) would have been available to him but he became a man of 28 by the time of the final judgment, and, therefore, not fit for the school, his conviction was sustained and the sentence reduced to already undergone. *Pachrangi v State of UP*, 1991 Cr LJ 3232 (All), relying on *Bhoop Ram v State of UP*, 1989 All Cr R 276 : 1990 Cr LJ 2671 : AIR 1990 SC 1329 [LNIND 1990 SC 277]
119. *Prahlad G Gajbhiye v State of Maharashtra*, (1994) 2 Cr LJ 2555 at p 2561 (Bom).
120. *Harkori v State of Rajasthan*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] .
121. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 .
122. *Rattan Lal v State of Punjab*, AIR 1965 SC 444 [LNIND 1964 SC 135] : 1964 (7) SCR 676 [LNIND 1964 SC 135] : 1965 (1) Cr LJ 360 ; *DalbirSingh v State of Haryana*, AIR 2000 SC 1677 [LNIND 2000 SC 810] : 2000 (5) SCC 82 [LNIND 2000 SC 810] : 2000 Cr LJ 2283 .
123. *Nalinakshan v Rameshan*, 2009 Cr LJ 1703 (Ker).
124. *MCD v State of Delhi*, 2005 (4) SCC 605 [LNIND 2005 SC 445] : AIR 2005 SC 2658 [LNIND 2005 SC 445] : 2005 SCC (Cr) 1322 : 2005 Cr LJ3077; *Sitaram Paswan v State of Bihar*, 2005 (13) SCC 110 [LNIND 2005 SC 703] : AIR 2005 SC 3534 [LNIND 2005 SC 703] : 2005 Cr LJ 4135 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

125. [s 53A] Construction of reference to transportation.

- (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".
- (2) In every case in which a sentence of transportation for a term has been passed before the commencement of the **Code of Criminal Procedure (Amendment)** Act, ¹²⁶[1955] (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.
- (3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.
- (4) Any reference to "transportation" in any other law for the time being in force shall,—
 - (a) if the expression means transportation for life, be construed as a reference to imprisonment for life;
 - (b) if the expression means transportation for any shorter term, be deemed to have been omitted.]

COMMENT—

This section has been inserted by Act XXVI of 1955. It deals with a sentence of transportation wherever it occurs in a statute. After this amendment of the Code 'transportation' as a sentence has been done away with as a punishment.

^{125.} Ins. by Act 26 of 1955, section 117 and Sch. (w.e.f. 1-1-1956).

^{126.} Subs. by Act 36 of 1957, section 3 and Sch. II, for "1954" (w.e.f. 17-9-1957).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

125. [s 53A] Construction of reference to transportation.

- (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".
- (2) In every case in which a sentence of transportation for a term has been passed before the commencement of the **Code of Criminal Procedure (Amendment)** Act, ¹²⁶[1955] (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.
- (3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.
- (4) Any reference to "transportation" in any other law for the time being in force shall,—
 - (a) if the expression means transportation for life, be construed as a reference to imprisonment for life;
 - (b) if the expression means transportation for any shorter term, be deemed to have been omitted.]

COMMENT—

This section has been inserted by Act XXVI of 1955. It deals with a sentence of transportation wherever it occurs in a statute. After this amendment of the Code 'transportation' as a sentence has been done away with as a punishment.

^{125.} Ins. by Act 26 of 1955, section 117 and Sch. (w.e.f. 1-1-1956).

^{126.} Subs. by Act 36 of 1957, section 3 and Sch. II, for "1954" (w.e.f. 17-9-1957).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 54] Commutation of sentence of death.

In every case in which sentence of death shall have been passed, ¹²⁷ [the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

COMMENT—

The law governing suspension, remission and commutation of sentence is both statutory and constitutional.¹²⁸ The stage for the exercise of this power generally speaking is post-judicial, i.e., after the judicial process has come to an end. After the judicial function ends, the executive function of giving effect to the judicial verdict commences. Constitutional power under Article 72/161 would override the statutory power contained in sections 432 and 433 and the limitation of section 433A of the Code as well as the power conferred by sections 54 and 55, IPC, 1860.¹²⁹ No convict has a fundamental right of remission or shortening of sentence. The State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law.¹³⁰ Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege.¹³¹ A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder.¹³² The power of remission vested in the Government under section 433A Code of Criminal Procedure, 1973 (Cr PC, 1973) is not in conflict with Articles 72 and 162 of the Constitution.¹³³ Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence.¹³⁴ It is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the Court in regard to the guilt of, and sentence imposed on, the accused.¹³⁵

[s 54.1] Delay in Execution whether entitle commutation of Death sentence to Life Imprisonment.—

In *TV Vatheeswaran's case*, AIR 1983 SC 361 [LNIND 1983 SC 43] : 1983 SCR (2) 348¹³⁶. a two-Judge Bench of SC considered whether the accused, who was convicted for an offence of murder and sentenced to death, kept in solitary confinement for about eight years was entitled to commutation of death sentence. It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death.¹³⁷ But a three-Judge in *Sher Singh v State of Punjab*,¹³⁸ held that though prolonged delay in the execution of a death sentence is

unquestionably an important consideration for determining whether the sentence should be allowed to be commuted, no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death" can be laid down as has been done in *Vatheeswaran Javed Ahmed v State of Maharashtra*,¹³⁹ re-iterated the proposition laid down in *Vatheeswaran (supra)* case and doubted the competence of the three-Judge Bench to **overrule** the *Vatheeswaran Case*. The conflicting views are finally settled by the **Constitution** Bench in *Triveni Ben v State of Gujarat*.¹⁴⁰ It **overruled** *Vatheeswaran (supra)* holding that undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but the Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran* case cannot be said to lay down the correct law. In *Madhu Mehta v UOI*,^{141, 142} Supreme Court commuted the death sentence on the ground that the mercy petition was pending for eight years after disposal of the criminal appeal by Supreme Court.

[s 54.1.1] Devender Singh Bhullar and Mahendra Das.—

In *Devender Pal Singh Bhullar v State of NCT of Delhi*,¹⁴³ the convict appealed to the President for clemency in 2003. The President, after a lapse of over eight years, dismissed his mercy plea in 2011. Bhullar had sought commutation of his death penalty to life sentence by the Supreme Court on the ground that there was inordinate delay by the President over his plea for clemency. A two-Judge Bench¹⁴⁴ by order dated 12 April 2013 dismissed his plea, by holding that the rule enunciated in *Sher Singh's* case (*supra*), *Triveniben's* case (*supra*) and some other judgments that long delay may be one of the grounds for commutation of the sentence of death into life imprisonment cannot be invoked in cases where a person is convicted for offence under TADA or similar statutes. Two weeks later in *Mahendra Nath Das v UOI*,¹⁴⁵ the same Bench held that the convict's death sentence could be commuted to life imprisonment because much of the inordinate delay of 12 years in the rejection of his mercy petition by the President was unexplained, and therefore, inexcusable.

[s 54.2] Modification of death sentence to a particular period with the further direction that the convict must not be released from prison for the rest of his life or before actually serving out the term.—

It was in *Swamy Shraddananda (2) v State of Karnataka*,¹⁴⁶ the three-Judge Bench held that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of 14 years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. But a two-Judge Bench in *Sangeet v State of Haryana*¹⁴⁷ in which it was held that:

a reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done

in *Swamy Shraddananda* and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in *Swamy Shraddananda* (*supra*), yet the same has not been referred to a larger Bench.

In *Sahib Hussain @ Sahib Jan v State of Rajasthan*,¹⁴⁸ another two-Judge Bench reiterated the position held in *Swamy Shraddananda* (*supra*) by holding that the observations in *Sangeet* (*supra*) are not warranted. In *Gurvail Singh @ Gala v State of Punjab*,¹⁴⁹ another two Judge also termed the remarks in *Sangeet* (*supra*) were 'unwarranted' and opined that if the two-Judge Bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench.

[s 54.3] Cases where the death sentence was modified to a particular period (or life) with further direction to avoid premature release

1. *Subhash Chander v Krishan Lal* ¹⁵⁰.
2. *Shri Bhagwan v State of Rajasthan* ¹⁵¹.
3. *Ram Anup Singh v State of Bihar* ¹⁵².
4. *Mohd. Munna v UOI* ¹⁵³.
5. *Jayawant Dattatraya Suryarao v State of Maharashtra* ¹⁵⁴.
6. *Nazir Khan v State of Delhi* ¹⁵⁵.
7. *Swamy Shraddananda (2) v State of Karnataka* ¹⁵⁶.
8. *Haru Ghosh v State of WB* ¹⁵⁷.
9. *Ramraj v State of Chattisgarh* ¹⁵⁸.
10. *Neel Kumar @ Anil Kumar v The State of Haryana* ¹⁵⁹.
11. *Sandeep v State of UP* ¹⁶⁰.
12. *Gurvail Singh @ Gala v State of Punjab* ¹⁶¹.
13. *Brajendra Singh v State of MP* ¹⁶².
14. *State of UP v Sanjay Kumar* ¹⁶³.

¹²⁷. Subs. by the A.O. 1950, for "the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were

substituted by the A.O. 1937, for "the Government of India or the Government of the place".

128. The Law Commission of India in its 41st report proposed that sections 54, 55 and 55A may be omitted from the [IPC](#) and their substance incorporated in [Section 402 Criminal Procedure Code](#)- See *State(Govt of NCT of Delhi) v Prem Raj*, (2003) 7 SCC 121 [LNIND 2003 SC 632] : JT 2003 (8) SC 17 [LNIND 2003 SC 632].

129. *Ashok Kumar v UOI*, AIR 1991 SC 1792 [LNIND 1990 SC 319] : (1991) 3 SCC 498 [LNIND 1991 SC 288].

130. *State of Haryana v Mahender Singh*, (2007) 13 SCC 606 [LNIND 2007 SC 1295] : 2008 Cr LJ 444 : (2009) 1 SCC (Cr) 221.

131. *Epru Sudhakar v Govt of AP*, (2006) 8 SCC 161 [LNIND 2006 SC 807] : AIR 2006 SC 3385 [LNIND 2006 SC 807].

132. *State of Mysore v H Srinivasmurthy*, (1976) 1 SCC 817 [LNIND 1976 SC 29] : AIR 1976 SC 1104 [LNIND 1976 SC 29].

133. *Maru Ram v UOI*, AIR 1980 SC 2147 [LNIND 1980 SC 446] : 1981 SCR (1) 1196.

134. *Devender Pal Singh Bhullar v State of NCT of Delhi*, AIR 2013 SC 1975 [LNIND 2013 SC 1281] : (2013) 6 SCC 195 [LNIND 2008 SC 2975].

135. *Kehar Singh v UOI*, AIR 1989 SC 653 [LNIND 1988 SC 586] : (1989) 1 SCC 204 [LNIND 1988 SC 586].

136. **Overruled** in *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885].

137. In *Ediga Annamma's case*, (1974) (3) SCR 329), two years was considered sufficient to justify interference with the sentence of death. In *Bhagwan Baux's case* (AIR 1978 SC 34), two and a half years and in *Sadhu Singh's case* (AIR 1978 SC 1506), three and a half years were taken as sufficient to justify altering the sentence of death into one of imprisonment for life, **See also** *KP Mohammed v State of Kerala*, (1985) 1 SCC (Cr) 142 : 1984 Supp SCC 684.

138. *Sher Singh v State of Punjab*, AIR 1983 SC 465 [LNIND 1983 SC 89] : (1983) 2 SCC 344 [LNIND 1983 SC 89].

139. *Javed Ahmed v State of Maharashtra*, AIR 1985 SC 231 [LNIND 1984 SC 310] : (1985) 1 SCC 275 [LNIND 1984 SC 310].

140. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] : JT 1989 (1) SC 314 [LNIND 1989 SC 885] : 1990 Cr LJ 1810 : (1989) 1 SCC (Cr) 248.

141. *Madhu Mehta v UOI*, (1989) 3 SCR 775 [LNIND 1989 SC 390].

142. **See also** *Daya Singh v UOI*, (1991) 3 SCC 61 [LNIND 1991 SC 231].

143. *Devender Pal Singh Bhullar v State of NCT of Delhi*, AIR 2013 SC 1975 [LNIND 2013 SC 1281] : (2013) 6 SCC 195 [LNIND 2008 SC 2975].

144. GS Singhvi and S J Mukhopadhyaya, JJ.

145. *Mahendra Nath Das v UOI*, (2013) 6 SCC 253 [LNIND 2013 SC 522] : 2013 (6) Scale 591 [LNIND 2013 SC 522].

146. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911; Also see *State of UP v Sanjay Kumar*, (2012) 8 SCC 537 [LNIND 2012 SC 416].

147. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

148. *Sahib Hussain @ Sahib Jan v State of Rajasthan*, 2013 Cr LJ 2359 : 2013 (6) Scale 219 [LNIND 2013 SC 474].

149. *Gurvail Singh @ Gala v State of Punjab*, 2013 (10) Scale 671 [LNIND 2013 SC 1147].

150. *Subhash Chander v Krishan Lal*, (2001) 4 SCC 458 [LNIND 2001 SC 853] .
151. *Shri Bhagwan v State of Rajasthan*, (2001) 6 SCC 296 [LNIND 2001 SC 1234] .
152. *Ram Anup Singh v State of Bihar*, (2002) 6 SCC 686 [LNIND 2002 SC 482] .
153. *Mohd Munna v UOI*, (2005) 7 SCC 417 [LNIND 2005 SC 701] .
154. *Jayawant Dattatraya Suryarao v State of Maharashtra*, (2001) 10 SCC 109 [LNIND 2001 SC 2510] .
155. *Nazir Khan v State of Delhi*, (2003) 8 SCC 461 [LNIND 2003 SC 696] .
156. *Swamy Shraddananda (2) v State of Karnataka*, AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 (13) SCC 767 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
157. *Haru Ghosh v State of WB*, (2009) 15 SCC 551 [LNIND 2009 SC 1734] .
158. *Ramraj v State of Chattisgarh*, (2010) 1 SCC 573 [LNIND 2009 SC 2093] .
159. *Neel Kumar @ Anil Kumar v The State of Haryana*, (2012) 5 SCC 766 [LNIND 2012 SC 298] .
160. *Sandeep v State of UP*, (2012) 6 SCC 107 [LNIND 2012 SC 306] .
161. *Gurvail Singh @ Gala v State of Punjab*, (2013) 2 SCC 713 [LNIND 2013 SC 94] .
162. *Brajendra Singh v State of MP*, (2012) 4 SCC 289 [LNIND 2012 SC 159] .
163. *State of UP v Sanjay Kumar*, (2013) 8 SCC 537 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 55] Commutation of sentence of imprisonment for life.

In every case in which sentence of ^{164.} [imprisonment] for life shall have been passed, ^{165.} [the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

COMMENT—

In the absence of an order under [section 55 IPC, 1860](#) or [section 433\(b\) Cr PC, 1973](#) a life convict cannot be released even after expiry of 14 years, for a sentence of life imprisonment means rigorous imprisonment for the rest of convict's life.^{166.} It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life.^{167.} However, Supreme Court has been, for quite some time, conscious of the liberal approach and sometimes discriminatory too, taken by the States in exercise of their power under [sections 432 and 433 of Cr PC, 1973](#) in remitting or commuting sentences. In *Jagmohan Singh v State of UP*,^{168.} Court had expressed concern about such approach made by the States in remitting life sentences that led to the amendment in [Cr PC](#) introducing section 433A by Act 45 of 1978. Under [section 433A of Cr PC, 1973](#) a sentence of imprisonment for life is imposed for an offence for which death is one of the punishments or where a death sentence is commuted to life under section 433, he shall not be released unless he has served 14 years of imprisonment.

It appears that the provision has been generally understood to mean that life sentence would only be 14 years of incarceration. Taking judicial notice of such a trend, the Supreme Court has, in cases where imposition of death sentence would be too harsh and imprisonment for life (the way it is understood as above) too inadequate, in several cases, has adopted different methods to ensure that the minimum term of life imprisonment ranges from at least 20 years to the end of natural life. However, in some cases, the Court had also been voicing concern about the statutory basis of such orders.^{169.} In the case of *State of Rajasthan v Jamil Khan*,^{170.} the Supreme Court opined that:

We are of the view that it will do well in case a proper amendment under [section 53 of IPC](#) is provided, introducing one more category of punishment - life imprisonment without commutation or remission. Dr. VS Malimath, J, in the Report on 'Committee of Reforms of Criminal Justice System', submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

[s 55.1] The power of High Court to commute.—

Exercise of power under section 433 is an executive discretion. The High Court in exercise of its revisional jurisdiction had no power conferred on it to commute the sentence imposed where a minimum sentence was provided for offence. The mandate of [section 433 Cr PC, 1973](#) enables the Government in an appropriate case to commute

the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the Courts.¹⁷¹ In *State (Govt. of NCT of Delhi) v Prem Raj*,¹⁷² Supreme Court was called upon to consider whether in a case involving conviction under section 7 read with [section 13\(1\)\(d\) of the Prevention of Corruption Act 1988](#), the High Court could commute the sentence of imprisonment on deposit of a specified amount by the convict and direct the State Government to pass appropriate order under [section 433\(c\) Cr PC, 1973](#). It was held that the question of remission lay within the domain of the appropriate government and it was not open to the High Court to give a direction of that kind even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under [section 433 Cr PC, 1973](#) vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside.¹⁷³

[s 55.2] Power to commute, when minimum sentence is provided in the Statute.—

Punishment has a penological purpose. Reformation, retribution, prevention, and deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither section 432 nor [section 433 of Cr PC, 1973](#) hence contains a non-obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under [sections 432 or 433 of the Cr PC, 1973](#). Wherever the [Indian Penal Code](#) or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing.¹⁷⁴

164. Subs. by Act 26 of 1955, section 117 and Sch, for transportation (w.e.f. 1-1-1956).

165. Subs. by the A.O. 1950, for "the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were substituted by the A.O. 1937, for the Government of India or the Government of the place.

166. *Naib Singh v State of Punjab*, 1983 Cr LJ 1345 : AIR 1983 SC 855 [LNIND 1983 SC 116] : 1983 Cr LR (SC) 348 : (1983) 2 SCC 454 [LNIND 1983 SC 116] : 1983 SCC (Cr) 536. The provisions of these sections are subject to the overriding power conferred by [Articles 72 and 161 of the Constitution of India](#). *Ashok Kumar v UOI*, AIR 1991 SC 1792 [LNIND 1990 SC 319] : 1991 Cr LJ 2483 , where the court also emphasised that imprisonment for life means imprisonment for the full span of life. **Affirming**, *Gopal Vinayak Godse v State of Maharashtra*, AIR 1961 SC 600 [LNIND 1961 SC 11] : (1961) 3 SCR 440 [LNIND 1961 SC 11] : (1961) 1 Cr LJ 736 . In the absence of an order the section is not applicable because there can be no order by

inference or implication, *Sat Pal v State of Haryana*, AIR 1993 SC 1218 [LNIND 1992 SC 526] : 1993 Cr LJ 314 : (1992) 4 SCC 172 [LNIND 1992 SC 526].

167. *Gopal Vinayak Godse v The State of Maharashtra*, (1961) 3 SCR 440 [LNIND 1961 SC 11] (**Constitution Bench**); *Dalbir Singh v State of Punjab*, (1979) 3 SCC 745 [LNIND 1979 SC 281] ; *Maru Ram v UOI*, (1981) 1 SCC 107 [LNIND 1980 SC 446] (**Constitution Bench**); *Naib Singh v State of Punjab*, (1983) 2 SCC 454 [LNIND 1983 SC 116] ; *Ashok Kumar alias Golu v UOI*, (1991) 3 SCC 498 [LNIND 1991 SC 288] ; *Laxman Naskar (Life Convict) v State of WB*, (2000) 7 SCC 626 [LNIND 2000 SC 1180] ; *Zahid Hussein v State of WB*, (2001) 3 SCC 750 [LNIND 2001 SC 692] ; *Kamalanantha v State of TN*, (2005) 5 SCC 194 [LNIND 2005 SC 337] ; *Mohd Munna v UOI*, (2005) 7 SCC 416 [LNIND 2005 SC 701] and *CA Pious v State of Kerala*, (2007) 8 SCC 312) [LNIND 2007 SC 1070] .

168. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .

169. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

170. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .

171. *Delhi Administration (Now NCT of Delhi) v Madan Lal*, 2002 (6) Supreme 77 [LNIND 2002 SC 533] .

172. *State (Govt of NCT of Delhi) v Prem Raj*, (2003) 7 SCC 121 [LNIND 2003 SC 632] .

173. *State of Punjab v Kesar Singh*, 1996 (5) SCC 495 [LNIND 1996 SC 1091] .

174. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

175. [s 55A] Definition of "appropriate Government".

In sections 54 and 55 the expression "appropriate Government" means,—

- (a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and
- (b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.]

COMMENT—

This section was substituted for the old section by the Adaptation of Laws Order 1950.

The appropriate Government empowered to remit the sentence of a person convicted of offences under [sections 489-A to 489-D of the IPC, 1860](#) is the Central Government not the State Government.^{176.}

175. Subs. by the A.O. 1950, for section 55A. Earlier section 55A was inserted by the A.O. 1937.

176. *GV Ramanaiah v Superintendent of Central Jail, Rajahmundry*, AIR 1974 SC 31 [[LNIND 1973 SC 300](#)] : (1974) 3 SCC 531 [[LNIND 1973 SC 300](#)] ; *Hanumant Dass v Vinay Kumar*, AIR 1982 SC 1052 : (1982) 2 SCC 177 -the appropriate Government is the Government of the State where the conviction took place and not the Government of the State where the offence was committed ([Section 432\(7\) Cr PC](#)).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

175. [s 55A] Definition of "appropriate Government".

In sections 54 and 55 the expression "appropriate Government" means,—

- (a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and
- (b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.]

COMMENT—

This section was substituted for the old section by the Adaptation of Laws Order 1950.

The appropriate Government empowered to remit the sentence of a person convicted of offences under [sections 489-A to 489-D of the IPC, 1860](#) is the Central Government not the State Government.^{176.}

175. Subs. by the A.O. 1950, for section 55A. Earlier section 55A was inserted by the A.O. 1937.

176. *GV Ramanaiah v Superintendent of Central Jail, Rajahmundry*, AIR 1974 SC 31 [[LNIND 1973 SC 300](#)] : (1974) 3 SCC 531 [[LNIND 1973 SC 300](#)] ; *Hanumant Dass v Vinay Kumar*, AIR 1982 SC 1052 : (1982) 2 SCC 177 -the appropriate Government is the Government of the State where the conviction took place and not the Government of the State where the offence was committed ([Section 432\(7\) Cr PC](#)).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 56] Sentence of Europeans and Americans to penal servitude. Proviso as to sentence for term exceeding ten years but not for life.

[Rep. by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949), sec. 2 (w.e.f. 6-4-1949).]

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 57] Fractions of terms of punishment.

In calculating fractions of terms of punishment, ¹⁷⁷[imprisonment] for life shall be reckoned as equivalent to ¹⁷⁸[imprisonment] for twenty years.

COMMENT—

Section 57 of the IPC, 1860 does not in any way limit the punishment of imprisonment for life to a term of 20 years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. The object and purpose of section 57 will be clear by simply referring to sections 65, 116, 119, 129 and 511 of the IPC, 1860.¹⁷⁹ The accused has thus no right to be released after a period of 20 years. The remissions granted under the rules made under the Prison Act or under the Jail Manual are merely administrative orders of the appropriate Government and fall exclusively within the discretion of the Government under section 401 (now section 432) Cr PC, 1973. In the case of a prisoner who is convicted in one State but transferred to the jail of another State to serve out the sentence, the appropriate Government to grant remission would be the Government of the State where the accused was convicted and not that of the transferee Government.¹⁸⁰

[s 57.1] Life imprisonment.—

Life imprisonment means imprisonment for the whole of a convict's natural life. It does not automatically expire on his serving sentence of 14 years or 20 years, unless, of course, the sentence is remitted or commuted by the Government in accordance with the law¹⁸¹. The Court said that life imprisonment means imprisonment for the whole of the remaining period of the convict's life. The fact that the West Bengal Correctional Services Act 1992, equates life imprisonment with imprisonment for 20 years does not entitle the convict to automatic release on expiry of such term of imprisonment including remission.¹⁸².

[s 57.2] Punishment for attempt Under Section 511 when the offence attempted is punishable with Life imprisonment.—

Section 57 of the IPC, 1860 provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. In view of this, for the offence of attempt to commit rape punishable under section 376(2)(a) read with section 511 maximum sentence would be rigorous imprisonment for ten years.¹⁸³

177. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation" (w.e.f. 1-1-1956).
178. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation" (w.e.f. 1-1-1956).
179. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
180. *State of MP v Ratan Singh*, 1976 Cr LJ 1192 : AIR 1976 SC 1552 [LNIND 1976 SC 215] ; see also *Naib Singh v State of Punjab*, (1983) 2 SCC 454 [LNIND 1983 SC 116] : AIR 1983 SC 855 [LNIND 1983 SC 116] : 1983 Cr LJ 1345 ; *Gopal Vinayak Godse*, AIR 1961SC 600 : (1961) 1 Cr LJ 736 : (1961) 63 Bom LR 517 [LNIND 1961 SC 11] SC.
181. *Life Convict, Laxman Naskar v State of WB*, AIR 2000 SC 2762 [LNIND 2000 SC 1180] : 2000 Cr LJ 4017 .
182. See the comments under section 45 and section 55.
183. *Chandrakant Vithal Pawar v State of Maharashtra*, 2011 Cr LJ 4900 (Bom); *Syed Ghousie Alias Babu v State of AP*, 2009 Cr LJ 311 (AP)(DB).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 58] Offenders sentenced to transportation how dealt with until transported.

[Rep. by the [Code of Criminal Procedure](#) (Amendment) Act, 1955 (26 of 1955), sec. 117 and Sch. (w.e.f. 1-1-1956).]

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 59] Transportation instead of imprisonment.

[Rep. by the [Code of Criminal Procedure](#) (Amendment) Act, 1955 (26 of 1955), sec. 117 and Sch. (w.e.f. 1-1-1956).]

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 60] Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

COMMENT—

Life imprisonment means rigorous imprisonment for life.¹⁸⁴ A distinction between 'imprisonment for life' and 'imprisonment for a term' has been maintained in the [Indian Penal Code](#) in several of its provisions. Second, by its very terms section 60 is applicable to a case where 'an offender is punishable with imprisonment which may be of either description' and it is only in such case that it is competent for the Court to direct that 'such imprisonment shall be either wholly rigorous or wholly simple or that any part of such imprisonment shall be rigorous and the rest simple'. And it is clear that whenever an offender is punishable with 'imprisonment for life' he is not punishable with 'imprisonment which may be of either description', in other words section 60 would be inapplicable. The position in law as regards the nature of punishment involved in a sentence of imprisonment for life is well settled and the sentence of imprisonment for life has to be equated to rigorous imprisonment for life.¹⁸⁵

184. *Mohd Munna v UOI*, (2005) 7 SCC 417 [LNIND 2005 SC 701] : AIR 2005 SC 3440 [LNIND 2005 SC 701].

185. *Naib Singh case*, (1983 (2) SCC 454 [LNIND 1983 SC 116] : 1983 SCC (Cr) 536.

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 61] Sentence of forfeiture of property.

[Rep. by the [Indian Penal Code](#) (Amendment) Act, 1921 (XVI of 1921), sec. 4.]

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 62] Forfeiture of property in respect of offenders punishable with death, transportation or imprisonment.

[Rep. by the [Indian Penal Code \(Amendment\) Act, 1921 \(XVI of 1921\)](#), sec. 4.]

COMMENT—

These sections were deleted by the [Indian Penal Code \(Amendment\) Act of 1921](#). They imposed the sentence of forfeiture of property. The Court recommended reintroduction of these sections because they have become necessary to combat the cancerous growth of corruption. These provisions would have a determined effect on those who are bent upon to accumulate wealth at the cost of the society by misusing their position of power.¹⁸⁶.

^{186.} *Shobha Suresh Jumani v Appellate Tribunal, Forfeited Property, AIR 2001 SC 2288 [LNIND 2001 SC 1184] : 2001 Cr LJ 2583* .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 63] Amount of fine.

Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

COMMENT—

A fine is fixed with due regard to circumstances of the case in which it is imposed and the condition of life of the offender. When the legislature has not fixed any upper limit for the quantum of fine in respect of a particular offence, the Court has freedom to fix any amount but then the Court must see that the fine imposed is not excessively high or repulsively low. Financial capacity of the accused, enormity of the offence and extent of damage caused to the victim of the offences etc. are relevant considerations in fixing up the amount.¹⁸⁷.

[s 63.1] Fine not to be harsh or excessive.—

The general principle of law running through sections 63 to 70 is that the amount of fine should not be too harsh or excessive. Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.¹⁸⁸. Section 63 does not prescribe any limit to the amount of fine, but it should not be excessive. In the present case having regard to the gravity of the offence and the illegal gains made by the accused, the fine imposed to the tune of Rs. 60 crores was held to be not excessive.¹⁸⁹.

[s 63.2] Applicability in other Statutes.—

Sections 63–70 IPC, 1860 and provision of Cr PC, 1973 relating to the award of imprisonment in default of payment of fine would apply to all cases wherein fines have been imposed on an offender unless 'the Act, Regulation, Rules or Bye-law contains an express provision to the contrary'.¹⁹⁰.

187. Sebastian v State of Kerala, 1992 Cr LJ 3642 (Ker) : 1992 (3) Crimes 864 (Ker)

188. Shahejadkhan Mahebubkhan Pathan v State of Gujarat, JT 2012 (10) SC 8 [LNIND 2012 SC 630] : 2012 (10) Scale 21 [LNIND 2012 SC 630] : AIR 2012 (SCW) 5875 (In this judgment the SC

quoted the previous edition of this book). See also *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 .

189. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976 .

190. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1.

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 64] Sentence of imprisonment for non-payment of fine.

191. [In every case, of an offence punishable with imprisonment as well as fine,¹ in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable **192.** [with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,] it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

COMMENT—

The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but also the duty of the Court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.¹⁹³ A default sentence is no punishment under law. It is only a method of enforcement of the direction for payment of amounts directed to be paid as fine. Wherever the Criminal Court has the jurisdictional competence to impose a fine, sections 64–70, [IPC](#), and [section 30 Cr PC, 1973](#) stipulate that the Court can recover the same by imposition of a default sentence. The jurisdiction to impose a default sentence is only incidental to the power to impose a fine and the duty of the Court to recover the same.¹⁹⁴ The wording of the section is not happy, but the Legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases in which fine can be imposed to induce the offender to pay the fine.

The cases falling under this section are:—

Where the offence is punishable with (a) imprisonment with fine, or (b) imprisonment or fine, or (c) fine only, and the offender is sentenced to (i) imprisonment, or (ii) fine, or both, the Court may sentence the offender to a term of imprisonment in default of payment of fine. A term of imprisonment for non-payment of fine is not a substantive sentence. It is only a penalty for the default. It cannot be added to the substantive sentence so as to see whether the maximum imprisonment that could be awarded for the offence is not being exceeded.¹⁹⁵

1. 'Imprisonment as well as fine.'—Magistrates cannot award compensation in addition to fine.¹⁹⁶

The full Bench of Madras High Court held that imprisonment in default of payment of fine cannot be directed to run concurrently with substantive sentence because both the sentences are distinct in view of [sections 53](#) and [64 IPC, 1860](#).¹⁹⁷

[s 64.1] Sentence and penalty distinguished.—

The term of imprisonment in default of payment of fine is not a sentence. It is penalty incurred for non-payment of fine. A sentence is a term of imprisonment, which the offender has to undergo unless it is remitted in a further judicial proceeding or otherwise. A term of imprisonment on default in payment of fine stands on a different footing. The further imprisonment is due to non-payment by refusal or otherwise. The convict can pay the amount and get rid of further imprisonment.¹⁹⁸

[s 64.2] Fine and Compensation.—

There exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense 'fine' stands on a higher footing than compensation awarded by the Court.¹⁹⁹

[s 64.3] Power of Magistrate to impose Sentence of imprisonment in default of fine.—

As per [section 30 of Cr PC, 1973](#) the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law: provided that the term is not in excess of the powers of the Magistrate under [section 29 Cr PC, 1973](#); and shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. The imprisonment awarded may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under [section 29 of Cr PC, 1973](#). The default sentence is not to be in excess to the limitations imposed under [section 30 Cr PC, 1973](#).²⁰⁰

[s 64.4] Default sentence on non-payment of Compensation.—

Undoubtedly, there is no specific provision in the Code which enables the Court to sentence a person who commits breach of the order of payment of compensation. But in *Hari Singh v Sukhbir Singh*,²⁰¹ Supreme Court held that since the imposition of compensation under [section 357\(3\) Cr PC, 1973](#) was on account of social concern, the Court could enforce the same by imposing sentence in default, particularly when no mode had been prescribed in the Code for recovery of sums awarded as compensation in the event the same remained unpaid. The position is re-iterated in *Sugnathi Suresh Kumar v Jagdeeshan*.²⁰² The provisions of sections 357(3) and 431 [Cr PC, 1973](#) when read with [section 64 IPC, 1860](#) empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.²⁰³

191. Subs. by Act 8 of 1882, section 2, for "In every case in which an offender is sentenced to a fine".
192. Ins. by Act 10 of 1886, section 21(2).
193. *Shahejadkhan Mahebubkhan Pathan v State of Gujarat*, 2012 (10) Scale 21 [LNIND 2012 SC 630] : (2013) 1 SCC 570 [LNIND 2012 SC 630] : JT 2012 (10) SC 8 [LNIND 2012 SC 630] : *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1.
194. *C Ganga v Lakshmi Ammal*, 2008 Cr LJ 3359 (Ker).
195. *P Balaraman v State of TN*, 1991 Cr LJ 166 Mad at pp 176-177.
196. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, (2007) 6 SCC 528 [LNIND 2007 SC 451] : 2007 Cr LJ 2417 : 2007 (4) SCR1122 : (2007) 3 SCC (Cr) 209.
197. *Donatus Tony Ikwanusi v The Investigating Officer, NCB* 2013 Cr LJ 1938 (Mad FB) : 2013 (2) CTC1. See also *Sukumaran v State*, 1993 Cr LJ 3228 (Ker) ; *Madappen Muhassin v State of Kerala*, 2016Cr LJ 4792 (Ker).
198. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : (2008) 1 SCC Cri 1 [LNIND 2007 SC 1171] .
199. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, (2007) 6 SCC 528 [LNIND 2007 SC 451] : 2007 Cr LJ 2417 : 2007 (4) SCR1122 : (2007) 3 SCC (Cr) 209.
200. *Kuna Maharana v State*, 1996 Cr LJ 170 (Ori).
201. AIR 1988 SC 2127 [LNIND 1988 SC 411] : (1988) 4 SCC 551 [LNIND 1988 SC 411] .
202. *Sugnathi Suresh Kumar v Jagdeeshan*, AIR 2002 SC 681 [LNIND 2002 SC 1622] : (2002) 2 SCC 420 [LNIND 2002 SC 1622] .
203. *Vijayan v Sadanandan*, (2009) 6 SCC 652 [LNIND 2009 SC 1119] : 2009 Cr LJ 2957 : (2009) 3 SCC (Cr) 296; *C Ganga v Lakshmi Ammal*, 2008 Cr LJ 3359 (Ker).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 65] Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

COMMENT—

This section applies to all cases where the offence is 'punishable with imprisonment as well as fine,' i.e., cases where fine and imprisonment can be awarded, and also those where the punishment may be either fine or imprisonment, but not both. The only cases that it does not apply to are those dealt with in section 67 where fine only can be awarded.²⁰⁴ Section 33 (now 30) of the [Cr PC, 1973](#) acts as a corollary to this section. Thus under [section 65, IPC, 1860](#) the imprisonment in default of fine cannot exceed one-fourth of the maximum term of imprisonment that can be awarded for the offence. Thus, where the High Court altered the conviction of the appellant to one under [section 419](#) read with [section 109 IPC](#), from a conviction recorded by the trial Court under sections 420/511, 467, 468 and 471 read with [section 120B IPC](#), and awarded a sentence of two years' rigorous imprisonment while maintaining the fine of Rs. 3,000 and by implication the default imprisonment of two years as awarded by the trial Court, it was held that, though the trial Court's order regarding two years' imprisonment in default of payment of fine was quite in order in view of the fact that the five offences for which the trial Court recorded a conviction were each punishable with seven years' imprisonment and the fine of Rs. 3,000 was only a part of the cumulative sentence for the commission of those five offences, yet the sentence of three years' imprisonment in default of payment of fine became illegal the moment the High Court altered the conviction to one under [section 419](#) read with [section 109 IPC](#), as under these sections the accused could be sentenced to a maximum of three years' imprisonment and, therefore, the default imprisonment could under no circumstance exceed nine months, that is, one-fourth of the maximum sentence of three years that could be awarded under [section 419, IPC](#).²⁰⁵ While a Magistrate's powers are specifically limited by [section 33\(old\) Cr PC](#) they must also be exercised so as not to contravene [section 65 IPC](#).²⁰⁶ [Section 326, IPC](#) is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. However, because of [section 29\(2\), Cr PC](#) the learned Magistrate, First Class, cannot impose the maximum amount of imprisonment prescribed by this section; he also cannot, by resorting to [section 65, IPC](#), award a period of imprisonment, in default of payment of fine, on the erroneous assumption that he has the power to award the maximum sentence prescribed by [section 326, IPC](#).²⁰⁷ [Section 65 IPC](#) that puts a limit of imprisonment for default sentence upto one-fourth of the term of imprisonment, the grievance against higher default sentence, if any, can be only by the accused and not by the State.²⁰⁸

-
204. *Yakoob Sahib v State*, (1898) 22 Mad 238.
205. *Ram Jas v State of UP*, 1974 Cr LJ 1261 : AIR 1974 SC 1811 [LNIND 1970 SC 363] ; see also *Partap Kumar*, 1976 Cr LJ 818 (P&H).
206. *Chhajulal v State of Rajasthan*, AIR 1972 SC 1809 [LNIND 1972 SC 179] : (1972) 3 SCC 411 [LNIND 1972 SC 179] . See *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1 in which the period of three years imprisonment for default of fine was reduced to six months.
207. *Bidhan Bisoi v State of Orissa*, 1989 Cr LJ 1038 (Ori).
208. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 66] Description of imprisonment for non-payment of fine.

The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

COMMENT—

The imprisonment in default of payment of a fine may be either rigorous or simple.

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 67] Imprisonment for non-payment of fine when offence punishable with fine only.

If the offence be punishable with fine only,²⁰⁹ [the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

COMMENT—

This section refers solely to cases in which the offence is punishable with fine only and has no application to an offence punishable either with imprisonment or with fine, but not with both. Such offences are governed by section 65. For a consideration under this section of the [Narcotic Drugs and Psychotropic Substances Act](#) (61 of 1985), section 21 of which imposes a fine and imprisonment in default, see *Daulat Raghunath Derale v State of Maharashtra*.²¹⁰

[s 67.1] Default sentence on non-payment of Maintenance.—

The sentence is imposed under [section 125\(3\) of Cr PC, 1973](#) only as a mode of enforcement of the direction to pay the amount of maintenance and not as a punishment. The Supreme Court was considering the question whether the default sentence, if undergone shall wipe off the liability.²¹¹ It is impermissible to impose a sentence of rigorous imprisonment on a defaulter under [section 125\(3\) Cr PC, 1973](#). Only a sentence of simple imprisonment can be imposed under [section 125\(3\) of Cr PC, 1973](#).²¹²

²⁰⁹. Ins. by Act 8 of 1882, section 3.

²¹⁰. *Daulat Raghunath Derale v State of Maharashtra*, [1991 Cr LJ 817](#).

²¹¹. *Kuldip Kaur v Surinder Singh*, ([AIR 1989 SC 232 \[LNIND 1988 SC 987\]](#)) : [1989 Cr LJ 794](#). It was held that the purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears.

²¹². *Moideenkutty Kunhankutty Haji v State of Kerala*, [2008 Cr LJ 3402](#) (Ker).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 68] Imprisonment to terminate on payment of fine.

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

COMMENT—

The person sentenced to pay a fine must deposit the fine forthwith, but may be, permitted to deposit it after some time in the discretion of the Court. Even in that event he must deposit the amount before the period specifically fixed by the Court and if he does not do so, he immediately incurs the liability of being sent to prison. It would be the duty of the Court to arrest him and confine him into the prison. Only when such confinement in the prison has commenced that the accused can have a legal right to deposit the amount whereupon [section 68 IPC, 1860](#) would come into operation and his imprisonment would terminate.²¹³ The time given by the High Court or the Sessions Judges in appeal or revision for payment of fine merely means that the realisation is deferred till the time granted. However, this cannot take away the rights of the convicts as provided under [section 68](#) and [section 69](#) of the [IPC, 1860](#). If the convict offers to deposit the fine imposed on him beyond the period provided, the Courts cannot refuse to accept the same. It must apply the provisions of [section 68](#) and [section 69](#) of the [IPC, 1860](#).²¹⁴ The period to deposit the amount of fine cannot be extended by the High Court under [section 482 Cr PC, 1973](#) and the petitioners can avail the remedy of provisions of [section 68 of IPC, 1860](#).²¹⁵

^{213.} *Ram Lakhan v State*, [1986 Cr LJ 617](#) (All); *Usman v State of UP*, [2007 Cr LJ 3868](#) (All).

^{214.} *State of Assam v Bir Bahadur Singh*, [2005 Cr LJ 4345](#) (Gau).

^{215.} *Prahlad Singh v State of MP*, [2009 Cr LJ 3161](#) (MP); *Ram Lakhan v State*, [1986 Cr LJ 617](#) (All).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 69] Termination of imprisonment on payment of proportional part of fine.

If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

ILLUSTRATION

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

COMMENT—

If the fine imposed on an accused is paid or levied while he is imprisoned for default of payment, his imprisonment will immediately terminate: and if a proportion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place. The Court has, however, no power to refund fine. If the time limit had been set by the Court for payment of fine and the fine amount is not paid within the time so fixed, then it goes without saying that the petitioner-accused has to either surrender before the Court or the prosecuting agency will be in a position to arrest him and produce before Court for his detention in prison for undergoing the default sentence.²¹⁶ In case of default in payment of fine accused not obeying specific directions as to making payment and postponing payment without surrendering into Court. Accused is guilty of abuse of process of Court.²¹⁷

^{216.} *Prahлад Singh v State of M P*, 2009 Cr LJ 3161 (MP).

^{217.} *Ram Lakhan v The State*, 1986 Cr LJ 617 (All).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 70] Fine leviable within six years, or during imprisonment. Death not to discharge property from liability.

The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

COMMENT—

Imprisonment in default of fine does not liberate the offender from his liability to pay the full amount of fine imposed on him. Such imprisonment is not a discharge or satisfaction of the fine but is imposed as a punishment for non-payment or contempt or resistance to the due execution of the sentence. The offender cannot be permitted to choose whether he will suffer in his person or his property. His person will cease to be answerable for the fine. Nevertheless, his property will for a time continue to do so. The bar of six years may save the property of the accused but not his personal arrest. The liability for any sentence of imprisonment awarded in default of payment of fine continues after the expiration of six years.²¹⁸ Any proceeding taken after six years to recover the fine by sale of immoveable property of the offender is time-barred.²¹⁹ The limitation starts from the date of passing of the sentence of conviction by the trial Court and not the date of dismissal of the appeal or revision preferred by the accused.²²⁰ The property of the accused is liable for the payment of fine even if he has undergone imprisonment in default of fine and as such even on death of the offender does not discharge any property which would after his death, be legally liable for his debts due from him (including liability) to discharge the fine.²²¹.

The expression "levy" in this section means "to seize" for the purpose of collecting the fine or to enforce execution for a certain sum and not actual realisation.²²² Any stay or suspension obtained from the higher Court has to be excluded in computing the period of six years' limitation under [section 70 IPC](#).²²³ Section 70 says that State shall levy fine within six years from the date of sentence. What is contemplated is that the State shall commence recovery proceedings within six years; and, need not be completed it within six years of the sentence. Therefore, once a distress warrant is issued within six years of the sentence, the plea of limitation is out of bounds for the sentence.²²⁴.

^{218.} *Ganu Sakharam*, (1884) Unrep. Cr C 207.

^{219.} *Collector of Broach v Ochhavlal Bhikalal*, (1940) 43 Bom LR 122 , (1941) Bom 147. *State v Krishna Pillai Madhavan Pillai*, 1953 Cr LJ 1265

220. *Palakdhari Singh*, AIR 1962 SC 1145 [LNIND 1962 SC 17] : (1962) 2 Cr LJ 256 .
221. *P R Anjanappa v Yurej Agencies Pvt Ltd*, 2004 Cr LJ 2565 (Kar).
222. *Ramaswamy*, (1962) 64 Bom LR 440 : 1963 (1) Cr LJ 152
223. *Mahtab Singh v State of UP*, 1979 Cr LJ 1077 : AIR 1979 SC 1263 [LNIND 1978 SC 186] .
224. *Mahtab Singh*, Supra; see also *Brahameshwar Prasad Sinha*, 1983 Cr LJ 8 (Pat).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 71] Limit of punishment of offence made up of several offences.

Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

225. [Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

ILLUSTRATIONS

- (a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.
- (b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

COMMENT—

The section says that where an offence is made up of parts, each of which constitutes an offence, the offender should not be punished for more than one offence unless expressly provided. Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the offender should not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. The section governs the whole Code and regulates the limit of punishment in cases in which the greater offence is made up of two or more minor offences. It is not a rule of adjective law or procedure, but a rule of substantive law regulating the measure of punishment, and it does not, therefore, affect the question of conviction, which relates to the province of procedure. [Section 71 IPC, 1860](#) as well as [section 26 of the General Clauses Act, 1897](#) talk only of punishment and not of conviction. Thus, conviction of the accused in respect of the same act for two different offences is quite legal.²²⁶ The section contemplates separate punishments for an offence against the same law and not under different laws. Where offences are committed under two separate enactments, [section 71 IPC, 1860](#) is not helpful to the accused and as such, two separate sentences cannot be

questioned by pressing section 71 into service.²²⁷ In order to attract provisions of Article 20(2) of the Constitution, i.e., doctrine of *autrefois acquit* or section 300 Cr PC, 1973 or section 71 IPC, 1860 or section 26 of the General Clauses Act, 1897 ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence.²²⁸

The rules for assessment of punishment are laid down in sections 71 and 72 of the IPC, 1860 and section 31 of the Cr PC, 1973. Section 31 of the Code of Criminal Procedure provides that when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the IPC, 1860, sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; and in the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offence being in excess of the punishment which it is competent to inflict on conviction of a single offences, to send the offender for trial before a higher Court. It, therefore, enhances the ordinary powers of sentences given to Magistrates by section 29, Cr PC, 1973; but in order to bring a case within the purview of this section, the accused must have been convicted of two or more offences in the same trial, and the sentence for any one of these offences should not exceed the limits of their ordinary powers. The limits fixed by this section refer to sentences passed simultaneously, or upon charges which are tried simultaneously. Sentences of imprisonment passed under it may run concurrently. When an accused is convicted at one trial of two or more offences, section 31(1) of Cr PC, 1973 vests discretion in Court to direct that punishment shall run concurrently. Court may sentence the accused for such offences to several punishments prescribed therefor, and such punishment would consist of imprisonment to commence, one after expiration of other in such order as the Court may direct, subject to limitation contained in section 71 of IPC, 1860.²²⁹

[s 71.1] Illustration (a).—

"A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up whole beating. If A were liable to punishment for every blow, he might be imprisoned for 50years, one for each blow. But he is liable only to one punishment for the whole beating." It is to be noted that the whole beating is considered to constitute one offence while each of the blows also amounted to the offence of voluntarily causing hurt. It can be said, therefore, that while the obtaining of money by cheating on the presentation of an individual bill did constitute the offence of cheating the obtaining of the entire money in pursuance of the terms of the single contract and the single conspiracy entered into also constituted the offence of cheating. When the accused could not be punished with the punishment for more than one such offence it cannot be the intention of law that the accused be charged with each of the offences, which were in a way included in the complete offence made up by the entire course of conduct of the accused in pursuance of the conspiracy.²³⁰

[s 71.2] Section 71 IPC and section 220 Cr PC.—

Section 71 of the IPC, 1860 has to be read in conjunction with section 220 of the Cr PC, 1973. It should, however, be remembered that section 220 Cr PC, 1973 contains only rules of criminal pleading in regard to joinder of charges and does not deal with the sentence to be passed on the charges of the offences mentioned in the several illustrations thereunder. Sub-section (5) of section 220 Cr PC, 1973 makes this position abundantly clear. A joint reading of section 71 IPC, 1860 and section 220 Cr PC, 1973 clearly shows that clause (2) of section 71 IPC, 1860 approximates sub-section (3) of

section 220 Cr PC, 1973 and clause (3) of section 71 IPC, 1860 corresponds to sub-section (4) of section 220 Cr PC, 1973. It, therefore, follows that the embargo on separate sentence under section 71 IPC, 1860 applies only to cases falling within sub-sections (3) and (4) of section 220 Cr PC, 1973 and not under, for example, sub-section (1) of that section.²³¹ Thus in cases covered by illustrations (i), (j) and (k) to sub-section (3) and illustration (m) to sub-section (4) of section 220 Cr PC, though the offences mentioned therein could be tried together and conviction recorded in regard to each one of them, yet no separate sentences could be passed in view of the embargo contained in section 71 IPC, 1860. Similarly, where the accused was convicted and sentenced under section 147 IPC, 1860 a separate sentence under section 143 IPC, 1860 could not be passed.²³² In the same way when an accused is convicted for a more serious offence, e.g., under section 148 IPC, 1860 a separate sentence under section 147 IPC, 1860 is not only uncalled for but illegal.²³³ It, therefore, means that cases falling under sub-section (1) of section 220 Cr PC, 1973 where several distinct offences are committed in course of the same transaction, the accused cannot only be tried and convicted of all of them at one trial but even separate sentences can be passed in regard to each one of them. Thus, where a person commits lurking house-trespass by night (section 457 IPC, 1860) and also commits theft (section 380 IPC, 1860) in course of the same transaction, he can be convicted and sentenced separately for both of them.²³⁴ Though the offence under section 420, IPC, 1860 and offence under section 138, N.I. Act are very distinct and their ingredients are different, still both the offences were committed during the same transaction; accused could have been charged and tried for both the offences during single trial as per section 220, Cr PC, 1973. However, from the language of section 220, it appears to be enabling provision whereby two or more different offences may be tried together by the Court and not mandatory.²³⁵

[s 71.3] CASES.—

1. It was contended that the accused having caused the evidence of the two offences under sections 330 and 348 to disappear, committed two separate offences under section 201 and are punishable accordingly. Taking a strict view of the matter, it must be said that by the same act the appellants committed two offences under section 201. The case is not covered either by section 71 of the IPC, 1860 or by section 26 of the General Clauses Act, and the punishment for the two offences cannot be limited under those sections. But, normally, no Court should award two separate punishments for the same act constituting two offences under section 201. The appropriate sentence under section 201 for causing the evidence of the offence under section 330 to disappear should be passed, and no separate sentence need be passed under section 201 for causing the evidence of the offence under section 348 to disappear.²³⁶ Where death was caused by rash and negligent driving of a truck and the accused could be convicted under sections 279 and also under sections 304A, it was held that a separate sentence under sections 279 could not be imposed.²³⁷

[s 71.4] Rioting and grievous hurt.—

The illustration (a) to section 71 IPC makes it clear that where only an offence is made up of many parts, and then only, the offender shall not be punished for more than one such offence. When the offences are separate and distinct and do not constitute parts of one offence, the accused can be convicted separately for each one of the offences. Therefore, the argument that the sentence both under sections 148 and 324, IPC is opposed to section 71, IPC is not acceptable.²³⁸

The provisions of [section 31 of the Code of Criminal Procedure](#) have to be read subject to the provisions of this section and that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with more severe punishment than the Court which tries him could award for anyone of such offences.²³⁹.

3. Same facts constituting different offences.—It has been held that although the act of the petitioner is only one, namely plying of overloaded vehicle on the public road, he had committed two distinct offences punishable under two different enactments, namely (i) violation of the terms of permit and certificate of registration granted by the authorities which is punishable under the [Motor Vehicles Act, 1988](#) and (ii) causing damage to the public property which is punishable under the [Prevention of Damage to Public Property Act, 1984](#). Hence, the claim of the petitioner that he is being punished more than once for the same offence violating [Article 20\(2\) of the Constitution of India](#) is neither factually correct nor legally tenable as he is being proceeded against for two distinct offences punishable under two separate Acts and no parallel procedure for the same offence is being adopted.²⁴⁰ Prosecution under sections 5 and 6 of Rajasthan [Sati \(Prevention\) Act 1987](#) not barred since section 5 makes the commission of an act an offence and punishes the same while the provisions of section 6 are preventive in nature and make provision for punishing contravention of prohibitory order so as to make the prevention effective. The two offences have different ingredients.²⁴¹.

4. An act giving rise to an offence and an aggravated form of the same offence.—Section 457 makes punishable lurking house trespass by night or house breaking by night in order to the committing of any offence punishable with imprisonment and if the offence intended to be committed is theft, the punishment is higher. Section 380 makes punishable a theft committed in a dwelling house. The two offences do not, in our opinion, fall under section 71 and, therefore, the conviction under both the sections is not illegal.²⁴².

225. Added by Act 8 of 1882, sec. 4.

226. *Ramanaya v State*, [1977 Cr LJ 467](#) (Pat).

227. *Re Natarajan*, [1976 Cr LJ 1502](#) (Mad); see also *Sukhnandan v State*, [\(1917\) 19 Cr LJ 157](#) .

228. *Mahendrabhai v State of Gujarat*, [AIR 2012 SC 2844 \[LNIND 2012 SC 1473\] : \(2012\) 7 SCC 621 \[LNIND 2012 SC 1473\] : 2012 Cr LJ 2432](#) .

229. *Satnam Singh Puransing Gill v State of Maharashtra*, [2009 Cr LJ 3781](#) .

230. *Banwarilal Jhunjhunwala v UOI*, [AIR 1963 SC 1620 \[LNIND 1962 SC 382\] : 1963 \(Supp2\) SCR 338 : 1963 Cr LJ 529](#) .

231. *Nirichan*, 12 M. 36; *Kalidas*, 38 C 453 : *Wazir*, 10A 58.

232. *Poovappa*, [1981 Cr LJ NOC 107](#) (Kant).

233. *Re Thangavelu*, [1972 Cr LJ 390](#) (Mad).

234. *Udai Bhan*, [1962 \(2\) Cr LJ 251 : AIR 1962 SC 1116 \[LNIND 1962 SC 37\]](#) ; see also *Ramanaya v State*, [1977 Cr LJ 467](#) (Pat).

235. *Sharan P Khanna v Oil & Natural Gas Corp Ltd*, [2010 Cr LJ 4256](#) (Bom).

236. *Roshan Lal v State of Punjab*, AIR 1965 SC 1413 [LNIND 1964 SC 339] : 1965 (2) Cr LJ 426 . See also *Nafe Singh v State of Haryana*, (1971) 3 SCC 934 : (1972) 1 SCC (Cr) 182; *Kharkan v State of UP*, AIR 1965 SC 83 [LNIND 1963 SC 205] : 1965 (1) Cr LJ 116 .
237. *Kantilal Shivabhai v State of Gujarat*, 1990 Cr LJ 2500 (Guj).
238. *Angadi Chennaiah v State of AP*, 1985 Cr LJ 1366 (AP).
239. *Puranmal*, AIR 1958 SC 935 [LNIND 1958 SC 89] : 1958 Cr LJ 1432 .
240. *Vikash Kumar Singh v State of Bihar*, AIR 2011 Pat 72 [LNINDORD 2011 PAT 7073] .
241. *State of Rajasthan v Hat Singh*, 2003 (2) SCC 152 [LNIND 2003 SC 7] : AIR 2003 SC 791 [LNIND 2003 SC 7] .
242. *Udai Bhan v State of UP*, AIR 1962 SC 1116 [LNIND 1962 SC 37] : 1962 Cr LJ 251 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 72] Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences, he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

COMMENT—

This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunal to pronounce with certainty under what penal provision his case falls. The section applies to cases in which the law applicable to a certain set of facts is doubtful. The doubt must be as to which of the offences the accused has committed, not whether he has committed any. Moreover, this rule would apply even if one of the alternatives were an offence of murder.²⁴³

²⁴³. *Sahel Singh*, 3 Cr LJ 364; see also *Nesti Mondal*, AIR 1940 Pat 289 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 73] Solitary confinement.

Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that

the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and ^{244.}~~shall not exceed one~~ year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

COMMENT—

Solitary confinement amounts to keeping the prisoner thoroughly isolated from any kind of contact with the outside world. It is inflicted in order that a feeling of loneliness may produce wholesome influence and reform the criminal. This section gives the scale according to which solitary confinement may be inflicted. Where the petitioner, an undertrial prisoner, who was arrested in connection with the assassination of a former Prime Minister was put in a separate cell only as a precautionary measure, to ensure his non-mingling with other prisoners and for his security, it was held that it did not amount either to solitary confinement or cellular confinement.^{245.} The well-known principle of law is that the convict carrying death punishment is not deemed to be 'prisoner under sentence of death' unless death sentence becomes final, conclusive and beyond judicial scrutiny. Such convict is handed over to the jail authority to be kept in safe and protected custody with purpose that he may be available for execution of the sentence eventually confirmed. This custody is different from custody of a convict suffering from simple or rigorous imprisonment. Therefore, he cannot be kept in Cell or solitary confinement which itself is a separate punishment.^{246.}

[s 73.1] Convicts on death row.—

The question about solitary confinement or keeping condemned prisoner alone under strict guard as provided in various jail manual has been considered in depth by the **Constitution** Bench in *Sunil Batra v Delhi Administration*^{247.} and *Triveniben v State of Gujarat.*^{248.} In Batra's case, it has been held that if the prisoner under sentence of death is held in jail custody, punitive detention cannot be imposed upon him by jail authorities except for prison offences. When a prisoner is committed under a warrant for jail custody under **section 366(2) Cr PC, 1973** and if he is detained in solitary confinement which is a punishment prescribed by **section 73, IPC, 1860** it will amount to imposing punishment for the same offence more than once which would be violative of **Article**

[20](#)(2). Practice of keeping prisoners in condemned cell before confirmation is a pre-constitutional practice and such practices should be avoided. Therefore, practice adopted in the jail until now cannot be a ground of putting the petitioners in solitary confinement or separate condemned cells.²⁴⁹.

The Supreme Court in *Shatrughan Chauhan v UOI*²⁵⁰. held that to be 'under sentence of death' means 'to be under a finally executable death sentence'. The Court, in this case also issued guidelines for safeguarding the rights of the death row convicts.

[244.](#) Subs. by Act 8 of 1882, section 5, "for be less than a".

[245.](#) *Perrarivalan v IG of Prisons, Madras*, [1992 Cr LJ 3125](#) (Mad).

[246.](#) *Anand Mohan v State of Bihar*, [2008 Cr LJ 1273](#) (Pat).

[247.](#) *Sunil Batra v Delhi Administration*, [AIR 1978 SC 1675 \[LNIND 1978 SC 215\] : 1978 Cr LJ 1741](#) .

[248.](#) *Triveniben v State of Gujarat*, [AIR 1989 SC 1335 \[LNIND 1989 SC 885\] : 1990 Cr LJ 1810](#) .

Also see *Kishor Singh Ravinder Dev v State of Rajasthan*, [AIR 1981 SC 625 \[LNIND 1980 SC 436\] : \(1981\) 1 SCC 503 \[LNIND 1980 SC 436\]](#) .

[249.](#) *Acharaparambath Pradeepan v State of Kerala*, [2004 Cr LJ 755](#) (Ker).

[250.](#) *Shatrughan Chauhan v UOI*, [2014 Cr LJ 1327](#) .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 74] Limit of solitary confinement.

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

COMMENT—

Solitary confinement if continued for a long time is sure to produce mental derangement.

The section limits the solitary confinement, when the substantive sentence exceeds three months, to seven days in any one month. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than 14 days is awarded.²⁵¹.

^{251.} *Nyan Suk Mether*, (1869) 3 Beng LR 49.

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

252. [Is 75] Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

Whoever, having been convicted,¹ –

- (a) by a Court in **253.** [India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, **254.** [***]

255. [***]

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to **256.** [imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

COMMENT—

Principle.—This section does not constitute a separate offence but only imposes a liability to enhanced punishment. What [section 75 IPC, 1860](#) contemplates is that where a person who has been, previously convicted of an offence punishable under Chapter XII (which deals with offences relating to coin and Government stamps) or Chapter XVII. (which relates to offences against property) with imprisonment of either description for a term of three years or up-wards, is once again found guilty of a similar offence, he shall be liable to enhanced punishment which may extend to imprisonment for life or to imprisonment of either description for a term which may extend to ten years. The section is concerned with a previous conviction for a similar offence but it does not postulate that in respect of the previous conviction, the punishment imposed should have been one of not less than three years. All that it posits is that the previous conviction should have been in respect of an offence punishable with a term of imprisonment for a term of three years or upwards, but it does not lay down that the offender should have been actually punished with such a term of imprisonment.^{257.} It does not apply to offences under other Acts.^{258.}

1. 'Having been convicted'.—A plain reading of this provision goes to show that the previous conviction ought to be for offence punishable under Chapter XII or Chapter XVII and the sentence imposed is three years or more than that. If the sentence is less than three years or the offence does not fall within any of the two Chapters then [section 75, IPC, 1860](#) would not be applicable. If any authority is required then reference may be made to *Re Kamya*,^{259.} wherein it has been held that the minimum required for enhancement of punishment under [section 75, IPC, 1860](#) is that the previous conviction of the accused should have resulted in punishment of three years or more.^{260.} Section 75 is invoked for enhancement of the sentence and that can come only at the time the sentence is to be imposed. The fact that the accused is an old offender is not to be taken note of by the Court at the trial. Only at the conclusion of the

trial after entering the conviction, that question can be taken up for imposing the sentence.²⁶¹ Simply because the provisions of [section 75 of the Indian Penal Code](#) are attracted in a particular case, is no ground for inflicting the extreme punishment provided in that section. The provisions of this section are only permissive and not obligatory. They do confer jurisdiction on the Courts to inflict enhanced punishment but then that jurisdiction is to be exercised in a judicial manner after taking into consideration the circumstances and the factors narrated above.²⁶² [Section 75, IPC, 1860](#) does not prescribe that a severe sentence should be imposed for repetition of any crime by an offender. It does not prescribe a minimum sentence for any event. It does not say that a convict of a petty theft committed without any violence should be given a severe sentence if he had half a dozen previous convictions for like offences to his credit.²⁶³

[s 75.1] Clause (a).—

For the application of this section it is not necessary to show that the previous sentence was for three years or upwards. What is required is that the previous conviction was for an offence punishable under Chapter XII or XVII, for which sentence of imprisonment could have been three years or upwards. The key word being "punishable" the actual sentence awarded for the first offence is not of any consequence so long the offence was punishable with imprisonment for three years or upwards.²⁶⁴ It is also necessary to remember that the conviction for the earlier offence must remain in operation on the date of conviction for second offence. Thus if the previous conviction is set aside on appeal, the accused cannot be awarded enhanced punishment under this section.²⁶⁵ Non-applicability of [section 75, IPC](#) has nothing to do with the proof or guilt of the main offence. If [section 75, IPC](#) is found to be inapplicable then it would not mean that the finding of guilt for certain offences recorded by the Magistrate will also go away. The conviction for the offences would stand and the accused would be liable to be sentenced for the main offence and the sentence cannot be enhanced with the aid of [section 75, IPC, 1860](#).²⁶⁶

[s 75.2] Section 75 and Section 236 of Cr PC.—

Under section 236 (310 of old Code) of the [Code of Criminal Procedure](#) and under [section 75 of the Indian Penal Code](#), it is enough if the person concerned has been earlier convicted. It is not necessary that the sentence should be in force. Bearing in mind that [section 75 of the IPC](#) and section 236 (310 of old code) of the [Code of Criminal Procedure](#) deal with persons with previous conviction and the previous sentence need not necessarily be in force when the subsequent offence is committed—it would be clear that the latter section is intended to be applicable only to cases to which [section 75 of the Indian Penal Code](#) applies.²⁶⁷

^{252.} Subs. by Act 3 of 1910, section 2, for section 75.

^{253.} The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch (w.e.f. 1-4-1951), to read as above.

^{254.} The word "or" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

- 255. Clause (b) omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).
- 256. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).
- 257. *Re Sugali Nage Naik*, 1965 (1) Cr LJ 508 .
- 258. *Manaklal Jhamaklal v State*, 1966 Cr LJ 1139 (MP).
- 259. *Re Kamya*, AIR 1960 AP 490 [LNIND 1959 AP 115] : 1960 Cr LJ 1302 .
- 260. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
- 261. *State v Tampikannu*, AIR 1970 Ker 251 [LNIND 1969 KER 110] .
- 262. *Daulat Singh v The State of HP*, 1981 Cr LJ 1347 (HP).
- 263. *Kalarikkal Narayana Panicker Accused v State of Kerala*, 1976 Cr LJ 410 .
- 264. *Ghisulal v State of MP*, 1977 Cr LJ 88 (MP).
- 265. *Dilip Kumar Sharma*, AIR 1976 SC 133 [LNIND 1975 SC 412] : 1976 Cr LJ 184 .
- 266. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
- 267. *Pratap v State of UP*, AIR 1973 SC 786 [LNIND 1972 SC 595] : (1973) 3 SCC 690 [LNIND 1972 SC 595] .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

252. [Is 75] Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

Whoever, having been convicted,¹ –

- (a) by a Court in **253.** [India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, **254.** [***]

255. [***]

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to **256.** [imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

COMMENT—

Principle.—This section does not constitute a separate offence but only imposes a liability to enhanced punishment. What [section 75 IPC, 1860](#) contemplates is that where a person who has been, previously convicted of an offence punishable under Chapter XII (which deals with offences relating to coin and Government stamps) or Chapter XVII. (which relates to offences against property) with imprisonment of either description for a term of three years or up-wards, is once again found guilty of a similar offence, he shall be liable to enhanced punishment which may extend to imprisonment for life or to imprisonment of either description for a term which may extend to ten years. The section is concerned with a previous conviction for a similar offence but it does not postulate that in respect of the previous conviction, the punishment imposed should have been one of not less than three years. All that it posits is that the previous conviction should have been in respect of an offence punishable with a term of imprisonment for a term of three years or upwards, but it does not lay down that the offender should have been actually punished with such a term of imprisonment.^{257.} It does not apply to offences under other Acts.^{258.}

1. 'Having been convicted'.—A plain reading of this provision goes to show that the previous conviction ought to be for offence punishable under Chapter XII or Chapter XVII and the sentence imposed is three years or more than that. If the sentence is less than three years or the offence does not fall within any of the two Chapters then [section 75, IPC, 1860](#) would not be applicable. If any authority is required then reference may be made to *Re Kamya*,^{259.} wherein it has been held that the minimum required for enhancement of punishment under [section 75, IPC, 1860](#) is that the previous conviction of the accused should have resulted in punishment of three years or more.^{260.} Section 75 is invoked for enhancement of the sentence and that can come only at the time the sentence is to be imposed. The fact that the accused is an old offender is not to be taken note of by the Court at the trial. Only at the conclusion of the

trial after entering the conviction, that question can be taken up for imposing the sentence.²⁶¹ Simply because the provisions of [section 75 of the Indian Penal Code](#) are attracted in a particular case, is no ground for inflicting the extreme punishment provided in that section. The provisions of this section are only permissive and not obligatory. They do confer jurisdiction on the Courts to inflict enhanced punishment but then that jurisdiction is to be exercised in a judicial manner after taking into consideration the circumstances and the factors narrated above.²⁶² [Section 75, IPC, 1860](#) does not prescribe that a severe sentence should be imposed for repetition of any crime by an offender. It does not prescribe a minimum sentence for any event. It does not say that a convict of a petty theft committed without any violence should be given a severe sentence if he had half a dozen previous convictions for like offences to his credit.²⁶³

[s 75.1] Clause (a).—

For the application of this section it is not necessary to show that the previous sentence was for three years or upwards. What is required is that the previous conviction was for an offence punishable under Chapter XII or XVII, for which sentence of imprisonment could have been three years or upwards. The key word being "punishable" the actual sentence awarded for the first offence is not of any consequence so long the offence was punishable with imprisonment for three years or upwards.²⁶⁴ It is also necessary to remember that the conviction for the earlier offence must remain in operation on the date of conviction for second offence. Thus if the previous conviction is set aside on appeal, the accused cannot be awarded enhanced punishment under this section.²⁶⁵ Non-applicability of [section 75, IPC](#) has nothing to do with the proof or guilt of the main offence. If [section 75, IPC](#) is found to be inapplicable then it would not mean that the finding of guilt for certain offences recorded by the Magistrate will also go away. The conviction for the offences would stand and the accused would be liable to be sentenced for the main offence and the sentence cannot be enhanced with the aid of [section 75, IPC, 1860](#).²⁶⁶

[s 75.2] Section 75 and Section 236 of Cr PC.—

Under section 236 (310 of old Code) of the [Code of Criminal Procedure](#) and under [section 75 of the Indian Penal Code](#), it is enough if the person concerned has been earlier convicted. It is not necessary that the sentence should be in force. Bearing in mind that [section 75 of the IPC](#) and section 236 (310 of old code) of the [Code of Criminal Procedure](#) deal with persons with previous conviction and the previous sentence need not necessarily be in force when the subsequent offence is committed—it would be clear that the latter section is intended to be applicable only to cases to which [section 75 of the Indian Penal Code](#) applies.²⁶⁷

^{252.} Subs. by Act 3 of 1910, section 2, for section 75.

^{253.} The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch (w.e.f. 1-4-1951), to read as above.

^{254.} The word "or" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

^{255.} Clause (b) omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

^{256.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

^{257.} *Re Sugali Nage Naik*, [1965 \(1\) Cr LJ 508](#).

258. *Manaklal Jhamaklal v State*, 1966 Cr LJ 1139 (MP).
259. *Re Kamya*, AIR 1960 AP 490 [LNIND 1959 AP 115] : 1960 Cr LJ 1302 .
260. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
261. *State v Tampikannu*, AIR 1970 Ker 251 [LNIND 1969 KER 110] .
262. *Daulat Singh v The State of HP*, 1981 Cr LJ 1347 (HP).
263. *Kalarikkal Narayana Panicker Accused v State of Kerala*, 1976 Cr LJ 410 .
264. *Ghisulal v State of MP*, 1977 Cr LJ 88 (MP).
265. *Dilip Kumar Sharma*, AIR 1976 SC 133 [LNIND 1975 SC 412] : 1976 Cr LJ 184 .
266. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
267. *Pratap v State of UP*, AIR 1973 SC 786 [LNIND 1972 SC 595] : (1973) 3 SCC 690 [LNIND 1972 SC 595] .

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.

[s 76] Act done by a person bound, or by mistake of fact believing himself bound, by law.

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact¹ and not by reason of a mistake of law² in good faith believes himself to be,

bound by law³ to do it.

ILLUSTRATIONS

- (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
- (b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

COMMENT.—

Sections 76 and 79 are based on the maxim *ignorantia facti doth excusat* and *ignorantia juris non excusat*. Section 76 excuses a person who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it. See Comment on section 79, *infra*.

This section and sections 77, 78 and 79 deal with acts of a person bound or justified by law. This section as well as sections 78 and 79 deal with acts of a person under a mistake.

1. 'Mistake of fact'.—See Comment under section 79, *infra*.

2. 'Mistake of law'.—See Comment under section 79, *infra*.

3. 'In good faith believes himself to be, bound by law'.—In order to entitle a person to claim the benefit of this section it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the latter expression with reference to section 52, that the person to whom the order was given was bound by law to obey it. Thus, in the case of a soldier, the [Penal Code](#) does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act. But in certain circumstances a soldier receives absolute protection under [section 132 of the Cr PC, 1973](#).

For illegal acts, however, neither the orders of a parent nor a master nor a superior will furnish any defence. Nothing but fear of instant death is a defence for a policeman who tortures anyone by order of a superior. The maxim *respondeat superior* has no application to such a case.⁶ The net position appears to be that if superior order is in conformity with the law no further question arises and the subordinate officer is protected by [section 76 IPC, 1860](#), if he carries out that order. It is only when the order is not in accordance with the law but the subordinate officer who carries out that order in good faith, on account of a mistake of fact and not on ground of mistake of law, believes himself to be bound by law to carry out such an order, that a further question arises as to whether the subordinate officer will not still get protection of [section 76 IPC, 1860](#), because of his mistake of fact. Thus, where the order was legal in the circumstances of the case, e.g., where the police patrol party opened fire under the order of the Deputy Commissioner of Police after it had been attacked on a dark night and an Assistant Commissioner of Police had been injured as a result of such attack, really no question arose for the application of [section 76 IPC, 1860](#), as the order was both legal and justified by the circumstances of the case.⁷ The Indian law as contained in [sections 76 and 79](#) of the [Penal Code](#) appears to be the same as in England. This point has, however, not been clearly decided in any case including the decision of the Supreme Court in *Shew Mangal Singh's case*.⁸ There are, however, enough indications

in *Shew Mangal Singh's* case and in sections 76 and 79 IPC, 1860, that if the subordinate due to a mistake of fact and not due to a mistake of law honestly believed that he was bound or justified by law in carrying out the superior order which though not manifestly illegal was nevertheless illegal, perhaps he would still get the benefit of superior order. Obedience to an illegal order can only be used in mitigation of punishment but cannot be used as a complete defence.⁹ If on account of any abnormal reaction, the employee has committed suicide, the conduct of the complainant or of higher officer of taking departmental action by way of resorting to legal remedy or enforcement of law, cannot be termed as leaving no option to the delinquent employee but to commit suicide and, therefore, cannot be said as abetment or incitement to suicide under such circumstances. In any case any action for resorting to legal remedy for grievances or for enforcement of law in exercise of powers or purported exercise of power cannot be said to contain any element of criminality unless such action is *ex facie* without any competence, authority or jurisdiction.¹⁰

[s 76.1] Protection of private persons assisting police.—

Private persons who are bound to assist the police under section 42 of the Cr PC, 1973 will be protected under 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.
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).
6. *Latifkhan v State*, (1895) 20 Bom 394; *Gurdit Singh*, (1883) PR No. 16 of 1883.
7. *State of WB v Shew Mangal Singh*, 1981 Cr LJ 1683 : AIR 1981 SC 1917 [LNIND 1981 SC 355] : (1981) 4 SCC 2 [LNIND 1981 SC 355].
8. *Shew Mangal Singh, Supra*.
9. *Chaman Lal*, (1940) 21 Lah 521.
10. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

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.

[s 77] Act of Judge when acting judicially.

Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

COMMENT.—

Under this section a Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives him, but also in cases where he, in good faith, exceeds his jurisdiction and has no lawful powers. It protects judges from criminal process just as the [Judicial Officers Protection Act, 1850](#), saves them from civil suits. Judicial Officers' Protection Act affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done.¹¹

A Collector who exercises powers of enquiry and award under the [Land Acquisition Act, 1894](#) is not acting judicially because he is not a judge. He is not entitled to the protection of section 77.¹² Regional Provident Fund Commissioner while passing order under section 7-A of 1952 Act is entitled to get protection as envisaged under [section 77 of IPC, 1860](#) and [section 3\(1\) of Judges \(Protection\) Act, 1985](#).¹³

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).
11. *Rachapudi Subba Rao v Advocate General*, (1981) 2 SCC 577 [LNIND 1980 SC 481] : AIR 1981 SC 755 [LNIND 1980 SC 481].
12. *Surendera Kumar Bhatia v Kanhaiya Lal*, (2009) 12 SCC 184 [LNIND 2009 SC 209] : AIR 2009 SC 1961 [LNIND 2009 SC 209].
13. *E S Sanjeeva Rao v CBI*, Mumbai, 2012 Cr LJ 4053 (Bom).

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.

[s 78] Act done pursuant to the judgment or order of Court.

Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such

judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

COMMENT.—

This section is merely a corollary to section 77. It affords protection to officers acting under the authority of a judgment, or order of a Court of Justice. It differs from section 77 on the question of jurisdiction. Here, the officer is protected in carrying out an order of a Court which may have no jurisdiction at all, if he believed that the Court had jurisdiction; whereas under section 77 the Judge must be acting within his jurisdiction to be protected by it.

Mistake of law can be pleaded as a defence under 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.*
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).*

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.

[s 79] Act done by a person justified or by mistake of fact believing himself justified, by law.

Nothing is an offence which is done by any person who is justified by law¹, or who by reason of a mistake of fact² and not by reason of a mistake of law³ in good faith, believes himself to be justified by law, in doing it.

ILLUSTRATION

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

COMMENT.—

Distinction between Sections 76 and 79.—The distinction between section 76 and this section is that in the former a person is assumed to be bound, and in the latter to be justified, by law; in other words, the distinction is between a real or supposed legal obligation and a real or supposed legal justification, in doing the particular act. Under both (these sections) there must be a *bona fide* intention to advance the law, manifested by the circumstances attending the act which is the subject of charge; and the party accused cannot allege generally that he had a good motive, but must allege specifically that he believed in good faith that he was bound by law (section 76) to do as he did, or that being empowered by law (section 79) to act in the matter, he had acted to the best of his judgment exerted in good faith.¹⁴.

1. Any person who is justified by law.—Jurisprudentially viewed, an act may be an offence, definitionally speaking but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by law or is *bona fide* believed by mistake of fact to be so justified.¹⁵ It is easy to see that if the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of [section 79 of the IPC, 1860](#). Many cases may however arise wherein acting under the provisions of the [Police Act](#) or other law conferring powers on the police, the police officer or some other person may go beyond what is strictly justified in law. Though [section 79 of the IPC, 1860](#) will have no application to such cases, [section 53 of the Police Act](#) will apply. But section 53 applies to only a limited class of persons. So, it becomes the task of the Court, whenever any question whether this section applies or not arises to bestow particular care on its decision. In doing this it has to ascertain first, what act is complained of and then to examine, if there is any provision of the [Police Act](#) or other law conferring powers on the police, under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done "under" the particular provision of law.¹⁶ But unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of his office.¹⁷ In *Bhanuprasad Hariprasad Dave's case*,¹⁸ wherein the allegations against the police officer was of taking advantage of his position and attempting to coerce a person to give him a bribe. The plea of colour of duty was negatived by the Supreme Court. In *Prof. Sumer Chand v UOI, 1994 (1) SCC 64 [LNIND 1993 SC 665]* Supreme Court on facts endorsed the opinion of the High Court that the act of the Police Officer complained of fell within the description of 'colour of duty'. The argument is irresistible that if the performance of the act which constitutes the offence is justified by law, i.e.,

by some other provision, then section 79 exonerates the doer because the act ceases to be an offence. Likewise, if the act were done by one 'who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it' then also, the exception operates and the *bona fide* belief, although mistaken, eliminates the culpability. If the offender can irrefutably establish that he is actually justified by law in doing the act or, alternatively, that he entertained a mistake of fact and in good faith believed that he was justified by law in committing the act, then, the weapon of section 79 demolishes the prosecution.¹⁹

2. 'Mistake of fact'.—Under this section, although an act may not be justified by law, yet if it is done under a mistake of fact, in the belief in good faith that it is justified by law it will not be an offence. Such cases are not uncommon where the Courts in the facts and circumstances of the particular case have exonerated the accused under section 79 on the ground of having acted in good faith under the belief, owing to a mistake of fact that he was justified in doing the act which constituted an offence. As laid down in [section 52 of the IPC, 1860](#), nothing is said to be done or believed in good faith which is done or believed without due care and attention. The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. 'Good faith' requires not logical infallibility but due care and attention. The question of good faith is always a question of fact to be determined in accordance with the proved facts and circumstances of each case.²⁰

'Mistake' is not mere forgetfulness.²¹ It is a slip "made, not by design, but by mischance."²² Under sections 76 and 79 a mistake must be one of fact and not of law. At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy.²³ It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence.²⁴ *Ignorantia facti doth excusat*, for such ignorance many times makes the act itself morally involuntary.²⁵ Where a man made a thrust with a sword at a place where, upon reasonable grounds, he supposed a burglar to be, and killed a person who was not a burglar, it was held that he had committed no offence.²⁶ In other words, he was in the same situation as far as regards the homicide as if he had killed a burglar. The accused while guarding his maize field shot an arrow at a moving object in the *bona fide* belief that it was a bear and in the process caused the death of a man who was hiding there. It was held that he could not be held liable for murder as his case was fully covered by section 79 as well as [section 80 IPC, 1860](#).²⁷ Similarly, where the accused while helping the police stopped a cart which they in good faith believed to be carrying smuggled rice but ultimately their suspicion proved to be incorrect, it was held that they could not be prosecuted for wrongful restraint under section 341 as their case was covered by [section 79 IPC, 1860](#).²⁸ Section 79 makes an offence a non-offence. Thus, where 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 the connected agencies do enter the statutory harbour and are protected from prosecution under [section 292 IPC, 1860](#), because section 79 of the Code exonerates them at least in view of their *bona fide* belief that the certificate is justificatory.²⁹

3. 'Mistake of law'.—Mistake in point of law in a criminal case is no defence. Mistake of law ordinarily means mistake as to the existence or otherwise of any law on a relevant subject as well as mistake as to what the law is.³⁰

penalty of the breach of it; because every person of the age of discretion and *compos mentis* is bound to know the law, and presumed so to do.^{31.}

If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a Court of Justice that he was ignorant of the law of the land, and no Court of Justice is at liberty to receive such a plea.^{32.}

The maxim *ignorantia juris non excusat*, in its application to criminal offences, admits of no exception, not even in the case of a foreigner who cannot reasonably be supposed in fact to know the law of the land.^{33.} The legal presumption that everyone knows the law of the land is often untrue as a matter of fact. But then why such a presumption subsists? The reason for this seems to be nothing but expediency; otherwise there is no knowing of the extent to which the excuse of ignorance of law might be carried. Indeed, it might be urged almost in every case.^{34.} This rule of expediency has been put to use even in a case where the accused could not have possibly known the law in the circumstances in which he was placed. Thus, a person who was on the high seas and as such could not have been cognizant of a recently passed law might be convicted for contravening it.^{35.}

Whenever the question of justification of an offence either due to mistake of fact or mistake of law arises, the guiding rules are: (1) that when an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence. (2) That where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge. (3) That the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence. (4) Where an act which is in itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime. (5) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute, whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.^{36.}

[s 79.1] Ignorance of statute newly passed.—

Although a person commits an act which is made an offence for the first time by a statute so recently passed as to render it impossible that any notice of the passing of the statute could have reached the place where the offence has been committed, yet his ignorance of the statute will not save him from punishment.^{37.} For an Indian law to operate and be effective in the territory where it operates namely, the territory of India, it is not necessary that it should either be published, or be made known outside the country.^{38.}

[s 79.2] Act of State.—

An act of State is an act injurious to the person or to the property of some person who is not at the time of that act a subject of the Government; which act is done by any representative of the Government's authority, civil or military, and is either previously sanctioned or subsequently ratified by the Government. The doctrine as to acts of State can apply only to acts which affect foreigners, and which are done by the orders or with the ratification of the Government. As between the State and its subjects there can be

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 Kataki 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 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.

[s 80] Accident in doing a lawful act.

Nothing is an offence which is done by accident¹ 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 whosoever 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 strangulate 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).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
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] .

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.

[s 81] Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention¹ to cause harm, and

in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

ILLUSTRATIONS

- (a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.
- (b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act. A is not guilty of the offence.

COMMENT.—

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided.⁶⁶ As in self-defence so in the prevention of harm the accused is faced with two choices both resulting in some harm and of sheer necessity to avoid a greater harm he has to commit an act which would otherwise be an offence. The test really is like this: there must be a situation in which the accused is confronted with a grave danger and he has no choice but to commit the lesser harm may be even to an innocent person, in order to avoid the greater harm. Here the choice is between the two evils and the accused rightly chooses the lesser one.⁶⁷

1. 'Without any criminal intention'.—Under no circumstances can a person be justified in intentionally causing harm; but if he causes the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property.

'Criminal intention' simply means the purpose of design or doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. The motive for an act is not a sufficient test to determine its criminal character. By a motive is meant anything that can contribute to give birth to, or even to

prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive is pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

Where an offence depends upon proof of intention the Court must have proof of facts sufficient to justify in coming to the conclusion that the intention existed. No doubt one has usually to infer intention from conduct, and one matter that has to be taken into account is the probable effect of the conduct. But that is never conclusive.⁶⁸.

Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.⁶⁹.

[s 81.1] **Mens rea.**—

It is a well settled principle of common law that *mens rea* is an essential ingredient of criminal offence. A statute can exclude that element, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excludes *mens rea*. There is a presumption that *mens rea* is an essential ingredient of a statutory offence; but this may be rebutted by the express words of a statute creating the offence or by necessary implication. But the mere fact that the object of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. It is also necessary to enquire whether a statute by putting a person under strict liability helps him to assist the State in the enforcement of the law; can he do anything to promote the observance of the law? *Mens rea* by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law. The nature of *mens rea* that will be implied in a statute creating an offence depends upon the object of the Act and the provisions thereof.⁷⁰.

It is, however, held that *mens rea* is an essential ingredient in every offence except in three cases:

- (1) cases not criminal in any real sense but which in the public interest are prohibited under a penalty;
- (2) public nuisance; and
- (3) cases criminal in form but which are really only a summary mode of enforcing a civil right.

The maxim *actus non facit reum, nisi mens sit rea* has, however, no application in its technical sense to the offences under the [Penal Code](#), as the definitions of various offences contain expressly a proposition as to the state of mind of the accused. In other words, each offence under the Code except offences like waging war (section 121), sedition (section 124A), kidnapping and abduction (sections 359, 363) and counterfeiting coins (section 232) prescribes a *mens rea* of a specific kind which is not exactly the same as *mens rea* in the sense of being a guilty mind under the common law. Thus, throughout the web of the [IPC, 1860](#) the doctrine of *mens rea* runs as a running thread in the form of "intentionally", "voluntarily", "knowingly", "fraudulently", "dishonestly" and the like. It is, therefore, not entirely correct to say that the doctrine of *mens rea* is inapplicable to the offence under the [Penal Code](#). What the Code requires is not negation of *mens rea* but *mens rea* of a specific kind and this may differ from offence-to-offence.

In this section and in sections 87, 88, 89, 91, 92, 93, 95, 100, 104 and 106, 'harm' can only mean physical injury.⁷¹

As to the doctrine of compulsion and necessity, see comment on section 94, *infra*.

[s 81.2] CASES.—

Where a Chief Constable not in his uniform came to a fire and wished to force his way past the military sentries placed round it, was kicked by a sentry, it was held that as the sentry did not know who he was, the kick was justifiable for the purpose of preventing much greater harm under this section and as a means of acting up to the military order.⁷² A person placed poison in his toddy pots, knowing that if taken by a human being it would cause injury, but with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from his pots. The toddy was drunk by and caused injury to some soldiers who purchased it from an unknown vendor. It was held that the person was guilty under section 328, and that this section did not apply.⁷³ Where a Village Magistrate arrested a drunken person whose conduct was at the time a grave danger to the public, it was held that he was not guilty of an offence by reason of the provisions of this section or sections 96 or 105.⁷⁴

[s 81.3] English cases.—

A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life. At the trial of an indictment for murder it appeared that the prisoners D and S, seamen, and the deceased, a boy between 17 and 18, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean and was probably more than 1,000 miles from land; that on the 18th day, when they had been seven days without food and five days without water, D proposed to S that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the 20th day, D with the assent of S, killed the boy, and both D and S fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation. It was held that upon these facts there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder.⁷⁵ A and B, swimming in the sea after shipwreck, get hold of a plank not large enough to support both; A pushes off B, who is drowned. This, in the opinion of *Sir James Stephen*, is not a crime as A thereby does B no direct bodily harm but leaves him to his chance of getting another plank. According to *Archbold* this is not a law now. In *R v Martin*,⁷⁶ the defendant, charged with driving whilst disqualified, sought to raise necessity as a defence but on the trial judge ruling, in effect, that necessity was no defence to an 'absolute' offence, he changed his plea to guilty. The circumstances on which the defendant sought to rely were that his wife's son (the defendant's stepson) was late for work and accordingly in danger of losing his job, and that this had made his wife so distraught that she threatened to commit suicide unless he drove her son to work. There was medical evidence available indicating that it was likely that his wife would have attempted suicide had he not driven her son to work. The Court of Appeal, quashing the conviction, held that the trial judge should have left the defence to the

jury. The authorities were now clear, said the Court, and established the following principles. First, the law does recognise a defence of necessity whether arising from wrongful threats of violence to another or from 'objective dangers' (conveniently called duress of circumstances) threatening the defendant or others. Second, the defence is available only if the defendant can be objectively said to be acting reasonably and proportionately to avoid the threat of death or serious injury. Third, it is for the jury to determine whether because of what the defendant reasonably believed he had good cause to fear death or serious injury; and, if so, whether a person of reasonable firmness, sharing the characteristics of the defendant, would have responded as the defendant did.⁷⁷.

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).
66. *Stephen's Digest of Criminal Law*, 9th Edn, Article 11.
67. *Southwark London Borough Council v Williams*, (1971) Ch 734 , (1971) 2 All ER 175 ; *Wood v Richards* (1971) RTR 201 .
68. *Ramchandra Gujar*, (1937) 39 Bom LR 1184 , (1938) Bom 114.
69. *Gurcharan Singh v State of Punjab*, AIR 1956 SC 460 : 1956 Cr LJ 827 . *Kusta Balsu Kandnekar v State of Goa*, 1987 Cr LJ 89 Bom.
70. *Mayer Hans George*, (1964) 67 Bom LR 583 , AIR 1965 SC 722 [LNIND 1964 SC 208] : (1965) 1 Cr LJ 641 . See also *Nathulal*, AIR 1966 SC 43 [LNIND 1965 SC 97] : 1966 Cr LJ 71 .
71. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.
72. *Bostan*, (1892) 17 Bom 626.
73. *Dhania Daji*, (1868) 5 BHC (Cr C) 59.
74. *Gopal Naidu*, (1922) 46 Mad 605 (FB).
75. *Dudley and Stephens*, (1884) 14 QBD 273 .
76. *R v Martin*, (1989) 1 All ER 652 CA.
77. Reproduced from All ER Annual Review 1989.

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.

[s 82] Act of a child under seven years of age.

Nothing is an offence which is done by a child under seven years of age.

COMMENT.—

Under the age of seven years no infant can be guilty of a crime; for, under that age an infant is, by presumption of law, *doli incapax*, and cannot be endowed with any discretion. If the accused were a child under seven years of age, the proof of that fact would be *ipso facto* an answer to the prosecution.^{78.} It is, therefore, desirable to bring some evidence regarding the age of the accused on the record.^{79.}

The accused purchased for one *anna*, from a child aged six years, two pieces of cloth valued at 15 *annas*, which the child had taken from the house of a third person. It was held that, assuming that a charge of an offence of dishonest reception of property (section 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardians and dishonestly appropriated it to his own use.^{80.}

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).
78. *Lukhini Agradanini*, (1874) 22 WR (Cr) 27, 28.
79. *Hiralal*, 1977 Cr LJ 1921 : AIR 1977 SC 2236 [LNIND 1977 SC 254].
80. *Makhulshah v State*, (1886) 1 Weir 470.

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.

[s 83] Act of a child above seven years of age and under twelve of immature understanding.

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

COMMENT.—

Where the accused is a child above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, and such non-attainment would have apparently to be specially pleaded and proved, like the incapacity of a person who, at the time of doing an act charged as an offence, was alleged to have been of unsound mind under this section it has got to be shown that the accused is not only under 12 but has not attained sufficient maturity of understanding. If no evidence or circumstance is brought to the notice of the Court, it will be presumed that the child accused intended to do what he really did. Thus, where a child of 12 or so used a sharp sword in killing a person along with his two brothers and no evidence either of age or immaturity of understanding was led on his behalf, it was held that he committed an offence at least under [section 326, IPC, 1860](#).⁸¹ The Legislature is manifestly referring in this section to an exceptional immaturity of intellect.⁸² What the section contemplates is that the child should not know the nature and physical consequences of his conduct.⁸³ The circumstances of a case may disclose such a degree of malice as to justify the maxim *malitia supplet octatem*.⁸⁴ Where the accused, a boy over 11 years but below 12 years of age, picked up his knife and advanced towards the deceased with a threatening gesture, saying that he would cut him to bits, and did actually cut him, his entire action can only lead to one inference, namely, that he did what he intended to do and that he knew all the time that a blow inflicted with a *kathi* (knife) would effectuate his intention.⁸⁵ In the prosecution of an 11-year-old child for throwing a brick at a police vehicle and then running away, the Court said that the justices were not entitled to conclude from his appearance that he was normal in respect of incurring criminal responsibility. The test is whether the child knew that what he was doing was seriously wrong and went beyond childish mischief. Running away was not by itself sufficient to rebut the presumption of *doli incapax*. A naughty child would run away from a parent or teacher even if what he had done was not criminal.⁸⁶

[s 83.1] CASE.—Theft by child.—

Where a child of nine years of age stole a necklace, worth Rs. 280, and immediately afterwards sold it to the accused for five annas, the accused could be convicted of receiving stolen property, because the act of the child in selling the necklace showed that he had attained a sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion within the meaning of this section.⁸⁷

Section 83 provides that nothing is an offence which is done by a child above seven years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. The [IPC, 1860](#) provides no protection from culpable liability on ground of tender age to one who is aged 12 years or more. In a child's life the period between seven and 12 years of age is rather the twilight period of transition to a minimal workable level of understanding of things in the firmament of worldly affairs. And that is why both the [IPC, 1860](#) and the [Oaths Act](#) have made special provisions for children below 12 years in respect of matters dependent on a minimal power of understanding.⁸⁸

A claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case.⁸⁹

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).
81. *Hiralal, Supra*.
82. *Lukhini Agradanini*, (1874) 22 WR (Cr) 27, 28.
83. *Ulla Mahapatra*, (1950) Cut 293.
84. *Mussamut Aimona*, (1864) 1 WR (Cr) 43.
85. *Ulla Mahapatra, Supra*.
86. *A v DPP*, (1991) COD 442 (DC).
87. *Krishna*, (1883) 6 Mad 373.
88. *Santosh Roy v State of WB*, 1992 Cr LJ 2493 : 1992 (1) Crimes 904 (Cal).
89. Section 7A Juvenile Justice (Care and Protection of Children) Act, 2000. See also *Amit Singh v State of Maharashtra*, 2011 (8) Scale 439 [LNIND 2011 SC 731] : (2011) 9 SCR 890 [LNIND 2011 SC 731] : (2011) 13 SCC 744 [LNIND 2011 SC 731] .

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

[s 84] Act of a person of unsound mind.

Nothing is an offence which is done by a person who, at the time of doing it,¹ by reason of unsoundness of mind,² is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.³

COMMENT.—

To commit a criminal offence, *mens rea* is generally taken to be an essential element of crime. It is said *furiosus nulla voluntus est*. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime; *actus non facit reum nisi mens sit rea*. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behaviour.⁹⁰.

[s 84.1] McNaughten Rule and the origin of Section 84 of IPC, 1860.—

Section 84 clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of *R v Daniel McNaughten*.⁹¹ In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity. The reference came to be made in a case where *Mc Naughten* was charged with the murder by shooting of Edward Drummond, who was the Pvt Secretary of the then Prime Minister of England Sir Robert Peel. The accused *Mc Naughten* produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and *Mc Naughten* was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. A comparison of answers to question no. 2 and 3 and the provision contained in [section 84 of the IPC, 1860](#) would clearly indicate that the section is modelled on that answers.⁹²

The essential elements of section 84 are as follows:

- (i) The accused must, at the time of commission of the act be of unsound mind;
- (ii) The unsoundness must be such as to make the accused at the time when he is doing the act charged as offence, incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law.⁹³ Where it is proved that the accused has committed multiple murders while suffering from mental derangement of some sort and it is found that there is (i) absence of any motive, (ii) absence of secrecy, (iii) want of pre-arrangement, and (iv) want of accomplices, it would be reasonable to hold that the circumstances are sufficient to support the inference that the accused suffered from unsoundness of mind.⁹⁴

Though the onus of proving unsoundness of mind is on the accused,⁹⁵ yet it has been held that where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.⁹⁶ Prosecution is duty bound to subject the accused to a medical examination immediately.⁹⁷ This onus may, however, be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or

immediately afterwards, also by evidence of his mental condition, his family history and so forth.⁹⁸. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.⁹⁹.

There are four kinds of persons who may be said to be non *compos mentis* (not of sound mind): (1) an idiot; (2) one made *non compos* by illness; (3) a lunatic or a madman; and (4) one who is drunk.

An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like. A person made non *compos mentis* by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder. A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason. Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.¹⁰⁰.

[s 84.2] Legal insanity *vis-a-vis* Medical insanity.—

A distinction is to be made between legal insanity and medical insanity. A Court is always concerned with legal insanity, and not with medical insanity. What [sections 84, IPC, 1860](#) provides is defence of legal insanity as distinguished from medical insanity. A person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law.¹⁰¹. Incapacity of the person on account of insanity must be of the nature which attracts the operation of [section 84 IPC, 1860](#).¹⁰². An accused who seeks exoneration from liability of an act under [section 84 of the IPC, 1860](#) is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the [IPC, 1860](#) and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not *ipso facto* exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of [section 84 of the IPC, 1860](#).¹⁰³. The medical profession would undoubtedly treat the accused as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act.¹⁰⁴. Only legal insanity is contemplated under [section 84 of IPC, 1860](#).¹⁰⁵.

[s 84.3] 42nd Report of Law Commission of India.—

Law Commission of India re-visited [section 84 of the IPC, 1860](#) in view of the criticism to the M'Naughten Rules in various countries including Britain but came to the conclusion that law of insanity under [section 84 of the IPC, 1860](#) needs no changes in Indian circumstances.¹⁰⁶.

Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of "unsoundness of mind" in the [Penal Code](#). The Courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not *ipso facto* exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity.¹⁰⁷ In this case, the accused was under medical treatment prior to the occurrence. Evidence indicating that he remained mentally fit for about four years after treatment. During the trial also he was sent for treatment and his conduct was normal thereafter. On such facts, it was held, that the accused was not entitled to protection under section 84. The Court also added that where previous history of insanity of the accused comes to light during investigation, the accused must be medically examined and report placed before the Court. Any lapse in this respect would create infirmity in the prosecution case and the accused may become entitled to benefit of doubt.

1. 'At the time of doing it'.—It must clearly be proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.¹⁰⁸ If he did know it, he is responsible.¹⁰⁹

In *Sheralli Wali Mohammed v State of Maharashtra*,¹¹⁰ it was held that:

... it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offence, he was labouring under any such incapacity? On this question, the state of his mind before and after the commission of the offence is relevant.

The crucial point of time for deciding whether the benefit of this section should be given or not is the material time when the offence takes place. If at that moment a man is found to be labouring under such a defect of reason as not to know the nature of the act he was doing or that, even if he knew it, he did not know it was either wrong or contrary to law then this section must be applied. In coming to that conclusion, the relevant circumstances, like the behaviour of the accused before the commission of the offence and his behaviour after the commission of the offence, should be taken into consideration.¹¹¹ The accused pushed a child of four years into fire resulting in his death but there was nothing to show that there was any deliberateness or preparation to commit the crime. His act was accompanied by manifestations of unnatural brutality and was committed openly. He neither concealed nor ran away nor tried to avoid detection which showed that he was not conscious of his guilt. It was held that the accused was entitled to benefit of section 84 and his conviction under section 302 was set aside.¹¹² The accused, a young boy brought up by his grandfather, went abroad for further studies. When his parents visited abroad they did not care to see him. His grandfather's death was communicated to him much later. On return to India, he committed offences of brutal nature at random. During the pendency of the session's case, he again continued and completed his engineering course and started a printing press and later he managed a garage and allied industries employing nearly 30 persons. His behaviour before and after the offences was that of a normal man. It was held that he was insane at the time of the offence and was given benefit of section 84.¹¹³ Where the accused was examined by two doctors who certified him to be schizophrenic and his abnormal behaviour was also apparent from the evidence on the record, the Supreme Court held that the acquittal of the accused by the High Court was proper.¹¹⁴

In other words, to get the benefit of section 84 IPC, 1860, it must be shown that at the time of the commission of the act the accused by reason of unsoundness of mind was incapable of either knowing the nature of the act or that the act was either morally wrong or contrary to law and for determining this his state of mind before and after the commission of the offence is most relevant. It would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime.¹¹⁵. Thus, the fact that the accused committed the murder over a trifling matter and made a clean breast of his crime would not go to show that he was insane.¹¹⁶.

[s 84.4] Lucid intervals.—

A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; merely a cessation of the violent symptoms of the disorder is not sufficient.¹¹⁷.

2. 'Unsoundness of mind'—Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, it is included in this expression. It is only 'unsoundness of mind' which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility.¹¹⁸. The nature and extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.¹¹⁹. Thus, as Stephen says that if a person cuts off the head of a sleeping man because 'it would be great fun to see him looking for it when he woke up', it would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act.¹²⁰. The accused had killed his wife and his minor children and assaulted his neighbour and the police officer. The evidence showed that he had a history of insanity with at random assault on strangers but his relations with his wife were cordial. It was held that the accused was a man of unsound mind and his conviction under sections 302, 332 and 323 was set aside.¹²¹. The accused caught hold of the legs of a girl of two years of age on the road and struck her on the ground. She sustained head injury and died in the hospital. On the basis of the ocular evidence about the conduct of the accused at the time of the offence and the opinion of the doctor about his state of mind, the accused was acquitted on the ground of insanity.¹²². The accused, a labourer, killed his brother's wife and attempted to kill his mother in a quarrel over money deposited with his mother. Accused assaulted with axe on the vital parts of the victim's body, absconded for three months and immediately after the incident worked as a labourer in another village for 15 days. It was held that the conduct of the accused immediately before, at the time of and after the incident, was wholly inconsistent with the plea of insanity raised by him. The history of earlier mental derangement was not by itself sufficient to bring the case within section 84.¹²³. Where on the day of the crime the accused was seen dancing with a dog on his head and with a broken bottle, but the medical evidence showed that he was a normal man, it was held that defence of insanity was an afterthought.¹²⁴. The mere fact that the accused attempted to escape from the scene of occurrence after killing his wife, belied his plea of insanity.¹²⁵. Where a father and his relatives sacrificed a four-year-old son to propitiate the deity, the Supreme Court held that this does not by itself constitute insanity. Such primitive and inhuman actions must be punished severely so as to deter others from resorting to such barbaric practices.¹²⁶.

[s 84.5] Partial delusion.—

Mere abnormality of mind or partial delusion affords no protection under section 84 IPC, 1860.¹²⁷ Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is to be, therefore, excused depends upon the nature of the delusion. If he labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real.¹²⁸ If a person afflicted with insane delusion, in respect of one or more particular subjects or persons, commits a crime, knowing that he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed.¹²⁹ Where the accused after killing his daughter tried to commit suicide and there was no evidence of psychiatric treatment but only major depression, he was held liable to be convicted.¹³⁰

3. 'Nature of the act, or...what is either wrong or contrary to law'—If the accused were conscious that an act was done which he ought not to do and if the act was at the same time contrary to the law of the land, he is punishable. His liability will not be diminished if he did the act complained of with a view under the influence of insane delusion of redressing or revenging some supposed grievance or injury or of producing some public benefit, if he knew that he was acting contrary to law.¹³¹ Where the accused, a young man, took a girl of four years on a bicycle to a lonely place near a canal, sexually assaulted her and threw her into the canal, it was held that it was a carefully thought out action and not an act of an insane person.¹³²

Mere absence of motive for a crime, howsoever atrocious it may be, cannot, in the absence of plea and proof of legal insanity, bring the case within this section.¹³³ The mere fact that an act of murder is committed by the accused on a sudden impulse and there is no discoverable motive for the act will not generally afford the Court sufficient basis for accepting the plea of insanity.¹³⁴ Thus, in *SW Mohammed's* case the Supreme Court held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have the necessary *mens rea* for the offence.¹³⁵ In a Madras case, however, the Madras High Court has held that where the accused was insane for some months prior to occurrence and on cordial terms with his wife but suddenly killed the wife in the open courtyard without any ostensible motive and did not even attempt to run away or secret his crime, he had to be given the benefit of section 84, IPC, 1860.¹³⁶ This case can, of course, be distinguished from the above mentioned Supreme Court case on the ground that in the instant case the accused had previous history of insanity which was not fully cured. Prior or subsequent treatment for schizophrenia coupled with the evidence of the doctor that the accused was schizophrenic would entitle the accused to the benefit of section 84 in a charge of murder.¹³⁷ But where the doctor in his evidence merely said unsoundness of mind may have existed from before and that evidence was contradicted by evidence of close relations about sanity of the accused at the time of the occurrence, it was held that the accused could not get the benefit of section 84, IPC, 1860.¹³⁸ There is a difference between medical insanity and legal insanity. By medical insanity is meant the prisoner's consciousness of the bearing of his act on those affected by it and by legal insanity is meant the prisoner's consciousness in relation to himself.¹³⁹ There can be no legal insanity unless the cognitive faculties of the accused are as a result of unsoundness of mind completely impaired. In order to constitute legal insanity unsoundness of mind must be such as to make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.¹⁴⁰ Thus, mere abnormality of mind or partial delusion,

irresistible impulse or compulsive behaviour of a psychopath affords no protection under [section 84 of the IPC, 1860](#) as the law contained in that section is still squarely based on the outdated M'Naughten Rules of 19th Century England. Thus, in *Siddheswari's case*¹⁴¹, where the accused killed her ailing child of three and there was also some evidence elicited in cross-examination to show that the accused had suffered from some mental derangement two years prior to the incident, it was held that the mere fact the murder was committed on a sudden impulse or as a "mercy killing" was no ground to give her the benefit of [section 84 IPC, 1860](#), even though both euthanasia (mercy killing) and irresistible impulse would entitle the accused in England to get the benefit of diminished responsibility and her crime would be treated as manslaughter (i.e. culpable homicide not amounting to murder). In a latter case too the Gauhati High Court felt that where the accused has made out a *prima facie* case of irresistible impulse the plea has to be taken into consideration in deciding the question of giving benefit of [section 84, IPC, 1860](#), to the accused.¹⁴²

The position, however, has undergone a sea change in England where the right or wrong test of the M'Naughten Rules no longer dominate this branch of criminal law to the exclusion of mental abnormality falling short of complete insanity as a limited defence establishing a claim to diminished responsibility. Thus, under section 2 of the Homicide Act, 1957 if two Psychiatrists certify that the homicidal act of the accused was influenced by abnormal condition of his mind though not amounting to legal insanity within the meaning of M'Naughten Rules, still he cannot be convicted of murder but his offence will be regarded only as a manslaughter which is equivalent to culpable homicide not amounting to murder under the [IPC, 1860](#). It is hoped that the Indian law too would be changed on this score with due regard to the modern developments in the field of psychology of criminal behaviour.

[s 84.6] CASES.—

Accused, who was a mentally challenged person before the incident, killed three persons and caused injuries to others with an axe. He did not know the implication of his act and indiscriminately went on wielding axe blows, be it a child or a woman and thereafter he did not even attempt to hide the weapon which he used for committing crime. He was found of unsound mind in his medical examination. Case of accused comes within the four corners of [section 84 IPC, 1860](#).¹⁴³ Where an accused, who was suffering from fever which caused him while suffering from its paroxysms to be bewildered and unconscious, killed his children at being annoyed at their crying, but he was not delirious then, and there was no evidence to show that he was not conscious of the nature of his act, it was held that he was not entitled to protection under this section.¹⁴⁴ But where the accused labouring under a delusion believed his two-month-old infant child to be a devil and danger to himself, his family and to the whole world and, therefore, killed the child with unusual ferocity almost reducing it to a pulp and thereafter without making any attempt to escape told the police party that he had removed a devil from the world, it was held that the accused did not know that what he had done was wrong and as such was entitled to get protection of [section 84, IPC, 1860](#), even when he did not plead insanity in his defence as the prosecution itself disclosed that he was insane.¹⁴⁵ [IPC, 1860](#)Allegation that accused appellant had cut his son, aged about one and a half years, to death and he was intercepted while he was preparing to bury the dead body by digging a pit. Medical evidence shows that the accused was suffering from schizophrenia. Accused was reticent by nature and used to keep himself indoors and interact only when he was compelled to do so. He was not in a normal state of mind at the time of alleged crime. Appellant is entitled to the benefits under [section 84 of IPC, 1860](#).¹⁴⁶ The accused killed three persons and caused injuries to others and there was no previous enmity or motive established. The

witnesses stated that he ran from one place to other and on his way he assaulted five persons indiscriminately without any rhyme or reason. The evidence shows that appellant had developed insanity since long and entitled to the benefit of this section.¹⁴⁷. Accused chopped off his wife's head, with a chopper. After the occurrence, in a very unusual and abnormal manner, holding the head and the chopper in each of his hands, he walked down the road and ultimately reached the police station. Though this, by itself, would not be sufficient to come to any conclusion but taken along with the other circumstances of the case would clearly point to the validity of the defence put forward on behalf of the accused.¹⁴⁸.

[s 84.7] Epilepsy, Epileptic fits and Section 84.—

Epilepsy usually occurs from early infancy, though it may occur at any period of life. Individuals, who have had epileptic fits for years, do not necessarily show any mental aberration, but quite a few of them suffer from mental deterioration. Religiosity is a marked feature in the commencement, but the feeling is only superficial. Such patients are peevish, impulsive and suspicious, and are easily provoked to anger on the slightest cause. Epileptic psychosis is that which is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is known as pre- epileptic, post-epileptic and masked or psychic phases (psychomotor epilepsy).¹⁴⁹.

Where the accused committed the murder without any motive under the influence of an epileptic fits, he was entitled to get the benefit under [section 84, IPC, 1860](#).¹⁵⁰. But if at the time of the crime he was not acting under epileptic automatism, mere past history of epilepsy will not absolve the accused from liability.¹⁵¹.

[s 84.8] Irresistible impulse.—

Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under section 84 as the law contained in that section is still squarely based on the outdated M'Naughten Rules of 19th Century. The provisions of section 84 are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords, in M'Naughten's case. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time.¹⁵².

[s 84.9] Nervousness.—

The fact that the accused became nervous after raping a six-year-old girl and in that state of mind killed her, was held to be not sufficient to establish insanity. The Court reduced the death sentence to life imprisonment and added that nervous psychosis may become in circumstances a kind of insanity.¹⁵³.

[s 84.10] Homicide by 'ganja' smoker.—

In a case of *ganja* addict before the Supreme Court, the accused had killed his wife and children ranging one –16 years with knife. Death sentence was confirmed by the High

Court. The accused had not raised the defence of unsoundness in Courts below. The Supreme Court got the enquiry conducted by police after a plea was raised at the SLP stage. The enquiry report and evidence of family members and other witnesses revealed the addiction and on-going treatment. He was not allowed the benefit of section 84. The state of mind on the day of the incident is the crucial factor. The State of mind on other days is relevant only if such evidence would help determining the state of mind at the crucial moment.¹⁵⁴.

[s 84.11] Insane delusion.—

The accused killed two women by cutting their necks with an axe without any reason. Evidence showed that he suffered from similar attacks of disorder earlier too. After the incident he was heard saying that he was haunted by a God to do what he did. The plea of insanity was accepted and the accused was directed to be kept in a mental hospital.¹⁵⁵. The accused killed seven persons including his wife and two children with an axe. He also killed the cattle which came his way. There was no provocation. It was brutality *simpliciter*. The evidence on record showed that he was not of sound mind. The death sentence awarded to him was set aside. He was acquitted under the benefit of this section.¹⁵⁶. Mere abnormality or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under [section 84 of the Penal Code](#).¹⁵⁷.

[s 84.12] Paranoid schizophrenia.—

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults.¹⁵⁸. In paranoid schizophrenia, the person affected lives in a state of constant fear being haunted by the belief that he is being poisoned, some noxious gases are blown into his room and that all are plotting against him to ruin him. The patient gets very irritated and excited owing to equally painful and disagreeable hallucinations and delusions.¹⁵⁹. The accused was convicted for having murdered his wife in a brutal manner. He raised the plea of insanity. It came out from evidence that he was suffering from leprosy and insanity from sometime past. The medical opinion was that he was suffering from paranoid schizophrenia which is a form of paranoid psychosis. The plea was allowed. But he being not in a fit state of mind to judge his own welfare or take care of himself without medical aid, the Court directed him to be detained in safe custody under medical supervision and not to be released till medical evidence of social fitness.¹⁶⁰. The evidence on record shows that on the day of the incident, when the appellant was examined by doctors, he was found to be suffering from paranoid schizophrenia. He had delusions and persecutory ideas with no insight in his illness. From this, an inference can reasonably be drawn that the accused was under paranoid delusions at the time that he committed the offence.¹⁶¹.

[s 84.13] Burden of proof.—

The Supreme Court defined the doctrine of burden of proof in the context of the plea of insanity in the following propositions:-

- "(1) The prosecution must prove beyond reasonable doubt that the appellant had committed the offence with the requisite *mens rea*; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
- (2) There is a rebuttable presumption that the appellant was not insane, when he committed the crime, in the sense laid down by [section 84 of the IPC, 1860](#): the appellant may rebut it by placing before the court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.
- (3) Even if the appellant was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the appellant or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including *mens rea* of the appellant and in that case the court would be entitled to acquit the appellant on the ground that the general burden of proof resting on the prosecution was not discharged".¹⁶²

It has been held that merely because an injured witness, who may legitimately be classified as an interested witness for obvious reasons, may have stated that the appellant was not of unsound mind, cannot absolve the primary duty of the prosecution to establish its case beyond all reasonable doubt explaining why the plea for unsoundness of mind taken by the accused was untenable.¹⁶³

The burden of proving the existence of circumstances bringing the case within the purview of section 84 lies upon the accused under [section 105 of the Indian Evidence Act](#). Under the said section, the Court shall presume the absence of such circumstances.¹⁶⁴ But the burden on the accused cannot be equivalent with the burden of proof on the prosecution and cannot be rated higher than the burden on a party to a civil proceeding where a finding can be based upon preponderance of probabilities. There is no conflict between the general burden which is always on the prosecution and which never shifts and the special burden which rests on the accused to make out the defence of insanity.¹⁶⁵ Sometimes the facts may in themselves be sufficient to discharge the burden which lies on the accused. This possibility was recognised by the Supreme Court in *Ratan Lal v State of MP*.¹⁶⁶ The accused-appellant was kept in police custody for ten days and only then it was felt that he needed medical examination. There was no evidence on record to show what his condition was during those ten days and why he was not examined earlier. This conduct on the part of the police, neither to arrange his examination nor permit him to do so, brought about such a gap of time between the incident and examination that his condition at the time of the incident was no longer capable of being precisely determined. As against this police inaction, the defence pointed towards the conduct of the accused before the incident and some statements of witnesses which supported the instable condition of the accused. This was held to be sufficient to discharge the burden which lies on the accused and his acquittal was upheld by the Supreme Court. Going by this case in *Tukappa Tamanna Lingardi v State of Maharashtra*,¹⁶⁷ the Bombay High Court found evidence of insanity from a narration of the facts themselves. Mere oral statements of witnesses cannot give rise to an inference that the appellant was of unsound mind at the time of commission of offence. Plea of the accused does not come within exception contemplated under [section 84 of IPC, 1860](#).¹⁶⁸ [IPC, 1860](#)

Where there was no satisfactory evidence of the previous history of the accused or his subsequent conduct and the only fact on record was that ghastly murders were committed without motive, it was held that the burden of proof as to plea of insanity was not discharged. However, because of the absence of motive, premeditation and any weapon, killings being done with stone pieces, death sentence was converted into life imprisonment.¹⁶⁹ Where, on the other hand, a father killed his son and then danced

around, moving towards his house threatening others, facts spoke for themselves so as to discharge the burden of proof as to insanity, the accused was acquitted and ordered to be detained in a mental home.¹⁷⁰.

Mere eccentric behaviour, like drowning one's own two and a half-year-old child to death, does not discharge this burden which is essentially on the accused and requires him to show all the ingredients of the defence to the extent at least of making them probable at the time of the commission of the act. Previous history and subsequent conduct are only relevant facts in the determination of the condition at the material time.¹⁷¹.

The mere absence of *motive* is not sufficient to bring the case within the scope of section 84.¹⁷².

[s 84.14] Sentencing.—

The accused was charged with offences under sections 427, 302, 307, 451, etc. Medical evidence showed that he was a person of unsound mind at the time when the offences were committed. The accused, therefore, could not be detained in prison. He was directed to be put in a mental hospital. The authorities were further directed to follow the procedure prescribed by [section 335, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#).¹⁷³.

[s 84.15] Sentencing.—Battered woman syndrome.—

The accused woman pleaded guilty to manslaughter on an indictment for murder. She was a young woman aged 20. She began a sexual relationship with the deceased when she was 14 and began to live with him when she was 16. She had a miscarriage and on two occasions took overdoses. The deceased became violent towards her two or three times each week. She sought psychiatric help and on two occasions came to the attention of the police. In 1998 she decided to end the relationship and there was an argument which developed into a fight. She picked up a knife and waved it at the deceased, telling him to leave. There was a further struggle during the course of which the deceased received a fatal knife wound to his back. She immediately shouted for help and was found in an extremely distressed condition. When she was examined, she was found to be extensively bruised. A psychiatrist who examined her found that she exhibited a number of features of the "battered woman's syndrome", including chronic depressive illness, a feeling of hopelessness and despair, and inability to act effectively or to see an escape from her situation, and feelings of self-blame, shame and a poor sense of self-worth. A second psychiatrist found a degree of clinical depression which amounted to abnormality of mind. She was sentenced to four years' detention in a young offender institution. Her appeal against the sentence was allowed. In the light of the evidence, the Court reached the conclusion that there were in the present case those exceptional circumstances which would allow the Court to take the unusual course of passing a sentence other than custody. The accused woman had been subject from a young age to persistent and prolonged violence from a man older than herself who was domineering and demanding. Since her arrest she had made remarkable progress, and a custodial sentence would be likely to damage and possibly bring to an end that rehabilitation. She had served the equivalent of a sentence of 12 months and it was appropriate to give her the opportunity to continue her progress. The Court accordingly quashed the sentence of four years' detention in a young offender institution and substituted a probation order.¹⁷⁴.

[s 84.16] CASES.—Defence not made out.—

Accused came to the house one day prior to the occurrence, demanded money and threatened the deceased of grave consequences and on the next day, when the demand was not fulfilled, he trespassed into the house, pushed away PWs 1 and 2, bolted the door from inside and inflicted repeated *aruval* blows on the deceased that resulted into her death. All these aspects also show that at the relevant time, he was not insane as claimed by him.¹⁷⁵ Accused committed murder of two persons and caused injuries to another. Testimony of witnesses was found cogent and reliable and there was no material on the basis of which it could be inferred that at the time of commission of offence the accused was of unsound mind to such an extent that by reason of such unsoundness, he was incapable of knowing the nature of the act or knowing that he was doing what was either wrong or contrary to law, plea of insanity rejected.¹⁷⁶ Mere taking treatment earlier in Mental Hospital itself is not sufficient proof of total insanity of person.¹⁷⁷

The accused killed his wife and daughter with an axe. He attended *Kirtan* (rendering of religious hymns) a night before. He carried the corpses in a hand-cart and made his statement before the police. His confessional statement was recorded by a competent judicial magistrate. He found no noticeable abnormality of mind or mental disorderliness. Even on his examination under [section 313, Cr PC, 1973](#), he showed a soundness of mind. It was held that he was not entitled to the benefit of section 84.¹⁷⁸

[s 84.17] When to be pleaded.—

The plea cannot be raised for the first time before the Supreme Court for which no foundation was established before.¹⁷⁹

[s 84.18] Investigation of offence vis-à-vis the general exceptions—

The duty cast upon the investigating officer to investigate into the mental condition of the accused is very important. The Supreme Court held that, where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.¹⁸⁰ The Division Bench of High Court of Kerala observed that even if all the acts constituting an offence as per definition in [IPC, 1860](#) are committed by a person, if an investigating officer finds on investigation that by reason of unsoundness of mind, accused was incapable of knowing the nature of the act, or that he was doing what is either wrong or contrary to law, as stated in [Section 84 IPC, 1860](#), he shall not file a charge sheet against such person.¹⁸¹ The Court also held that the 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](#).¹⁸² But the Single Bench of the High Court of Kerala, later, held that the ingredients of section 84 can only be taken as a defence during trial and it is not possible to throw out the Final Report in a case on the ground that the concerned accused was suffering from legal insanity.¹⁸³

[s 84.19] Procedure.—

Chapter XXV of Cr PC, 1973 deals with provisions as to accused persons of unsound mind.¹⁸⁴.

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).
90. *State of Rajasthan v Shera Ram*, (2012) 1 SCC 602 [LNIND 2011 SC 1192] : AIR 2012 SC 1 [LNIND 2011 SC 1192] : (2012) 1 SCC (Cr) 406.
91. *R v Daniel McNaughten*, 1843 RR 59 : 8ER 718 (HL).
92. *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 .
93. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
94. *State of Orissa v Duleswar Barik*, 2008 Cr LJ 1065 (Ori) relied on *Shama Tudu v State*, 1987 Cr LJ 618 (Ori).
95. *Dahyabhai*, 1964 (2) Cr LJ 472 (SC); *Lonimohon Das*, 1974 Cr LJ 1186 (Gau); *Gunadhar Mondal*, 1979 Cr LJ NOC 178 (Cal); *Kesheorao*, 1979 Cr LJ 403 (Bom); *Lala Sk.*, 1983 Cr LJ 1675 (Cal); *Balu Ganpat*, 1983 Cr LJ 1769 (Bom); *Paramal Raman v State of Kerala*, 1992 Cr LJ 176 Ker; *Bai Bamilaben v State of Gujarat*, 1991 Cr LJ 2219 Guj; *Shama Tudu v State*, 1987 Cr LJ 618 Orissa; *Sheralli Walli Md v State of Maharashtra*, AIR 1972 SC 2443 : 1972 Cr LJ 1523 ; *Qyami Ayatu v State of MP*, AIR 1974 SC 216 [LNIND 1973 SC 242] : 1974 Cr LJ 305 . In *Shama Tudu v State*, 1987 Cr LJ 618 , the Orissa High Court cited the following cases in which the plea of insanity was accepted : *Mitu Khadia v State of Orissa*, 1983 Cr LJ 385 : 1983 Cut LR (Cr) 108; *Khageshwar Pujari v State of Orissa*, 1984 Cr LJ 1108 : 1984 (1) Ori LR 142 ; *Sundar Bairagi v State*, 1984 Cr LJ 124 ; *Bata v State*, 1985 (2) Ori LR 398 . The plea was negated in the following cases; *Nakul Chandra v State of Orissa*, 1982 Cr LJ 2158 : (1982) 54 Cut LJ 195; *Kusa Majhi v State*, (1985) 59 Cut LT 203 : 1985 (1) Crimes 520 : 1985 Cr LJ 1460 : AIR 1985 SC 1409 [LNIND 1985 SC 227] . *State of MP v Digvijay Singh*, AIR 1981 SC 1740 [LNIND 1978 SC 324] : 1981 Cr LJ 1278 , prosecution case proved.
96. *Siddhapal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] ; *Sanna Eranna*, 1983 Cr LJ 619 (Kant); *M Parvaiah*, 1985 Cr LJ 1824 (AP); *Kuttappan*, 1986 Cr LJ 271 (Ker).
97. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
98. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
99. *Bhikari*, AIR 1966 SC 1 [LNIND 1965 SC 57] . Absence of motive is one of the factors to be taken into account. *Subbigadu v Emperor*, AIR 1925 Mad 1238 [LNIND 1925 MAD 157] : 1926 (27) Cr LJ 46 ; *Ujagar Singh v State*, AIR 1954 PEPSU 4 : 1953 Cr LJ 1859 . But this is only one factor among others. See *Amrit Bhushan Gupta v UOI*, AIR 1977 SC 608 [LNIND 1976 SC 458] : 1977 Cr LJ 376 ; *Ram Bharose v State of MP*, 1974 Jab LJ 348 ; *Peeru Singh v State of MP*, 1987 Cr LJ 1781 MP.

100. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : JT 2007 (9) SC 110 : 2007 AIR (SCW) 3808 : 2007 (7) SCR 917 [LNIND 2007 SC 774] : (2007) 8 Scale 455 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509.
101. *Kuttappan v State of Kerala*, 1986 Cr LJ 271 (Ker).
102. *Siddhapal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] .
103. *Surendra Mishra v State of Jharkhand*, AIR 2011 SC 67 : (2011) 11 SCC 495 [LNIND 2011 SC 27] : (2011) 3 SCC(Cr.) 232.
104. *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 .
105. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
106. Available at : <http://lawcommissionofindia.nic.in/1-50/Report42.pdf> (last accessed in July 2019).
107. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509 : (2007) 4 KLT 63 [LNIND 1985 KER 300] .
108. Third question and answer in M'Naughton's case, (1843) 4 St Tr (NS) 847, 10 Cl & F 200; *Tola Ram*, (1927) 8 Lah 684. *Jaganath Das v State*, 1991 Cr LJ (NOC) 32 Cal.
109. *Harka v State*, (1906) 26 AWN 193. *Hari Singh Gond v State of MP*, (2008) 16 SCC 109 [LNIND 2008 SC 1728] : AIR 2009 SC 31 [LNIND 2008 SC 1728] : 2009 Cr LJ 346 : (2008) 3 KLT 969 [LNIND 2008 SC 1728] , Mere abnormality of mind, partial delusion, irresistible impulse or compulsive psychopathic behaviour affords no protection under section 84. It is only unsoundness of mind which naturally impairs the cognitive faculties of mind which can justify exemption under section 84. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] , time factor, time of the offence is crucial.
110. *Sheralli Wali Mohammed v State of Maharashtra*, (1973) 4 SCC 79 : 1972 Cr LJ 1523 .
111. *Govindaswami Padayachi*, (1952) Mad 479; *Ahmadullah*, (1961) 3 SCR 583 [LNIND 1961 SC 29] : (1961) 2 Cr LJ 43 : AIR 1961 SC 998 [LNIND 1961 SC 29] ; *Dahyabhai*, AIR 1964 SC 1563 [LNIND 1964 SC 88] : 1964 (2) Cr LJ 472 ; followed in *Narain v State*, 1991 Cr LJ 1610 All, the accused murdering the Imam of a masjid, acquitted because of proven insanity. *AG Bhagwat v UT Chandigarh*, 1989 Cr LJ 214 P&H, no insanity at the time of attack.
112. *Ajaya Mahakud v State of Orissa*, 1993 Cr LJ 1201 (Ori).
113. *S Sunil Sandeep v State of Karnataka*, 1993 Cr LJ 2554 (Kant).
114. *State of Punjab v Mohinder Singh*, (1983) 2 SCC 274 : 1983 SCC (Cr) 402 : 1983 Cr LR (SC) 187 . In a similar acquittal, the HP High Court ordered that the accused be confined to mental hospital so that he would pose no danger to public. *Krishan Dutt v State of HP*, 1992 Cr LJ 1065 HP.
115. *SW Mohammed*, 1972 Cr LJ 1523 : AIR 1972 SC 2443 .
116. *Oyami Ayatu*, 1974 Cr LJ 305 : AIR 1974 SC 216 [LNIND 1973 SC 242] . See also *Gunadhar Mondal*, 1979 Cr LJ NOC 178 (Cal), *Kesheorao* 1979 Cr LJ 403 (Bom). *Basanti v State*, 1989 Cr LJ 415 (Ori), woman jumped into well with her children, rescued, voluntarily explaining her conduct, no insanity. *Parapuzha Thamban v State of Kerala*, 1989 Cr LJ 1372 (Ker); *Munilal Gupta v State*, 1988 Cr LJ 627 (Del); *Meh Ram v State*, 1994 Cr LJ 1897 (Raj).
117. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509 : (2007) 4 KLT 63 [LNIND 1985 KER 300] .
118. *Kader Hasyer Shah*, (1896) 23 Cal 604 , 607; *Kalicharan*, (1947) Nag 226.
119. *Gedka Goalal*, (1937) 16 Pat 333.
120. Stephen : *History of the Criminal Law*, vol II, p 166.

121. *Raghu Pradhan v State of Orissa*, 1993 Cr LJ 1159 (Ori).
122. *Brushabha Digal v State of Orissa*, 1993 Cr LJ 3149 (Ori).
123. *Ashok Dattatraya v State of Maharashtra*, 1993 Cr LJ 3450 (Bom).
124. *Amruta v State of Maharashtra*, 1996 Cr LJ 1416 (Bom).
125. *Tola Ram v State of Rajasthan*, 1996 Cr LJ 8 (Raj). For a case of pretended insanity, see *Nathu Bapu Mhaskar v State of Maharashtra*, 1996 Cr LJ 2121 (Bom).
126. *Paras Ram v State of Punjab*, (1981) 2 SCC 508 : 1981 SCC (Cr) 516. *Gulab Manik Surwase v State of Maharashtra*, 2001 Cr LJ 4302 (Bom) the conduct of assaulting his wife in broad day light within the sight of his relatives and leaving behind the blood stained axe on the spot, the Court said, was a sign of abnormalcy. The accused was given the benefit of doubt. *Laxmandas Mangaldas Manikpuri v State of Maharashtra*, 1997 Cr LJ 950 (Bom), no trace of insanity in the conduct of the accused either before or after killing his wife. Defence under section 84 not available.
127. *Marimuthu v State*, 2009 Cr LJ 3633 (Mad).
128. Fourth question and answer in *M'Naughton's case* (1843) 4 St Tr (NS) 847; *Ghatu Pramanik*, (1901) 28 Cal 613 .
129. First question and answer in *M'Naughton's case*, sup. *Durga Domar v State of MP*, (2002) 10 SCC 193 , the accused killed in ferocious manner 5 children belonging to his close relatives, Courts below sentenced him to death, he could not engage a counsel. In this state of things, the judicial conscience of the Supreme Court compelled it to seek medical opinion regarding the mental condition of the accused.
130. *Madesh v State by The Inspector of Police*, 2014 Cr LJ 96 (Mad).
131. *M'Naughton's case*, (1843) 4 St Tr (NS) 847, 10 Cl & F 200.
132. *State of Maharashtra v Umesh Krishna Pawar*, 1994 Cr LJ 774 (Bom).
133. *Kalicharan*, (1947) Nag 226.
134. *Ganesh Shrawan*, (1969) 71 Bom LR 643 .
135. *SW Mohammed*, 1972 Cr LJ 1523 : AIR 1972 SC 2443 . See also *Mitu Khadia*, 1983 Cr LJ 1385 (Ori).
136. In the matter of *Lakshman*, 1973 Cr LJ 110 (Mad).
137. *Prakash*, 1985 Cr LJ 196 (Bom). *Krishan Dutt v State of HP*, 1992 Cr LJ 1065 (HP), medical evidence and manner of commission showed insanity, acquittal.
138. *Velusamy*, 1985 Cr LJ 981 (Mad).
139. *Baswant Rao*, (1948) Nag 711.
140. *Sukru Sa*, 1973 Cr LJ 1323 (Ori); *Kesheorao*, 1979 Cr LJ 403 (Bom); *Lala Sk*, 1983 Cr LJ 1675 (Cal); *Rajan v State*, 1984 Cr LJ 874 (Ker); *Kusa Majhi*, 1985 Cr LJ 1460 (Ori). *Sudhir Ch Biswas v State*, 1987 Cr LJ 863 Cal.
141. *Siddheswari Bora*, 1981 Cr LJ 1005 (Gau).
142. *State of Assam v Inush Ali*, 1982 Cr LJ 1044 (Gau).
143. *Sita Ram v State*, 2011 Cr LJ 1082 (All); *Leena Balkrishna Nair v State of Maharashtra*, 2010 Cr LJ 3292 (Bom).
144. *Lakshman Dagdu*, (1886) 10 Bom 512.
145. *Nivrutti*, 1985 Cr LJ 449 (Bom).
146. *Debeswar Bhuyan v State of Assam*, 2012 Cr LJ 274 (Gau). See also *Laxman Gagarai v State of Orissa*, 2012 Cr LJ 44 (Ori).
147. *State of Orissa v Kalia Alias Debabrata Maharana*, 2008 Cr LJ 3107 (Ori).
148. *Kuttappan v State of Kerala*, 1986 Cr LJ 271 (Ker).

149. *State of Rajasthan v Shera Ram*, (2012) 1 SCC 602 [LNIND 2011 SC 1192] : AIR 2012 SC 1 [LNIND 2011 SC 1192] : (2012) 1 SCC (Cr) 406 relied on Modi, *Medical Jurisprudence and Toxicology*, 24th Edn, 2011.
150. *Satwant Singh*, 1975 Cr LJ 1605 (P & H). *R v Sullivan*, (1983) 2 All ER 673 , epilepsy is a disease of the mind, but it is not that of madness, though the effect produced on the mind is the same because it is difficult to convict a person who is himself a victim of psychomotor epilepsy.
151. *State of MP v Ahamadulla*, 1961 (2) Cr LJ 43 : AIR 1961 SC 998 [LNIND 1961 SC 29] .
152. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : JT 2007 (9) SC 110 : 2007 AIR (SCW) 3808 : 2007 (7) SCR 917 [LNIND 2007 SC 774] : (2007) 8 Scale 455 [LNIND 2007 SC 774] : (2007) 3 SCC(Cr) 509; *Lok Bahadur Dahal v State of Sikkim*, 2012 Cr LJ 4996 (Sik); *Marimuthu v State*, 2009 Cr LJ 3633 (Mad); *Siddhapal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] ; *Ramadhin v State of MP*, 1995 Cr LJ 3708 (MP).
153. *Riyasat v State of UP*, 1993 Cr LJ 2834 (All).
154. *Jagdish v State of MP*, (2009) 9 SCC 495 [LNINDORD 2009 SC 210] : (2010) 1 SCC(Cr) 21 : AIR 2010 SC (Supp) 373.
155. *Niman Sha v MP*, 1996 Cr LJ 3395 (MP); *Venugopalan Venu v Kerala*, 1996 Cr LJ 3363 (Ker). *Raval Mohanbhatt v State*, 1998 Cr LJ 4325 (Guj).
156. *State of Jharkhand v Madras Nayak*, 2003 Cr LJ NOC 197 : 2003 AIR Jhar HCR 653.
157. *Siddhapal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] .
158. *Shrikant Anandrao Bhosale v State of Maharashtra*, AIR 2002 SC 3399 [LNIND 2002 SC 606] : (2002) 7 SCC 748 [LNIND 2002 SC 606] .
159. *Debeswar Bhuyan v State of Assam*, 2012 Cr LJ 274 (Gau).
160. *Jagannath Das v State*, 1991 Cr LJ (NOC) 32 (Cal). *SK Nair v State of Punjab*, AIR 1997 SC 1537 [LNIND 1996 SC 1829] : 1997 Cr LJ 772 : (1997) 1 SCC 141 [LNIND 1996 SC 1829] , the plea of paranoid, facts established that he understood the implications of the acts at the time of the incident plea not sustainable. *Ram Swarup Thakur v State of Bihar*, 2000 Cr LJ 426 (Pat), the accused killed his own son of 3 years old for no reason. He was in mental hospital for two years, not a normal man at the time. No evidence from prosecution as to his state of mind. Acquitted. *Shrikant Anandrao Bhosale v State of Maharashtra*, AIR 2002 SC 3399 [LNIND 2002 SC 606] : (2002) 7 SCC 748 [LNIND 2002 SC 606] , another case of paranoid schizophrenia, the accused killed his wife in day light, made no attempt to hide or run away, mental unsoundness before or after occurrence was proved. The benefit of section 84 was granted. Also see *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 .
161. *Tikaram Krishnalal Pandey v State of Maharashtra*, 2013 Cr LJ 2410 (Bom).
162. *Dahyabhai Chhaganbhai Thakkar v State of Gujarat*, AIR 1964 SC 1563 [LNIND 1964 SC 88] ; *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 ; In *State of H v Gian Chand*, AIR 2001 SC 2075 [LNIND 2001 SC 1124] : (2001) 6 SCC 71 [LNIND 2001 SC 1124] : 2001 Cr LJ 2548 : (2001) 1 SCC(Cr) 980, the Supreme Court set aside the High Court Judgment by holding that the High Court misapplied the *Dahyabhai Judgment* (*Supra*).
163. *Devidas Loka Rathod v State of Maharashtra*, AIR 2018 SC 3093 [LNIND 2018 SC 311] .
164. *Gelsing Pida Pawar v State of Maharashtra*. 2010 Cr LJ 4097 (Bom); *Leena Balkrishna Nair v State of Maharashtra*, 2010 Cr LJ 3292 (Bom); *Sarat Chandra Sahoo v State of Orissa*, 2010 Cr LJ 3084 (Ori)].

165. *Shivraj Singh v State of MP*, 1975 Cr LJ 1458 , the accused failed to make out his defence. Similar observations occur in *State v E Lemon*, AIR 1970 Goa 1 : 1970 Cr LJ 36 ; *Balagopal Re*, 1976 Cr LJ 1978 ; *Dulal Nayak v State of WB*, 1987 Cr LJ 1561 Cal, striking twice on head with the leg of cot, intention clear. *Omkarlal v State of MP*, 1987 Cr LJ 1289 MP. *TN Lakshmaiah v State of Karnataka*, (2002) 1 SCC 219 [LNIND 2001 SC 2360] , the Court has to examine the accused's claim having regard to his entire conduct up to commencement of the proceedings before the trial Court. The accused murdered his wife and son and took the plea that he acted under a spell of insanity. He led no evidence to that effect. Also his conduct was that of a fully conscious man. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] , explanation of the type of burden of proof which lies on the accused; *Bihari Lal v State of HP*, 2006 Cr LJ 3832 HP, the accused has to prove his mental condition of insanity. He cannot draw any benefit from adverse medical opinion.
166. *Ratan Lal v State of MP*, AIR 1971 SC 778 [LNIND 1970 SC 487] : 1971 Cr LJ 654 .
167. *Tukappa Tamanna Lingardi v State of Maharashtra*, 1991 Cr LJ 2375 (Bom).
168. *Kirtanram Mansai Urav v State of MP*, 2011 Cr LJ 4658 (Chh).
169. *Bhan Singh v State of MP*, 1990 Cr LJ 1861 (MP).
170. *Elkari Shankari v State of AP*, 1990 Cr LJ 97 AP. See also *Uchhab Sahoo v State of Orissa*, 1989 Cr LJ 168 (Ori), evidence created a doubt that the accused might have been under a spell of madness.
171. *Narayan Chandra Dey v State*, 1988 Cr LJ 387 (Cal). See also *Santosh Kumar Sarkar v State*, 1988 Cr LJ 1828 Cal.
172. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 4 KLT 63 [LNIND 1985 KER 300] . There has to be absence of *mens rea* and not mere absence of motive.
173. *Chandrashekhar v State*, 1998 Cr LJ 2237 (Kant). See also *Raval Mohanbai Laxmanbai v State*, 1998 Cr LJ 4325 .
174. *R v Feel (Taramary)*, (2000) 2 Cr App R (S) 464, [CA (Crim Div)].
175. *Mariappan v State of TN*, 2013 Cr LJ 2334 (SC) : 2013 (6) Scale 18 .
176. *Turam Sundi v State of Jharkhand*, 2011 Cr LJ 1872 (Jha); *Madhusudan v State of Karnataka*, 2011 Cr LJ 215 (Kar); *C T Raveenran v State of Kerala*, 2011 Cr LJ 14089 (Ker).
177. *Nand Lal v State of Rajasthan*, 2011 Cr LJ 3686 (Raj); *Babasaheb Thombre v State of Maharashtra*, 2008 Cr LJ 2935 (Bom)].
178. *Dhaneswar Pradhan v State of Assam*, 2003 Cr LJ 733 (Gau).
179. *PSVLN Sastry v Advocate General HC of AP*, (2007) 15 SCC 271 .
180. *Apu @ Gajraj Singh v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : 2007 (3) RCR (Criminal) 343.
181. *Shibu v State of Kerala*, 2013 (4) KLJ 300 : 2013 (4) KLT 323 [LNIND 2012 KER 968] (Ker DB).
182. *Ibid.*
183. *Ashok Kumar R v State of Kerala*, 2016 Cr LJ 4765 (Ker) : 2016 (4) KHC 232 .
184. Section 328-339.

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.

[s 85] Act of a person incapable of judgment by reason of intoxication caused against his will.

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing

what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.—

Under this section a person will be exonerated from liability for doing an act while in a state of intoxication if he at the time of doing it, by reason of intoxication, was

- (1) incapable of knowing the nature of the act, or
- (2) that he was doing what was either wrong or contrary to law;

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.¹⁸⁵.

Voluntary drunkenness is no excuse for the commission of a crime.¹⁸⁶ A person cannot become himself drunk with liquor and commit an offence and then come and say that he had consumed the liquor and, therefore, the benefit of section 85 should be given to him.¹⁸⁷ The law pronounces that the obscuration and divestment of that judgment and human feeling which in a sober state would have prevented the accused from offending, shall not, when produced by his voluntary act, screen him from punishment, although he be no longer capable of self-restraint.¹⁸⁸ It is also no excuse to say that because of it he failed to resist the impulse to act in a certain way¹⁸⁹ or that because of it he acted like an automaton.¹⁹⁰

[s 85.1] Voluntary drunkenness.—when an excuse.—

Nevertheless voluntary drunkenness is a factor which has to be taken into consideration at least in two types of cases, *viz.*,

(i) where a specific intent is an essential element of an offence charged and the evidence shows that the state of intoxication of the accused is such that he is incapable of forming the specific intent essential to constitute the crime.¹⁹¹ In the Indian context, for example, it would be intent to kill as in clauses 1, 2, and 3 of [section 300, IPC, 1860](#). In such cases, however, even if the accused fails to actually form the specific intent, [section 86, IPC, 1860](#), would impute the necessary guilty knowledge to him and he would, therefore, be liable for culpable homicide not amounting to murder though not of murder.¹⁹² Thus, voluntary intoxication amounting to prove incapacity to form the required specific intent would be a limited excuse to reduce an offence of murder (section 302) to one of culpable homicide not amounting murder ([section 304, IPC, 1860](#)). This is, however, a question of fact in each case.

In a case of wife-burning, her dying declaration disclosed that her husband consumed liquor, scolded her and then set her afire after pouring kerosene on her. She fought the fire and tried to run away but the accused again caught hold of her and again poured oil and inflamed her. It was held that these circumstances showed that the mental faculties of the accused were not impaired to such an extent that he was prevented from forming the requisite intention to cause death. He was convicted under section 302 and not section 304, Part II.¹⁹³

(ii) where habitual drunkenness has resulted in such a diseased condition of the mind that the accused is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. In such a case M'Naughten Rules ([section 84, IPC](#),

1860) would come into play and he would be absolved from liability.¹⁹⁴ The most common example of such an alcoholic disease is "Delirium Tremens" which is produced by prolonged and habitual excessive drinking and results in loss of the faculty of reasoning or serious defect of reasoning. In other words, "insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged."¹⁹⁵

Under this section if a man is made drunk through stratagem or the fraud of others, or through ignorance, or through any other means causing intoxication without the man's knowledge or against his will, he is excused.¹⁹⁶

[s 85.2] CASE.—

The accused ravished a girl of 13 years of age and, in furtherance of the act of rape, placed his hand upon her mouth and his thumb upon her throat, thereby causing death by suffocation. The sole defence was a plea of drunkenness. It was held that drunkenness was no defence unless it could be established that the accused at the time of committing rape was so drunk that he was incapable of forming the intent to commit it (which was not alleged), inasmuch as the death resulted from a succession of acts, the rape and the act of violence causing suffocation, which could not be regarded independently of each other; and that the accused was guilty of murder.¹⁹⁷

Drink is an aggravating feature in the award of sentence. In reference to one of the accused persons there was no evidence to establish that the effect of intoxication was such as to cause him to lack the specific intent for murder, particularly in view of the fact that, on his own admission, he was following instructions given by the other accused and he was able to give the police a lucid account of his actions. The degree of intoxication fell far below that which would preclude the formation of specific intent required for murder.¹⁹⁸

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).

185. *Bablu v State of Rajasthan*, (2006) 13 SCC 116 [LNIND 2006 SC 1134] : AIR 2007 SC 697

[LNIND 2006 SC 1134] : 2007 Cr LJ 1160 , the Court stated three propositions as to the scope of the section:

- (i) the insanity whether produced by drunkenness or otherwise is a defence to the crime charged;
- (ii) evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts

proved in order to determine whether or not he had this intent; and

- (iii) the evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind is affected by drink so that he more readily gave to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

186. *Chet Ram v State*, [1971 Cr LJ 1246](#); (HP) *Bodhee Khan*, (1866) 5 WR (Cr) 79; *Boodh Dass*, (1866) PR No. 41 of 1866.

187. *Venkappa Kannappa Chowdari v State of Karnataka*, [1996 Cr LJ 15](#) (Kar).

188. *Mobeni Minji*, [1982 Cr LJ NOC 39](#) (Gau).

189. *Director of Public Prosecutions v Beard*, [\(1920\) AC 479](#); *AG for Northern Ireland v Gallagher* ([1963](#)) [AC 349](#).

190. *Brathy v AG for Northern Ireland*, [\(1963\) AC 386](#).

191. *Director of Public Prosecutions v Beard*, [\(1920\) AC 479](#); *Ramsingh*, (1938) Nag 305; *Saman Singh*, (1941) 24 Lah 39; *DPP v Majewski* ([1976](#)) [2 All ER 142](#); *Shankar Jaiswara v State of WB*, ([2007](#)) [9 SCC 360 \[LNIND 2007 SC 651\]](#): (2007) 3 SCC Cr 553, the appellant abused the victim in a filthy language, and when told to leave, stabbed him seven times to his death with a sharp weapon, so many wounds shows no loss of self control, witnesses did not testify to the degree of intoxication, in such circumstances it could not be said that there was no intention on the part of the appellant or that he was out of his senses on account of intoxication.

192. *Mathai Mathew*, [1952 Cr LJ 1304](#) (TC); *Basdev v State of PEPSU*, [1956 Cr LJ 919](#) (2) : AIR [1956 SC 488 \[LNIND 1956 SC 34\]](#); see also R. Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, pp 604-605.

193. *Mavari Surya Satyanaraina v State of AP*, [\(1995\) 1 Cr LJ 689](#).

194. *Davis* (1881) 14 Cox cc 563; *AG for Northern Ireland v Gallagher*; *DPP v Board*, Supra.

195. *Basdev*, [1956 Cr LJ 919](#) (at p 922-SC).

196. 1 Hale PC 32.

197. *Director of Public Prosecutions v Beard*, [\(1920\) AC 479](#).

198. *Sooklal v Trinidad and Tobago*, [\(1999\) 1 WLR 2011](#), [Lord Hope of Craighead, PC].

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.

[s 86] Offence requiring a particular intent or knowledge committed by one who is intoxicated.

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been

intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.—

Offence requiring particular intent or knowledge.—By reading the above section, it is clear that in the first part of the section the words 'intention or knowledge' are mentioned, but in the latter part of the section the word 'knowledge' is only mentioned and the word 'intention' is omitted. In case of voluntary drunkenness, knowledge is to be presumed in the same manner as if there was no drunkenness. If really the Parliament wanted the word 'intention' also to be presumed even in the case of an act done in a drunken state of mind, the said word could have been mentioned in the Second part also, but the same is omitted. Therefore, whether the accused was having intention or not while committing an act cannot be presumed as in case of knowledge.¹⁹⁹ As certain guilty knowledge or intention forms part of the definition of many offences, this section is provided to meet those cases. It says that a person voluntarily intoxicated will be deemed to have the same knowledge as he would have had if he had not been intoxicated. There may be cases in which a particular knowledge is an ingredient, and there may be other cases in which a particular intent is an ingredient, the two not being necessarily always identical. The section does not say that the accused shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. Therefore, although there is a presumption so far as knowledge is concerned, there is no such presumption with regard to intention.²⁰⁰ Thus, this section attributes to a drunken man the knowledge of a sober man when judging of his action but does not give him the same intention. This knowledge is the result of a legal fiction and constructive intention cannot invariably be raised.²⁰¹ Drunkenness makes no difference to the knowledge with which a man is credited and if a man knew what the natural consequences of his acts were, he must be presumed to have intended to cause them.²⁰² But this presumption may be rebutted by his showing that at the time he did the act, his mind was so affected by the drink he had taken that he was incapable of forming the intention requisite for making his act the offence charged against him.²⁰³

So far as knowledge is concerned the Court must attribute to the intoxicated man the same knowledge as if he was quite sober but so far as intent or intention is concerned, the Court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. If the man was beside his mind altogether for the time being, it would not be possible to fix him with the requisite intention. In other words, where a man goes so deep into drinking that he becomes really incapable of forming the requisite specific intent or knowledge for the offence, then in such a case too section 86 of the Code would impute the requisite knowledge to the accused though not the requisite intention. Thus, where the accused in a state of extreme intoxication caused a fatal injury in the abdomen of his friend but by virtue of his highly intoxicated state of mind was incapable of knowing then as to what he was doing far less forming the requisite intent to kill as envisaged in [section 300, IPC, 1860](#), he could not be convicted under section 302 as he did not have the requisite intent to kill but he could still be convicted under section 304 Part II, [IPC, 1860](#), by virtue of imputed knowledge under [section 86, IPC, 1860](#).²⁰⁴ In this connection see also the discussion under sub-head "voluntary drunkenness: when an excuse" under section 85, *ante*. But if he had not gone so deep in drinking and from the facts it could be found that he knew what he was about the Court will apply the rule that a man is presumed to intend the natural consequences of his act or acts.²⁰⁵

[s 86.1] CASES.—

Accused husband beating his wife and throwing burning lamp on her under influence of liquor. Since he himself consumed the liquor he is not entitled to claim benefit under section 86 of IPC, 1860.²⁰⁶ Act of the accused of walking a distance to the house of a witness and concealing the weapon and his wearing appurtenances showed that he was conscious and capable of understanding of his act. No evidence as regards the degree of intoxication or any evidence of any attending general circumstances to arrive at a conclusion that accused was beside his mind altogether temporarily at time incident.²⁰⁷ On the basis of evidence in this case, it cannot be said that the accused was so much intoxicated at the time of the incident that he was beside his mind altogether for the time being. He did set his wife on fire, but as soon as her sari started burning he realised the folly of his act and started extinguishing the fire. It shows that he was not so much intoxicated that he was besides his mind altogether. Therefore, the rule that a man is presumed to intend the natural consequences of his act can be applied to him also. Conviction under section 302 IPC, 1860 altered to one under section 304(1) IPC, 1860.²⁰⁸

[s 86.2] Sections 85 and 86.—

The reading of sections 85 and 86 together makes it clear that section 86 is an exception to section 85. These provisions show that if the intoxication is induced voluntarily, the act done is an offence even if the person is incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law. This section obviously covers all offences. That is why; it appears that it became necessary to enact section 86 to take care of offences requiring a particular intent or knowledge on the part of the intoxicated offender. The section takes care of such offences and states that if intoxication is involuntary, neither knowledge nor intention in committing the offence will be presumed. If however, it is voluntary only knowledge of the offence on the part of the offender will be presumed but not intention in committing it. What section 86 means and no more as compared to section 85. The degree of intoxication demanded by both sections, however, remains the same. In fact, it is instructive to note that section 84 which exempts persons of unsoundness of mind also expects the degree of unsoundness to the same extent, viz., incapability of knowing the nature of the act or of the knowledge that what is being done either wrong or contrary to law. Hence, the conclusion is inescapable that to avail of the exception under section 86, the degree of intoxication of the offender must be such that he is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Intoxication short of this degree will not entitle the offender to the benefit of the exception.²⁰⁹.

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).
199. *Mavari Surya Satyanaraina v State of AP*, [1995 Cr LJ 689](#) (AP).
200. *Dil Mohammad*, (1941) 21 Pat 250; *Basdev v State of PEPSU*, [1956 Cr LJ 919](#) (2) : [AIR 1956 SC 488](#) [[LNIND 1956 SC 34](#)].
201. *Pal Singh*, (1917) PR No. 28 of 1917.
202. *Judagi Malah*, (1929) 8 Pat 911.
203. *Samman Singh*, (1941) 24 Lah 39.
204. *Enrique F Rio v State*, [1975 Cr LJ 1337](#) (Goa).
205. *Basdev v State of Pepsu*, [\(1956\) SCR 363](#) [[LNIND 1956 SC 34](#)] : [AIR 1956 SC 488](#) [[LNIND 1956 SC 34](#)].
206. *Gautam Bhila Ahire v State of Maharashtra*, [2010 Cr LJ 4073](#) (Bom); *Pidika Janu v State of Orissa*, [1989 Cr LJ \(NOC\) 104](#),
207. *Shankar Jaiswara v State of WB*, [\(2007\) 9 SCC 360](#) [[LNIND 2007 SC 651](#)] : (2007) 3 SCC (Cr) 553.
208. *Babu Sadashiv Jadhav v State of Maharashtra*, [1984 Cr LJ 739](#) (Bom).
209. *State of Maharashtra v Ashok Yashwant*, [1987 Cr LJ 1416](#) (Bom).

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.

[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-masochists 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).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
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).

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.

[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] .
 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).
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).

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.

[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

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 that person:

Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity; Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

ILLUSTRATION

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon. Knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

COMMENT.—

This section empowers the guardian of an infant under 12 years or an insane person to consent to the infliction of harm to the infant or the insane person, provided it is done in good faith and is done for his benefit. Persons above 12 years are considered to be capable of giving consent under section 88. The consent of the guardian of a sufferer, who is an infant or who is of unsound mind, shall have the same effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind.

[s 89.1] Corporal punishment to children.—

Corporal punishment to child, in present days, is not recognized by law. It is an archaic notion that to maintain discipline, child can be punished physically by the teaching staff because of implied consent by the parents or guardian. Now it is recognized social principle that even parents of the child are made to understand the basic human rights of the child and instead of corporal punishment, correctional methods are recognized in law.²¹⁸ But the applicability of [sections 88 and 89, IPC, 1860](#) and administering of corporal punishments on students by the teachers for their benefit, came up for consideration in *M Natesan v State of Madras*.²¹⁹ It was a case where a boy of 15 years was sent with the progress report to get the signature of his parents in it. But he returned it with a thumb impression of another person, stating that the said thumb impression was that of his mother, which was proved to be wrong. The teacher got agitated and he beat the boy on his right palm with a stick. He did not cry. He, therefore, beat him again, asking him why he did not cry. This resulted in causing three injuries, two superficial and one contusion. The Madras High Court held that:

It cannot be denied that having regard to the peculiar position of a school teacher he must in the nature of things have authority to enforce discipline and correct a pupil put in his charge. To deny that authority would amount to a denial of all that is desirable and necessary for the welfare, discipline and education of the pupil concerned. It can therefore be assumed that when a parent entrusted a child to a teacher, he on his behalf impliedly consents for the teacher to exercise over the pupil such authority. Of course, the person of the pupil is certainly protected by the penal provisions of the [Indian Penal Code](#). But the same code has recognised exceptions in the form of ss. 88 and 89. Where a teacher exceeds the authority and inflicts such harm to the pupil as may be considered to be unreasonable and immoderate, he would naturally lose the benefit of the exceptions. Whether he is entitled to the benefit of the exceptions or not in a given case will depend upon the particular nature, extent and severity of the punishment inflicted.

[220](#) In *K A Abdul Vahid v State of Kerala*,[221](#) the Kerala High Court considered the question when a school teacher, beats a student with a cane, who created commotion in the school or showed disobedience to the Rules, whether he could be proceeded against under the provisions of the [IPC, 1860](#) and found that the teacher has acted within the exception conferred on him, under [section 88 of IPC, 1860](#).

-
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).
 218. *Hasmukhbhai Gokaldas Shah v State of Gujarat*, [2009 Cr LJ 2919](#) (Guj).
 219. *M Natesan v State of Madras*, [AIR 1962 Madras 216 \[LNIND 1961 MAD 136\]](#) : [1962 \(1\) Cr LJ 727](#) .
 220. Also see *Ganesh Chandra Saha v. Jiw Raj Somani*, [AIR 1965 Calcutta 32](#) : ([1965 \(1\) Cr LJ 24](#)) .
 221. *K A Abdul Vahid v State of Kerala*, [2004 Cr LJ 2054](#) (Ker).

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.

[s 90] Consent known to be given under fear or misconception.

A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact,¹

and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

COMMENT.—

This section does not define 'consent' but describes what not consent is.

This section says that consent is not a true consent if it is given—

- | | |
|--|---|
| (1) by a person under fear of injury; | and the person obtaining the consent knows or has reason to believe this. |
| (2) by a person under a misconception of fact; | |
| (3) by a person of unsound mind; | and who is unable to understand the nature |
| (4) by a person who is intoxicated; | and consequence of that to which he gives his consent. |
| (5) by a person under 12 years of age | |

Consent is an act of reason, accompanied with deliberation, the mind weighing as in balance, the good and evil on each side.²²² Consent means an active will in the mind of a person to permit the doing of the act complained of, and knowledge of what is to be done, or of the nature of the act that is being done, is essential to consent to an act.²²³ An act of helplessness on the face of inevitable compulsions is not consent in law.²²⁴ It requires voluntary participation by victim not only after exercise of intelligence based on knowledge of significance and moral quality of act, but after having fully exercised the choice between resistance and assent.²²⁵ A mere act of helpless resignation in the face of inevitable compulsion, non-resistance and passive giving in cannot be deemed to be consent.²²⁶ The Supreme Court in a long line of cases has given wider meaning to the word 'consent' in the context of sexual offences as explained in various judicial dictionaries. In *Jowitt's Dictionary of English Law* (Second Edn), vol (1) 1977 at p 422 the word 'consent' has been explained as an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. It is further stated that consent supposes three things—a physical power, a mental power, and a free and serious use of them and if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.²²⁷ Section 90 cannot be considered as an exhaustive definition of consent for the purposes of **IPC, 1860**. The normal connotation and concept of consent is not intended to be excluded.²²⁸ For determining whether consent given by the prosecutrix was voluntary or under a misconception of fact, no straitjacket formula can be laid down.²²⁹

The factors set out in the first part are from the point of view of the victim. The second part enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has the knowledge or reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. The requirements of both the parts have to be cumulatively satisfied.²³⁰ Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.²³¹ Consent can be obtained under various methods and always necessarily need not be a one which is given voluntarily. For example, if a victim is intoxicated without her knowledge or consent and if the rape is committed while the victim was intoxicated or drunken, it cannot be said that she had voluntarily given the consent. Therefore, such passive consent cannot be treated as a consent as contemplated by [section 90 of IPC, 1860](#).²³² Obtaining consent by exercising deceit cannot be legitimate defence to exculpate an accused.²³³

[s 90.1] Submission to Rape.—

An act of submission does not involve consent- Consent cannot be equated to inability to resist or helplessness.²³⁴ Every consent involves a submission, but every submission is not consent and the mere fact that a woman had submitted to the promise of the accused does not necessarily indicate that her consent existed unless the evidence on record establishes that the sexual act, which the prosecutrix had allowed, was accompanied with deliberation after the mind had weighed, as in a balance, the good and the evil on each side with the existing capacity and power to withdraw the assent according to one's will or pleasure.²³⁵ Where, the accused had sexual intercourse with the prosecutrix by giving false assurance to her that he would marry her and when she became pregnant, he refused to do so, it was evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, therefore, the act of the accused fell squarely under the definition of rape as her consent was obtained under a misconception of fact.²³⁶

1. 'Misconception of fact'.—The expression "under a misconception of fact" is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In [section 3 of the Evidence Act](#) Illustration (d) states that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married... "thus... if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person..." Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of [section 90 IPC, 1860](#) is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.²³⁷ Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had *mala fide* motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and

consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.²³⁸ In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. If a fully grown-up girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant, it is an act of promiscuity on her part and not an act induced by misconception of fact and it was held that section 90 IPC, 1860 cannot be invoked unless the Court can be assured that from the inception the accused never intended to marry her. Therefore, it depends on case to case that what is the evidence led in the matter. If it is a fully grown-up girl who gave the consent then it is a different case but a girl whose age is very tender and she is giving a consent after persuasion of three months on the promise that the accused will marry her which he never intended to fulfil right from the beginning which is apparent from the conduct of the accused, in our opinion, section 90 can be invoked.²³⁹ A promise to marry without anything more will not give rise to "misconception of fact" within the meaning of section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of section 375 clause second.²⁴⁰

[s 90.2] CASES.—

The prosecutrix had sexual intercourse with the accused on the representation made by the accused that he would marry her. This was a false promise held out by the accused. Had this promise not been given perhaps, she would not have permitted the accused to have sexual intercourse. It appears that the intention of the accused was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him.²⁴¹ In *Uday v State of Karnataka*,²⁴² the Court considered the following facts: (i) where a girl was of 19 years of age and had sufficient intelligence to understand the significance and moral quality of the act she was consenting to; (ii) she was conscious of the fact that her marriage was difficult on account of caste considerations; (iii) it was difficult to impute to the appellant, knowledge that the prosecutrix had consented in consequence of a misconception of the fact arising from his promise; and (iv) there was no evidence to prove conclusively that the appellant never intended to marry the prosecutrix. On the basis of the above factors, Court held that it did not feel persuaded to hold that consent was obtained by misconception of facts on the part of the victim.

In a case, the prosecutrix had left her home voluntarily, of her own free will to get married to the accused. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the accused on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time,

and when he finally arrived she went with him to the Karna Lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the accused, where she lived with his relatives. Here to, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at the Birla Mandir. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married. However, they were apprehended by the police. If the prosecutrix was in fact going to Ambala to marry the accused, as stands fully established from the evidence on record, the Supreme Court held it fails to understand on what basis the allegation of "false promise of marriage" has been raised by the prosecutrix.²⁴³

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).
222. Story, section 222.
223. *Lock*, (1872) LR 2 CCR 10, 11.
224. *Satpal Singh v State of Haryana*, 2010 AIR (SCW) 4951 : (2010) 8 SCC 714 [LNIND 2010 SC 666] : 2010 Cr LJ 4283 .
225. *Md. Jakir Ali v The State of Assam*, 2007 Cr LJ 1615 (Gau).
226. Re, (AIR 1960 Madras 308), *Gopi Shanker v State of Rajasthan*, (AIR 1967 Rajasthan 159), *Bhimrao v State of Maharashtra*, (1975 Mah. LJ 660) and *Vijayan Pillai v State of Kerala*, (1989 (2) KLJ 234) quoted from *R v Day*, (173 ER 1026) in 1841 approved in *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407.
227. *State of UP v Chhoteylal*, AIR 2011 SC 697 [LNIND 2011 SC 73] : (2011) 2 SCC 550 [LNIND 2011 SC 73] in this case, SC elaborately discussed the meaning of consent and quoted from various Indian and foreign authorities.
228. *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407.
229. *Uday v State of Karnataka* AIR 2003 SC 1639 [LNIND 2003 SC 228] : (2003) 4 SCC 46 [LNIND 2003 SC 228] : 2003 SCC (Cr) 775.
230. *Deepl Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] : AIR 2005 SC 203 [LNIND 2004 SC 1123] .
231. *State of HP v Mango Ram*, (2000 (7) SCC 224 [LNIND 2000 SC 1144] : 2000 Cr LJ 4027 (SC).
232. *KCPeter v State of Kerala*, 2011 Cr LJ 3488 (Ker).
233. *Karthi @ Karthick v State*, 2013 Cr LJ 3765 (SC).
234. *Laddoo Singh Alias Harjit Singh v State of Punjab*, 2008 Cr LJ 2885 (PH).

235. *Bipul Medhi v State of Assam*, 2008 Cr LJ 1099 (Gau).
236. *State of UP v Naushad*, 2014 Cr LJ 540 .
237. *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407 relied on *N Jaladu, Re (ILR (1913) 36 Madras 453* .
238. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533].
239. *Jayanti Rani Panda v State of WB*, 1984 Cr LJ 1535 (Cal).
240. *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407 relied on *N Jaladu, Re (ILR (1913) 36 Madras 453*).
241. *Yedla Srinivasa Rao v State of AP*, (2006) 11 SCC 615 [LNIND 2006 SC 785] : (2007) 1 SCC(Cr) 557; *Bipul Medhi v State of Assam*, 2008 Cr LJ 1099 (Gau); *Abhoy Pradhan v State of WB*, 1999 Cr LJ 3534 (Cal).
242. *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] : (2003) 4 SCC 46 [LNIND 2003 SC 228] : 2003 SCC (Cr) 775.
243. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] . See also *Swapan Chatterjee v State of WB*, 2009 Cr LJ 16 (Cal); *Karthi @ Karthick v State*, 2013 Cr LJ 3765 (SC); *Ravi v State*, 2010 Cr LJ 3493 (Mad); *Vinod Mangilal v State of MP*, 2009 Cr LJ 1204 (MP).

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.

[s 91] Exclusion of acts which are offences independently of harm caused.

The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

ILLUSTRATION

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

COMMENT.—

The section serves as a corollary to sections 87, 88 and 89. It says in explicit terms that consent will only condone the act causing harm to the person giving the consent which will otherwise be an offence. Acts which are offences independently of any harm which they may cause will not be covered by consent given under sections 87, 88 and 89, e.g., causing miscarriage, public nuisance, offences against public safety, morals, etc. It may be stated here that the illustration given under this section has become somewhat inappropriate as pregnancy can now be terminated under [section 3 of Medical Termination of Pregnancy Act, 1971](#), on a number of grounds and not only on the ground of saving the life of the woman.

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).

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.

[s 92] Act done in good faith for benefit of a person without consent.

Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in

lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

ILLUSTRATIONS

- (a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.
- (b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.
- (c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.
- (d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

COMMENT.—

Acts done in good faith.—This section is designed to meet those cases which do not come either under section 88 or under section 89. The principal object of sections 88, 89 and 92 is protection of medical practitioners. Illustrations (a) and (b) exemplify cases in which it is impossible to give consent; illustrations (c) and (d), where legal capacity to consent is wanting.

The author of the Code observes:

There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian, yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught on a blanket below, but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall though the person who threw it down knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship, we extend by clause 72 a protection very similar to that which we have given to the acts of regular guardians.²⁴⁴.

This section speaks of 'hurt', whereas section 89 speaks of 'grievous hurt', otherwise the terminology of both the sections is almost identical.

-
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).
- 244.** The Works of Lord Macaulay- 'On the Chapter of General Exceptions', Note B.

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.

[s 93] Communication made in good faith.

No communication made in good faith is an offence by reason of any harm¹ to the person to whom it is made, if it is made for the benefit of that person.

ILLUSTRATION

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

COMMENT.—

This section protects the innocent without unduly cloaking the guilty.

The communication under this section must be

- (1) made in good faith; and
- (2) for the benefit of the person to whom it is made.

The illustration to this section does not say, however, whether the communication was made to the patient for his benefit.

1. 'Harm'.—In this section 'harm' means an injurious mental reaction.^{245.}

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).
- 245.** *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.

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.

[s 94] Act to which a person is compelled by threats.

Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence : Provided the person doing the act did not of his

own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

COMMENT.—

By this section a person is excused from the consequences of any act, except (1) murder and (2) offences against the State punishable with death, done under fear of instant death; but fear of hurt or even of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

Murder committed under a threat of instant death is not excused under this section. But 'murder' does not include abetment of murder and such abetment will be excused.²⁴⁶ Abetment of murder and of the offence of causing disappearance of the evidence of murder was excused under this section when it was done under fear of instant death at the hands of the murderers.²⁴⁷

[s 94.1] Doctrine of compulsion and necessity.—

No one can plead the excuse of necessity or compulsion as a defence of an act otherwise penal, except as provided in this section. No man from a fear of consequences to himself has a right to make himself a party to committing mischief on mankind.²⁴⁸

Except where unsoundness of mind is proved or real fear of instant death is proved, the burden of proof being on the prisoner, pressure of temptation is not an excuse for breaking the law.²⁴⁹ Under the English law the defence of duress is available not only in case of fear of instant death but also in case of serious bodily harm.²⁵⁰ Furthermore, such a threat need not be always against the person of the accused.²⁵¹

This defence was not allowed to a person who voluntarily joined a criminal organisation or gang with knowledge that the gang used loaded firearms to carry out robberies on sub-post offices and also that the leader of the gang might bring pressure upon him to participate in such offences. He had accordingly to participate in a robbery under pressure in which the leader shot dead the sub-post master. His appeal against conviction for man slaughter was rejected.²⁵²

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).
246. *Umadasi Dasi*, (1924) 52 Cal 112 : Karu, (1937) Nag 524. But see *R v Howe*, (1987) 1 All ER 770 HL, where it was noted that the defence of duress is not available to a person charged with murder whether as a principal in the first degree (the actual killer) or as principal in the second degree (the aider and abettor).
247. *Bachchan Lal*, 1957 Cr LJ 344 .
248. *Maganlal and Motilal*, (1889) 14 Bom 115.
249. *Devji Govindji*, (1895) 20 Bom 215, 222, 223.
250. *Director of Public Prosecutions for Northern Ireland v Lynch*, (1975) 1 All ER 913 -Per House of Lords.
251. *Hurley* (1967) VR 526.
252. *R v Sharp*, (1987) 3 All ER 103 CA. Following *Lynch v DPP for Northern Ireland*, (1975) 1 All ER 913 : (1975) AC 653 .

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.

[s 95] Act causing slight harm.

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

COMMENT.—

slight harm or trifles.—The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. The authors of the Code observe:

Clause 73 [this section] is intended to provide for those cases which, though, from the imperfections of language, fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommodate him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the judges to except them in practice.²⁵³.

The expression 'harm' has been used in this section in a wide sense including physical injury and hence, this section applies in cases of actual physical injury also. This section applies not only to acts which are accidental but also to deliberate acts which cause harm or are intended to cause harm or known to be likely to cause harm.²⁵⁴. In a campaign by Sarvodaya workers to educate people about the evil of alcohol, liquor shops were picketed to prevent people from going there even if it was at the cost of slight harm; their prosecution under section 341 for causing wrongful restraint was quashed.²⁵⁵. Where the accused locked the complainant inside the factory by pulling down the shutter, it was held that ingredients of the offence under section 342 (wrongful confinement) were established but as the complainant regained his freedom within a very short time and only a minimal harm was caused, the case was clearly covered by section 95.²⁵⁶.

[s 95.1] CASES.—Acts regarded as trivial.—

This section was applied where a person was convicted for taking pods, almost valueless, from a tree standing on Government waste land;²⁵⁷ where the accused committed theft of a cheque of no value²⁵⁸. and where the plaintiff complained of the harm caused to his reputation by the imputation that he was travelling with a wrong ticket.²⁵⁹. So also an offence of misbranding²⁶⁰. and the conduct of a lawyer in using filthy language in course of cross-examination²⁶¹. were treated as trivial.

Where the record of the trial Court showed that the injury caused was very simple, being in the nature of a scratch, the Court said that the act was so trivial that no person of a sound common sense would regard it as an offence. The prayer of the complainant for conviction of the accused for causing simple hurt under section 323 was liable to be rejected.²⁶².

[s 95.2] Acts not regarded as trivial.—

The top most official of the State Police, indecently behaved with a senior lady IAS Officer, in the presence of gentry and in spite of her raising objections continued with such behaviour. The Supreme Court observed that if it is held, on the face of such allegations that, the ignominy and trauma to which, she was subjected to was so slight that the lady IAS Officer, as a person of ordinary sense and temper, would not complain about the same, sagacity will be the first casualty. In that view of the matter [section 95, IPC, 1860](#) cannot have any manner of application to an offence relating to modesty of woman as under no circumstances can it be trivial.²⁶³. Where the Accused caused the

deceased to fall down and co-accused threw down a heavy stone on head of deceased, act attributed to accused formed part of a joint yet a murderous assault on deceased. Hence, it is not covered by exception in section 95.²⁶⁴ Where a blow was given across the chest with an umbrella by a dismissed policeman to a District Superintendent of Police because his application to reconsider his case was rejected;²⁶⁵ where the accused tore up a paper which showed a money debt due from him to the prosecutor though it was unstamped, and therefore, not a legal security;²⁶⁶ and where a respectable man was taken by the ear,²⁶⁷ it was held that this section did not apply. An offence under [Prevention of Food Adulteration Act, 1954](#) cannot be regarded as trivial.²⁶⁸

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).
253. The Works of Lord Macaulay- 'On the Chapter of General Exceptions', Note B, pp. 109, 110.
254. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.
255. *Narayanan v State of Kerala*, 1987 Cr LJ 741 Ker; following *Attappa Re*, AIR 1951 Mad 759 [LNIND 1950 MAD 178] : 1951 (2) Cr LJ 716 , where it was observed that even if obstruction is caused, if the harm caused is slight, section 95 would apply.
256. *Anoop Krishan Sharma v State of Maharashtra*, 1992 Cr LJ 1861 (Bom).
257. *Kasyabin Ravji*, (1868) 5 BHC (Cr C) 35.
258. *Ethirajan*, 1955 Cr LJ 816 .
259. *South Indian Railway Co v Ramakrishna*, (1889) 13 Mad 34.
260. *Public Prosecutor v K Satyanarayana*, 1975 Cr LJ 1127 (AP).
261. *Bheema*, 1964 (2) Cr LJ 692 (AP).
262. *State of Karnataka v M Babu*, 2002 Cr LJ 2604 (Kant), the Court discussed the doctrine of triviality.
263. *Rupan Deol Bajaj v Kanwar Pal Singh Gill*, AIR 1996 SC 309 [LNIND 1995 SC 981] : (1995) 6 SCC 194 [LNIND 1995 SC 981] : JT 1995 (7) SC 299 [LNIND 1995 SC 981] : (1995) 5 Scale 670 : 1996 Cr LJ 381 .
264. *Athai v State of MP* 2010 Cr LJ 995 (MP).
265. *Sheo Gholam Lalla*, (1875) 24 WR (Cr) 67.
266. *Ramasami v State*, (1888) 12 Mad 148.
267. *Shoshi Bhusan Mukerjee v Walmsley*, (1897) 1 CWN.
268. *Dist Food Inspector v Kedarnath*, 1981 Cr LJ 904 (Gau); *State of Kerala v Vasudevan Nair* (Ker) (FB) 1975 FAJ 36 : (1975 Cr LJ 97); *M/s. Razak Rice And Oil Mills v Bharat Narayan Patnaik, Food Inspector, Berhampur Municipality* 1989 Cr LJ 648 (Ori).

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 96] Things done in private defence.

Nothing is an offence which is done in the exercise of the right of private defence.

COMMENT.—

In a civilised society the defence of person and property of every member thereof is the responsibility of the State. Consequently, there is a duty cast on every person faced with apprehension of imminent danger of his person or property to seek the aid of the machinery provided by the State but if immediately such aid is not available, he has the right of private defence. Right to private defence is a very valuable right and it has been recognized in all civilized and democratic societies within certain reasonable limits. Sections 96–106 of [IPC, 1860](#) codify the entire law relating to right of private defence of person and property including the extent of and the limitation to exercise of such right. When enacting [sections 96 to 106](#) of the [IPC, 1860](#), excepting from its penal provisions, certain classes of acts, done in good faith for the purpose of repelling unlawful aggressions, the Legislature clearly intended to arouse and encourage the manly spirit of self-defence amongst the citizens, when faced with grave danger.²⁶⁹.

[s 96.1] Principle.—

The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property.²⁷⁰ The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The law does not require a law abiding citizen to behave like a coward when confronted with an imminent unlawful aggression. There is nothing more degrading to the human spirit than to run away in face of danger. The right of private defence is thus, designed to serve a social purpose and deserves to be fostered within the prescribed limits. The [IPC, 1860](#) defines homicide in self-defence as a form of substantive right, and therefore, save and except the restrictions imposed on the right of the Code itself, it seems that the special rule of English Law as to the duty of retreating will have no application to this country where there is a real need for defending oneself against deadly assaults. The right to protect one's own person and property against the unlawful aggressions of others is a right inherent in man. The duty of protecting the person and property of others is a duty which man owes to society of which he is a member and the preservation of which is both his interest and duty. It is, indeed, a duty which flows from human sympathy.

As Bentham said:

It is a noble movement of the heart, that indignation which kindles at the sight of the feeble injured by the strong. It is noble movement which makes us forget our danger at the first cry of distress..... It concerns the public safety that every honest man should consider himself as the natural protector of every other.

But such protection must not be extended beyond the necessities of the case; otherwise it will encourage a spirit of lawlessness and disorder. The right has, therefore, been restricted to offences against the human body and those relating to aggression on property. Right of private defence of person and property is recognized in all free, civilised, democratic societies within certain reasonable limits. Those limits are dictated by two considerations: (1) that the same right is claimed by all other members of the society and (2) that it is the State which generally undertakes the responsibility for the maintenance of law and order. The citizens, as a general rule, are neither expected to run away for safety when faced with grave and imminent danger to their person or property as a result of unlawful aggression, nor are they expected, by

use of force, to right the wrong done to them or to punish the wrong doer of commission of offences.²⁷¹.

[s 96.2] Scope.—

Section 96 IPC, 1860 provides that nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression "right of private defence". It merely indicates that nothing is an offence which is done in the exercise of such right.²⁷² While providing for exercise of the right, care has been taken in IPC, 1860 not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.²⁷³ Just because one circumstance exists amongst the various factors, which appears to favour the person claiming right of self-defence, does not mean that he gets the right to cause the death of the other person. Even the right of self-defence has to be exercised directly in proportion to the extent of aggression.²⁷⁴.

[s 96.3] Test.—

Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea.²⁷⁵ The means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot; his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence.²⁷⁶ A person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negated. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is

essentially, as noted above, a finding of fact.²⁷⁷ Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step-by-step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.²⁷⁸

Mere use of abusive language does not give rise to private defence. Thus, where the deceased about a month before the murder had tried to outrage the modesty of the wife of the accused and thereafter on the day of the incident cut a rustic joke enquiring whether the accused had not kept buffaloes for drinking milk which lead the accused to beat the deceased mercilessly resulting in his death, it was held that giving the most charitable interpretation one could not find a single circumstance which will give the accused the benefit of the right of private defence and the interval between the attempt to outrage the modesty of the accused's wife and the murder being too long he was also not entitled to get the benefit of grave and sudden provocation within the meaning of exception 1 to [section 300, IPC, 1860](#).²⁷⁹ Giving a general view of all the provisions on this right in *Munney Khan v State*,²⁸⁰ the Supreme Court observed:

The right of private defence is codified in [sections 96 to 106, IPC](#), which have all to be read together in order to have a proper grasp of the scope and limitations of this right. By enacting the sections the authors of the Code wanted to except from the operation of its penal clauses acts done in good faith for the purpose of repelling unlawful aggression.²⁸¹

Summary of Principles regarding Private defence

- (i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
- (ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
- (iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
- (iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
- (v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
- (vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
- (vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
- (viii) The accused need not prove the existence of the right of private defence

beyond reasonable doubt.

- (ix) The [IPC, 1860](#) confers the right of private defence only when that unlawful or wrongful act is an offence.
- (x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

[*Darshan Singh v State of Punjab.* [282](#)-]

All the sections would have to be read together to ascertain whether in the facts and circumstances of the case the accused were entitled to the defence or they exceeded it. Only then one can get a comprehensive view of the scope and limitations of the right. [283](#).

1. Availability or Non-availability of private defence.—Factors to be kept in view.— In order to find whether right of private defence is available or not, the entire incident must be examined with care and viewed in its proper setting. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered on a plea of private defence. [284](#). The right of private defence is a defence right. It is neither a right of aggression nor a right of reprisal. There is no right of private defence where there is no apprehension of danger. Right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. The necessity must be a present necessity whether real or only apparent. [285](#). It remains a question of fact whether the right has been legitimately exercised. [286](#). Thus, running to house, fetching a sword and assaulting the deceased are by no means a matter of chance. These acts bear stamp of a design to kill and take the case out of the purview of private defence. [287](#). But where the accused was dispossessed of his land by a party of men and he ran to his residence from where he fetched his gun and came back within 15 minutes to fire at and injure them, he was held to be within his rights, but when he went further still and chased and injured a person who was just standing by there and who died, in reference to him the accused had no right of private defence. [288](#). Along with the above factors one has also to remember the following limitations on the right of private defence of person or property:

- (i) that if there is sufficient time for recourse to public authorities, the right are not available;
- (ii) that more harm than that is necessary should not be caused;
- (iii) that there must be a reasonable apprehension of death or grievous hurt or hurt to the person or damage to the property concerned. [289](#). Where on account of some incident, the accused was confronted by three persons; it was held that the superiority in numbers in itself could in all probability have been construed by the accused as an imminent danger to himself thus, giving him the signal to act in exercise of the right of private defence. [290](#).

The need to act must not have been created by the conduct of the accused in the immediate context of the incident which was likely or intended to give rise to that need. [291](#). The Supreme Court reiterated the various principles governing the law of private defence and observed that it was essentially a defensive right and did not include the right to launch an offensive attack, particularly when the need for defence no longer existed. [292](#). A right of private defence given by the [Penal Code](#) is essentially

one of defence or self-protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in section 99 which are as important as the right itself.²⁹³

[s 96.4] CASES.—Plea of Private Defence rejected.—

After inflicting injuries on person of first deceased, accused persons ran towards second deceased, who was standing ten steps away from place of incident. Further after seeing incident relating to death of first deceased, second deceased started running towards *Durga-ki-Dhani* and was chased by accused persons and they inflicted *lathi* blows on his person. Accused had no right to invoke right of self-defence by chasing second deceased and to cause fatal injuries upon him.²⁹⁴ Where the accused were in fact the aggressors and being members of the aggressors party none of the accused can claim right of self-defence.²⁹⁵ Merely because there was a quarrel and some of the accused person sustained injuries, that does not confer a right of private defence extending to the extent of causing death. It has to be established that the accused person were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. Right of private defence has been rightly discarded.²⁹⁶

The defence claimed that the place of occurrence was the house of the accused and, therefore, they had acted in self-defence but that was not proved through any leading evidence despite the examination of the accused under [section 313 of the Cr PC, 1973](#), it was held that the right of self-defence was not available to them.²⁹⁷

[s 96.5] Social nature of defence.—

The right of private defence is not restricted to the particular person who is under attack. It extends to the society as a whole. It is available to any member of the society who rises to the occasion. But it is wholly a social obligation without any legal overtones.²⁹⁸

[s 96.6] Material that accused may rely on.—

An accused entitled to rely for constructing his private defence on the material on record brought by the prosecution.²⁹⁹ Without formally taking a plea of self-defence, the accused has a right to probabilise such defence on the basis of the prosecution evidence and if he succeeds in his effort, the Court can give him such a benefit.³⁰⁰

2. Duty to retreat, if any.—It is now well settled that the rule of retreat which Common Law Courts espoused is not relevant under the [IPC, 1860](#). If a man's property is in imminent danger of being impaired or attacked he has the right to resort to such measures as would be reasonably necessary to thwart the attempt to protect his property.³⁰¹ Under the common law the doctrine of necessity permitted one to defend one's person or property or the person or property of others against an unjustified attack by the use of reasonable force. In determining what was reasonable force, which in the Indian context means minimum force under [section 99, IPC, 1860](#), the common law Courts always insisted if the accused could prevent the commission of crime against him by retreating. On this rule of retreat one would like to ask: if a person is attacked by an armed burglar in his own room, he is expected to run away leaving the burglar to act as he liked.³⁰² In *Jaidev's case*³⁰³, Gajendragadkar, J, as he then was,

specifically held that in India there is no rule which expects a man first to run away or at least try to do so before he can exercise his right of private defence. Rather he has every right to stand his own ground and defend himself if there is no time to have recourse to official help. Law does not expect a citizen to be a rank coward or leave his own house at the mercy of the burglar.³⁰⁴. In spite of this clear exposition of the law in *Jaidev's case* Sarkaria, J, held in *Yogendra Morarji's case*³⁰⁵, that one must first try to avoid the attack by retreating otherwise one would not be entitled to get the benefit of private defence. It appears that *Jaidev's* case was not canvassed before the learned judges who decided the latter case. It is submitted with utmost respect that the former view as held in *Jaidev's* case, appears to be more reasonable and has to be preferred.

3. No Private defence in a free fight.—Where both sides can be convicted for their individual acts, normally no right of private defence is available to either party and they will be guilty of their respective acts.³⁰⁶. Where two parties come armed with determination to measure their strength and to settle a dispute by force and in the ensuing fight both sides receive injuries, no question of right of private defence arises. In such a case of free fight both parties are aggressors and none of them can claim right of private defence.³⁰⁷. In a free fight between two groups resulting in the death of one and injuries to several others both grievous and simple, all the accused participated in the fight. The plea of one of the accused that he joined the fight later and acted in defence of other co-accused was held to be not tenable. The Court observed that his case could not be separated by giving him right of private defence under the benefit of doubt.³⁰⁸. In a sudden fight between two groups in heat of passion death of a man was caused and several others on both the sides were injured. The deceased opened the assault first. It was held that in such fights the question that which party opened attack first is immaterial. Plea of right of self-defence was not allowed to the accused.³⁰⁹. Where two groups forming an unlawful assembly over the possession of land in dispute which was in peaceful possession of neither group, indulged in free fight resulting in the death of two persons of a group, it was held that right of private defence was not available to either group.³¹⁰.

The right to voluntary causing of death or any other harm is available against the assailant and not against any other person.³¹¹.

4. Injury to accused.—If makes out private defence.—Number of injuries on the accused by itself may not be sufficient to establish the right of private defence.³¹². The number of injuries is not always considered to be a safe criterion for determining who the aggressor was. It can also not be laid down as an unqualified proposition of law that whenever injuries are on the body of the accused person, the presumption must necessarily be raised that the accused person had caused injuries in exercise of the right of private defence. The defence has to further establish that the injury so caused on the accused probabilise the version of the right of private defence.³¹³. Non-explanation of injuries on the person of the accused is a factor of great importance and this fact may induce the Court in judging the veracity of prosecution witnesses with considerable care.³¹⁴. The right of private defence cannot justifiably be raised by showing that one of the accused had suffered some minor injuries and the prosecution had not explained the same.³¹⁵. In a given case it may strengthen the plea of private defence set up by the accused or may create genuine doubt regarding the prosecution case. At the same time it cannot be laid down as an invariable proposition of law that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand *prima facie* established and burden would shift on to the prosecution to prove that those injuries were caused to the accused in self-defence by the complainant party.³¹⁶. When the accused turned back from the house of the deceased whom they had visited, the deceased followed them along with his brother and mother and tried to attack them

from behind. The accused turned back and shot at him causing death. It was held that the conduct of the accused was justifiable. His acquittal was not interfered with.³¹⁷ Where the deceased along with his father was putting up a fence which was protested by the accused resulting in an altercation, and the accused suddenly dealt a *lathi* blow on the head of the deceased which proved fatal, it was held that since the accused received injuries as a result of assault by the deceased and his father, the accused had justifiably exercised his right of private defence.³¹⁸ In a case of murder some of the serious injuries found on the person of the accused were not explained and some of the prosecution witnesses also were injured, it was held that it could be said that the accused party had acted in exercise of right of private defence and confirmation of the acquittal of all the accused but one by the High Court was not proper.³¹⁹ Where serious injuries inflicted on the person of the accused could not be explained by the prosecution, the accused could be said to be entitled to the right of private defence. Their conviction under section 300 was held to be not proper.³²⁰

In *State of UP v Mukunde*,³²¹ the Supreme Court observed that merely on the ground that the prosecution witnesses have not explained the injuries on the accused, their evidence ought not to be rejected if the Court finds it probable that the accused might have acted in exercise of the right of private defence. The Supreme Court also observed in a subsequent case³²² that:

it cannot be held as a matter of law or invariably a rule that whenever an accused sustained an injury in the same occurrence the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before non-explanation of injuries on the person of the accused by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (1) that the injuries on the person of the accused were of a serious nature and (ii) such injuries must have been received at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which completes in probability with that of the prosecution.³²³

These rulings were followed in *Kashi Ram v State of MP*³²⁴. The accused persons were alleged to have assaulted the prosecution party, but the prosecution witnesses failed to explain serious injuries including injuries on the vital parts of the body sustained by one of the accused in the same incident. The Court said that this could not be a ground for discarding the prosecution story and for acquittal of all accused persons.

Where the accused had some trivial injuries on non-vital parts but the victim had suffered as many as 19 injuries including some on vital parts which resulted in his death, it could not be believed that the accused had acted in self-defence especially when he was arrested five or six days after the incident but in the intervening time did not care to get himself medically examined. A plea of private defence cannot be based on surmises and speculation.³²⁵

The Supreme Court has also observed that merely because there was a quarrel and the accused persons also sustained injuries, it did not confer a right of private defence to the extent of causing death. Though such right cannot be weighed in golden scales, it has at least to be shown that the accused persons were under such grave apprehension about the safety of their life and property and that the retaliation to the extent actually done was absolutely necessary.³²⁶

The number of injuries is not always a safe criterion for determining as to who was the aggressor. It cannot be stated as a universal rule that whenever injuries are on the body of the accused person, a presumption must necessarily be raised that the accused persons had caused injuries in the exercise of the right of private defence. The defence has further to show that injuries on the accused probabilise the version of the right of private defence.³²⁷ In moments of excitement and disturbed mental equilibrium, parties cannot be expected to preserve composure and use exactly only so much in

retaliation as is commensurate with the apprehended danger. Due weightage has to be given to what happened at the spur of the moment at the spot. Things have to be judged pragmatically keeping in view, the normal human reactions and behaviour, self-preservation being the paramount consideration. Microscopic and pedantic scrutiny has to be avoided.³²⁸.

[s 96.7] Retaliation.—

The Supreme Court observed:

From a plain reading of the sections (Ss. 96–106) it is manifest that such a right can be exercised only to repel unlawful aggression and not to retaliate. To put it differently, the right is one of defence and not of requital or reprisal. Such being the nature of the right, the High Court could not have exonerated the accused persons of the charges levelled against them by bestowing on them the right to retaliate and attack the complainant party.³²⁹.

[s 96.8] Where private defence not pleaded.—

If circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea, even if accused had not taken it. A right of private defence need not specifically be taken and in the event the Court on the basis of the materials placed on record is in a position to come to such a conclusion, the Court may act thereupon.³³⁰. Where the right of private defence was not pleaded by the accused, but it appeared that the complainant was the aggressor, the Bombay High Court held that the benefit of such defence could still be given to the accused.³³¹. Fact that accused pleaded alibi-itself will not preclude the Court from giving him also the right of private defence if on proper appraisal of evidence and other material on records, Court finds it to be available to him.³³². The right of private defence cannot be denied merely because the accused adopted a different line of defence particularly when the evidence adduced by the prosecution would indicate that they were put under a situation where they could reasonably have apprehended grievous hurt even to one of them.³³³. The Supreme Court endorsed this principle by saying that it is not necessary that the plea of private defence must always be taken by the accused person. Even if the accused does not do so, the Court can consider it if the circumstances show that the right of private defence was legitimately exercised.³³⁴.

The accused has not to plead self-defence by examining some witnesses or by making any statement. But there has to be some material available on record to indicate that the accused had attacked the deceased in exercise of the right of self-defence.³³⁵.

[s 96.9] In appeal.—

It is permissible for accused to raise that plea at the stage of appeal as the settled legal position is that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.³³⁶.

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).
269. *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333 [LNIND 2010 SC 70] : (2010) 1 SCR 642 [LNIND 2010 SC 70] : AIR 2010 SC 1212 [LNIND 2010 SC 70] : 2010 Cr LJ 1393 : (2010) 2 SCC(Cr) 1037.
270. *Dharam v State of Haryana*. JT 2007 (1) SC 299 [LNIND 2006 SC 1108] : AIR 2007 SC 397 [LNIND 2006 SC 1108] : 2006 AIR SCW 6298.
271. *Darshan Singh v State of Punjab*, (2010) 2 SCC 333 : (2010) 1 SCR 642 [LNIND 2010 SC 70] : AIR 2010 SC 1212 [LNIND 2010 SC 70] : 2010 Cr LJ 1393 : (2010) 2 SCC(Cr) 1037.
272. *V Subramani v State of TN*, (2005) 10 SCC 358 [LNIND 2005 SC 224] : AIR 2005 SC 1983 [LNIND 2005 SC 224].
273. *Babulal Bhagwan Khandare v State of Maharashtra*, AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203].
274. *Mano Dutt v State of UP*, JT 2012 (2) SC 573 : 2012 (3) Scale 219 [LNIND 2012 SC 160] : (2012) 4 SCC 79 [LNIND 2012 SC 160].
275. *V Subramani v State of TN*, (2005) 10 SCC 358 [LNIND 2005 SC 224] : AIR 2005 SC 1983 [LNIND 2005 SC 224].
276. *Dharam v State of Haryana*. JT 2007 (1) SC 299 [LNIND 2006 SC 1108] : AIR 2007 SC 397 [LNIND 2006 SC 1108] : 2006 AIR SCW 6298.
277. *Buta Singh v The State of Punjab*, 1991 (2) SCC 612 [LNIND 1991 SC 177] : 1991 SCC (Cr) 494 : AIR 1991 SC 1316 [LNIND 1991 SC 177] : 1991 Cr LJ 1464 ; *Satya Narain Yadav v Gajanand*, (2008) 16 SCC 609 [LNIND 2008 SC 2782] : (2008) 10 Scale 728 [LNIND 2008 SC 2782].
278. *Babulal Bhagwan Khandare v State of Maharashtra*, AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203].
279. *Dattu Genu*, 1974 Cr LJ 446 : AIR 1974 SC 387 [LNIND 1973 SC 357].
280. *Munney Khan v State*, AIR 1971 SC 1491 [LNIND 1970 SC 338] : (1970) 2 SCC 480 [LNIND 1970 SC 338]. On the same point, *Narasimha Raju v State*, 1971 Cr LJ 1066 : (1970) 3 SCC 481 : AIR 1971 SC 1232 ; *Mohammad Hameed v State*, AIR 1980 SC 108 : 1980 Cr LJ 192 : (1979) 4 SCC 708 . An illustrative situation is *Jagdish Chandra v State of Rajasthan*, 1987 Cr LJ 649 Raj, in consequence of enmical terms and intemperate nature, one fired at the other, the other returning the fire resulting in death. In the prosecution of the other, this defence was allowed.
281. Plea of self-defence was rejected where the evidence showed that the deceased was unarmed and was not the aggressor. *Kuduvakuzinyil Sudhakaran v State*, (1995) 1 Cr LJ 721 (Ker). Defence that a stab wound causing death was inflicted on the chest of the deceased with a pen-knife was found to be apparently false because such instrument would not have caused that kind of wound, plea of self defence rejected, *Sellamuthu v State of TN*, (1995) 2 Cr LJ 2143 (Mad). *Hakim Singh v State of MP*, (1994) 2 Cr LJ 2463 (MP), the deceased was unarmed when fired at, he caused injury only after receiving the gun-shot wound, right of private defence in shooting at him not available. *Hukam Chand v State of Haryana*, AIR 2002 SC 3671 [LNIND 2002 SC 652] , theory of self-defence, not supported by facts. *Jham Singh v State of MP*, 2003 Cr LJ 2847 , no injury found on the person of the accused, nor any report made. The plea of private defence was rejected.
282. *Darshan Singh v State of Punjab*, (2010) 2 SCC 333 : (2010) 1 SCR 642 [LNIND 2010 SC 70] : AIR 2010 SC 1212 [LNIND 2010 SC 70] : 2010 Cr LJ 1393 : (2010) 2 SCC(Cr) 1037.

283. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : (2008) 1 SCC (Cr) 608 : AIR 2008 SC 1172 [LNIND 2008 SC 187]. *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 , principles imbibed in sections 96-106 restated. *Manubhai Atabhai v State of Gujarat*, (2007) 10 SCC 358 [LNIND 2007 SC 822] : AIR 2007 SC 2437 [LNIND 2007 SC 822] , once the right of private defence is established, conviction is not permissible.
284. *Sikandar Singh v State of Bihar*, (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC (Cr) 417.
285. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 . *Dharam v State of Haryana*, (2007) 15 SCC 241 [LNIND 2006 SC 1108] , nature and scope of the right explained. *Haren Das v State of Assam*, 2012 Cr LJ 1467 (Gau).
286. *Thankachan v State of Kerala*, (2008) 17 SCC 760 .
287. *Biran Singh*, 1975 Cr LJ 44 : AIR 1975 SC 87 .
288. *Krishanlal v State*, 1988 Cr LJ 990 (J&K).
289. *Puran Singh*, 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] .
290. *Shivappa Laxman Savadi v State*, 1992 Cr LJ 2845 (Kant). *Hari Singh v State of Rajasthan*, AIR 1997 SC 1505 [LNIND 1996 SC 1592] : 1997 Cr LJ 733 ; *State of Haryana v Mewa Singh*, AIR 1997 SC 1407 : 1997 Cr LJ 1906 ; *Ram Dhani v State*, 1997 Cr LJ 2286 (All); *Rizwan v State of Chhattisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] : 2003 Cr LJ 1226 : (2003) 2 SCC 661 [LNIND 2003 SC 72] .
291. *Triloki Nath v State of UP*, AIR 2006 SC 321 [LNIND 2005 SC 867] : (2005) 13 SCC 323 [LNIND 2005 SC 867] .
292. *Shajahan v State of Kerala*, (2007) 12 SCC 96 [LNIND 2007 SC 243] : (2008) 2 SCC (Cr) 234 : 2007 Cr LJ 229 , extreme enmity between parties result in attacks.
293. *Bathu Singh v State of MP*, AIR 2004 SC 4279 [LNIND 2004 SC 835] : (2004) 7 SCC 206 .
294. *Gopal v State of Rajasthan*, 2013 Cr LJ 1297 , JT 2013 (1) SC 639 [LNIND 2013 SC 37] , 2013 (1) MLJ (Crl) 617 [LNIND 2013 SC 37] , 2013 (1) Scale 445 [LNIND 2013 SC 37] , (2013) 2 SCC 188 [LNIND 2013 SC 37] ; *Mukesh Rathore v State of Chhattisgarh*, 2010 Cr LJ 1289 (Chh); *State of Rajasthan v Brijlal*, 2010 Cr LJ 1000 (Raj).
295. *Sikandar Singh v State of Bihar* (2010) 7 SCC 477 [LNIND 2010 SC 603] : AIR 2010 SC 44023 : (2010) 3 SCC(Cr) 417.
296. *Raj Pal v State of Haryana*, (2006) 9 SCC 678 [LNIND 2006 SC 282] : (2006) 3 SCC(Cr) 361.
297. *Raj Singh v State of Haryana*, 2015 Cr LJ 2803 : (2015) 6 SCC 268 [LNIND 2015 SC 283] : 2015 (5) Scale 492 [LNIND 2015 SC 283] .
298. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : (2008) 1 SCC (Cr) 608 : AIR 2008 SC 1172 [LNIND 2008 SC 187] .
299. *Ravishwar Manjhi v State of Jharkhand*, (2008) 16 SCC 261 : AIR 2009 SC 1262 [LNIND 2008 SC 2423] .
300. *Janardan Singh v State of Bihar*, (2009) 16 SCC 269 : (2010) 3 SCC (Cr) 253.
301. *Mahabir Choudhary v State of Bihar*, 1996 AIR(SC) 1998, 1996 Cr LJ 2860 : 1996 (5) SCC 107 [LNIND 1996 SC 891] .
302. *Glanville Williams* : Text book on Criminal Law, 1979 Edn, p 460.
303. *Jaidev*, 1963 (1) Cr LJ 495 : AIR 1963 SC 612 [LNIND 1962 SC 249] .
304. *Jaidev, Supra*; see also *Mohd Khan*, 1972 Cr LJ 661 : (1971) 3 SCC 683 [LNIND 1971 SC 540] ; *Puran Singh*, 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] .

305. *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 . This case is against all previous authorities and is wrongly decided (MH Editor).
306. *Dr. Mohammad Khalil Chisti v State of Rajasthan*, 2013 Cr LJ 637 (SC) : 2013 (1) MLJ (Crl) 198 [LNIND 2012 SC 801] : (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Gopal v State of Rajasthan*, (2013) 2 SCC 188 [LNIND 2013 SC 37] : 2013 Cr LJ 1297 .
307. *Onkarnath Singh v State of UP*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] ; *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] ; *Sikhar Behera*, 1982 Cr LJ 1167 (Orissa); *Munir Ahmad v State of Rajasthan*, AIR 1989 SC 705 : 1989 Cr LJ 845 : (1989) 26 ACC 115 : 1989 Supp SCC 377 ; **reiterated** by the Supreme Court in *Paras Nath Singh v State of Bihar*, and *Hari Krishna Singh v State of Bihar*, AIR 1988 SC 863 [LNIND 1988 SC 139] : (1988) 2 SCC 95 [LNIND 1988 SC 139] : 1988 Cr LJ 925 . *Gajanand v State*, 1954 Cr LJ 1746 , AIR 1954 SC 695 , followed, *Abdul Hamid v State of UP*, 1991 Cr LJ 431 . See also *State of Assam v Upendra Das*, 1991 Cr LJ 2930 Gau, **relying** upon *Lakshmisingh v State of Bihar*, AIR 1976 SC 2263 : 1976 Cr LJ 1736 . For other cases of free fight and, therefore, acquittal. See *Ram Nath v State*, 1991 Cr LJ 1825 All; *Sonpal v State of UP*, 1991 Cr LJ 1597 All, prosecution not explaining how the event sparked off and how the accused suffered injuries. *Nityanand Pasayat v State*, 1989 Cr LJ 1547 (Ori), quarrel between two groups. *Amir Ali v State of Assam*, 1989 Cr LJ 1512 , a case of mutual fight over possession of land in which both sides were injured. The Court added that if a group of 5 assembles in private defence, they are not an unlawful assembly; but if they persist in use of force even after their right is over, they become an unlawful assembly. *Chandrasekharan v State of Kerala*, 1987 Cr LJ 1715 (Ker); *State of Rajasthan v. Sughad Singh*, AIR 1994 SC 1593 : 1994 Cr LJ 2188 .
308. *Amrik Singh v State of Punjab*, 1993 Cr LJ 2857 : 1993 AIR SCW 2482 : 1994 Supp (1) SCC 320.
309. *Rohtash v State of Haryana*, 1993 Cr LJ 3303 (P&H).
310. *Sikhar Behera v State of Orissa*, 1993 Cr LJ 3664 : 1993 AIR SCW 3162 : 1994 Supp (1) SCC 493. *Amerika Rai v State of Bihar*, AIR 2011 SC 1379 [LNIND 2011 SC 220] : (2011) 3 SCR 176 [LNIND 2011 SC 220] : (2011) 2 SCC(Cr) 429 : (2011) 4 SCC 677 [LNIND 2011 SC 220] *Ram Kumar v State of Haryana*, AIR 1998 SC 1437 [LNIND 1998 SC 231] : 1998 Cr LJ 2049 ; *Pammi v Govt. of MP*, AIR 1998 SC 1185 [LNIND 1998 SC 200] : 1998 Cr LJ 1617 ; *Periasami v State of TN*, 1997 Cr LJ 219 : (1996) 6 SCC 457 [LNIND 1996 SC 1552] .
311. *Mohammad Iqbal v State of MP*, 2012 Cr LJ 337 (Chh).
312. *Ranbir Singh v State of Haryana*, 2009 Cr LJ 3051 (SC) : (2009) 16 SCC 193 [LNIND 2009 SC 1053] .
313. *Sikandar Singh v State of Bihar* (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC(Cr) 417; *Dashrath Singh v State of UP*, (2004) 7 SCC 408 [LNIND 2004 SC 798] ; *Bishna v State of WB*, AIR 2006 SC 302 [LNIND 2005 SC 873] : (2005) 12 SCC 657 [LNIND 2005 SC 873] , *Shriram v State of MP*, (2004) 9 SCC 292 [LNIND 2003 SC 1026] .
314. *Lacchiram v State of MP*, 1990 Cr LJ 2229 MP, unexplained injuries on the person of the accused. But such injuries do not by themselves afford a defence. *Govardhan v State*, 1987 Cr LJ 541 (Raj). *Ram Kumar v State of Haryana*, 1994 Cr LJ 1450 P&H, dispute over water course, accused entered field to divert water, caused innumerable injuries to those who objected and also himself received a few injuries, he was held to be an aggressor having no right of private defence; *Velummei v State*, 1994 Cr LJ 1738 (Ker), a person entering the house of another for crime is an aggressor, he has no right of private defence. *Man Bharan Singh v State of MP*, 1996 Cr LJ 2707 (MP), every minor injury on the person of the accused does not require explanation.

315. *State of Punjab v Gurlabh Singh*, (2009) 13 SCC 556 [LNIND 2009 SC 1262] : AIR 2009 SC 2469 [LNIND 2009 SC 1262] ; *Radhe v State of Chhattisgarh*, (2008) 11 SCC 785 [LNIND 2008 SC 1333] : AIR 2008 SC 2878 [LNIND 2008 SC 1333] : 2008 Cr LJ 3520 , the mere fact of a quarrel and the accused sustaining injuries does not in itself create the right of self-defence to the extent of causing death, there has to be an attack creating apprehension of fatal injury. Such was not the case here.

316. *Onkarnath*, supra. Injuries to the accused not caused during the course of the same incident, no right of private defence, *Munna v State of UP*, AIR 1992 SC 278 : 1993 Cr LJ 45 : 1993 Supp (2) SCC 757 ; *State of Kerala v Mavila Thamban Nambiar*, 1993 Cr LJ 1817 (Ker), the accused fell off during the course of struggle and injured himself, those injuries could not give him the right of killing in private defence.

317. *State of Punjab v Sohan Singh*, AIR 1992 SC 1247 : 1992 Cr LJ 2514 : 1993 Supp (1) SCC 312 .

318. *Sridhar Das v State of Orissa*, 1992 Cr LJ 2907 (Ori).

319. *Makwana Takhat Singh Ratan Singh v State of Gujarat*, AIR 1992 SC 1989 : 1992 Cr LJ 3596 . No explanation of injuries on the person of the accused made, no difference to the acceptance of their plea of self-defence, *Hardeep Singh v State*, 1996 Cr LJ 3091 (Raj).

320. *Arjun v State of MP*, 1995 Cr LJ 3797 (MP).

321. *State of UP v Mukunde*, (1994) 2 SCC 191 [LNIND 1994 SC 71] : 1994 SCC (Cr) 473. Also to the same effect *Kasam Abdulla v State of Maharashtra*, 1998 Cr LJ 1422 : AIR 1998 SC 1013 [LNIND 1998 SC 157] , injuries on the person of a accused explained.

322. *Thakhaji Hiraji v Thakore Kuber Singh Chaman Singh*, (2001) 6 SCC 145 [LNIND 2001 SC 1150] : AIR 2001 SC 2326 : 2001 AIR SCW 2077.

323. The Court also noted the decision in *Chandu v State of Maharashtra*, (2001) 4 Scale 590 [LNIND 2009 NGP 319] : (2001) 5 Supreme 672; *Dev Raj v State of HP*, AIR 1994 SC 523 : 1993 AIR SCW 3966 : (1994) Supp 2 SCC 552, such injuries cannot be lightly ignored; *Tara Chand v State of Haryana*, AIR 1971 SC 1891 : 1971 Cr LJ 1411, the circumstance can also be taken into account in the mitigation of sentence.

324. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] . See also *State of Rajasthan v Pura*, 2000 Cr LJ 2615 (Raj); *Dharminder v State of HP*, AIR 2002 SC 3097 [LNIND 2002 SC 537] ; *Jesu Asir Singh v State*, AIR (2007) SC 3015 [LNIND 2007 SC 977] : (2007) Cr LJ 4310 : (2007) 12 SCC 19 [LNIND 2007 SC 977] : (2008) 2 SCC (Cr) 192.

325. *Poosaram*, 1984 Cr LJ 1848 (Raj); See also *State of Gujarat v Bai Fatima*, 1975 Cr LJ 1079 : AIR SC 1478; *Rizwan v State of Chhattisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] , non-explanation of injuries on the accused persons was not taken by itself to give them the benefit of the right of private defence. The Court considered the factors to be taken into account for examining whether the right of private defence must have existed.

326. *Radhe v State of Chhattisgarh*, (2008) 11 SCC 785 [LNIND 2008 SC 1333] : AIR 2008 SC 2878 [LNIND 2008 SC 1333] .

327. *Laxman Singh v Poonam Singh*, (2004) 10 SCC 94 [LNIND 2003 SC 767] : (2004) 1 MPLJ 93 : (2004) 1 Mah LJ 317 . *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] : (2004) 2 MPLJ 231 : 2004 Mah LJ 358 . *Shriram v State of MP*, (2004) 9 SCC 292 [LNIND 2003 SC 1026] : AIR 2004 SC 491 [LNIND 2003 SC 1026] : 2004 Cr LJ 610 .

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

329. *Rajesh Kumar v Dharmavir*, AIR 1997 SC 3769 [LNIND 1997 SC 445]: 1997 Cr LJ 2242.

330. *Ranveer Singh v State of MP* (2009) 3 SCC 384 [LNIND 2009 SC 123] : AIR 2009 SC 1658 [LNIND 2009 SC 123] ; *Bishna Alias Bhiswadeb Mahato v State of WB*, (2005) 12 SCC 657 [LNIND

2005 SC 873] Also see *Ravishwar Manjhi v State of Jharkhand*, AIR 2009 SC 1262 [LNIND 2008 SC 2423] : (2008) 16 SCC 561 [LNIND 2008 SC 2423] .

331. *State v Tanaji Dagadu Chawan*, 1998 Cr LJ 4515 (Bom).

332. *State of Rajasthan v Shiv Singh Haren Das v State of Assam*, 2011 Cr LJ 580 (Raj).

333. *Moti Singh v State of Maharashtra*, (2002) 9 SCC 494 .

334. *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] .

335. *Nagaraj v State*, 2006 Cr LJ 3724 (Mad-DB).

336. *Mehi Lal v State of UP*, 2011 Cr LJ 1440 (All).

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 97] Right of private defence of the body and of property.

Every person has a right, subject to the restrictions contained in section 99, to defend

—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

COMMENT.—

This section broadly specifies the offences against which the right of private defence can be exercised. Section 99 provides the limitations. These two sections combined together lay down the principles of the right of private defence.

The first clause of this section provides for the defence of body against any offence affecting the human body. The second provides for the defence of property against an act which amounts to the commission of certain offences.

There is no obligation upon a person entitled to exercise the right of private defence and to defend his person or property, to retire merely because his assailant threatens him with violence.³³⁷.

Explaining the genesis of the rule, the Supreme Court has observed:³³⁸.

"It is important to bear in mind that self-preservation of one's life is the necessary concomitant of the right of life enshrined in [Art. 21 of the Constitution of India](#), fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it."

[s 97.1] Aggressor has no right of private defence.—

The right to defend does not include a right to launch an offensive or aggression.³³⁹. The right of private defence does not arise where the accused were the aggressors and the question of exceeding such right also does not arise.³⁴⁰. The Supreme Court added, in this case, that the right of self-defence arises when there is unexpected apprehension and one is taken unawares, or the accused happens to kill accidentally while using reasonable force private defence can be used to ward off unlawful force, or to prevent it, to avoid unlawful detention and to escape from such detention.³⁴¹.

When the father of the accused was trying to forcibly remove the gate of the thrashing ground of the deceased which was situated on the land of the deceased, his act amounted to an offence of 'mischief'. And, if the deceased while protecting his own property assaulted the father of the accused with a *lathi*, and the accused killed him in return, the accused could not claim the right of private defence of body of his father.³⁴². In another case of the same kind the father of the accused was trying to pull out the gate of the deceased thrashing mill and on the deceased assaulting him in protection, the accused struck him dead. The right of private defence was not available in the circumstances.³⁴³. Where the parties went away from the property over which they were fighting, the death caused at that shifted place was not a justifiable exercise of the right of private defence.³⁴⁴. Where the accused succeeded in establishing their right to the property in dispute through the Court and then went to the field with a view

to ask the other party to vacate the premises, it was held that it by itself did not render them to be aggressors for the purpose of denying them the benefit of right of self-defence.³⁴⁵.

Number of injuries is not always the safe criterion for determining who the aggressor is. The fact of injuries on the body of the accused does not by itself create the presumption that the accused was entitled to the right of private defence.³⁴⁶.

[s 97.2] Unlawful assembly.—

So long as an assembly of persons is acting in exercise of the right of private defence it cannot be an unlawful assembly. An assembly though lawful to begin with, may in the course of events become unlawful. So long as the accused persons were acting in exercise of right of private defence, their object was not unlawful and so there was no unlawful assembly but once they exceeded the right, the assembly ceased to be lawful and became an unlawful assembly. There too only such of the members of the assembly who shared the object of doing anything in excess of the exercise of right of private defence, alone would be liable to be punished for the acts committed in prosecution of the common object or for their individual unlawful acts.³⁴⁷.

[s 97.3] Right of private defence to be pleaded.—

In a Supreme Court case it is stated,

It is well settled that even if an accused does not plead self-defence, it is open to the Court to consider such a plea if the same arises from materials on record.³⁴⁸.

But if no plea was entered on behalf of the accused and there were also no circumstances to show that the accused had probably the right of private defence, such a right could not be presumed on behalf of the accused on mere conjectures and surmises.³⁴⁹. A mere bald assertion without any evidence of facts and circumstances does not make out a case of private defence.³⁵⁰. The accused can, however, make out his plea by mere preponderance of probabilities from materials already on record and need not prove it to the hilt.³⁵¹. Where by preponderance of probabilities the plea of private defence of the accused is plausible, benefit should be extended to the accused.³⁵². Failure on the part of the prosecution to prove that the injuries on the person of the accused were not caused in self-defence, makes the defence of the accused probable and he is entitled to its benefit because he has not to prove his defence beyond reasonable doubt.³⁵³. Where the accused set up the plea of self-defence only during trial and not during investigation, it was held that this was not a ground for rejecting the plea.³⁵⁴. The accused on the observation of the High Court that the deceased was stabbed by the appellant, not in pursuance of any pre-planned attack, but being under the impression that the deceased was coming to attack him. The said observation cannot be read out of context to make out a case that the accused acted in self-defence. Such a plea is neither put forth in the statement under section 313 nor brought out in the cross examination of any of the prosecution witnesses.³⁵⁵. It is true that the right of private defence need not specifically be taken and in the event the Court on the basis of the materials on record is in a position to come to such a conclusion, despite some other plea having been raised, that such a case had been made out, it may act thereupon.³⁵⁶.

[s 97.4] CASES.—Defence of person.—

Under circumstances which might have induced the belief that a man was cutting the throat of his wife, their son shot and killed his father. It was held that if the son had reasonable ground for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable.³⁵⁷ Where a girl was being sexually molested and her father hit the assailant resulting in consequential death, it was held that the father was entitled to the right of private defence irrespective of the fact whether the affair was with or without consent because of the girl being a minor.³⁵⁸ Where a man found his wife in compromising position with a person who sprang at the husband and caused him multiple injuries, some of them grievous, the husband thereafter gave a chopper blow resulting in the death of that person, it was held that the husband had not exceeded his right of private defence and was entitled to acquittal.³⁵⁹ Where the father of the accused was being given *lathi* blows by the complainant party, the accused fired from the licensed gun of his father to defend his father, it was held that he had acted in the exercise of the right of private defence whether the injuries caused to his father were simple or grievous.³⁶⁰ Trespassers on the property of another cannot get any benefit of right of private defence if they are attacked by the person in possession of the property.³⁶¹ However no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. Such possession of the trespasser must extend over a sufficiently long period and acquiesced in by the true owner.³⁶² Though law permits even a trespasser in settled possession to defend his possession but, it does not permit a person to take the law in his own hand to take forcible possession merely because he has obtained a favourable order under section 145 Cr PC, 1973. Such a person cannot claim private defence.³⁶³ Settled possession means such clear and effective physical possession that under the criminal law he, even if he is a trespasser, gets the right to defend his possession of the property against an attack even by the true owner.³⁶⁴ If no party is proved to be in settled possession, the question of exercise of right of private defence does not arise.³⁶⁵ Where the accused were in possession of the property and had grown the paddy, they were entitled to defend their possession by using reasonable force which in the instant case went up to causing of death as the party in possession was attacked and grievous blows were given to them.³⁶⁶ Where the prosecution party attacked the accused, his brothers and others with sharp edged weapons and *lathis* and when they tried to enter the latter's house, the accused fired at the crowd resulting in the death of a man and injuries to others, it was held that the accused had acted only in the exercise of the right of private defence and he was entitled to complete acquittal.³⁶⁷ Where the accused was fired at to dispel his party from attempting to rescue their friend from illegal police detention and an informer accompanying the police who tried to prevent them from snatching the police gun received fatal injuries, it was held that they were entitled to the right of private defence.³⁶⁸ Where a fatal injury was caused in consequence of hot exchange of words, the right of private defence was held to be not available.³⁶⁹ The Supreme Court has suggested that the number and nature of injuries sustained by the accused and the deceased in any case, may furnish good evidence to consider whether the accused was acting in private defence and, if so, whether he had exceeded his right. In the state of the evidence on record in that case and the number of injuries suffered by the accused, the Court did not accede to the contention that the right was not properly exercised.³⁷⁰

[s 97.5] Defence of another person.—

The right of private defence need not necessarily be exercised for the defence of one's own person; it can be exercised for the defence of the person of another one.³⁷¹.

[s 97.6] Defence of property.—

Every person in possession of land is entitled to defend his possession against anyone who tries to eject him by force,³⁷² or to steal from it;³⁷³ or to do an act which will have the effect of causing injury to it, e.g., cutting of a bund.³⁷⁴ Even if a trespass has been committed, in certain situations, right of private defence can be used to eject the trespassers.³⁷⁵ Where the accused had no right, title, interest or possession of the land in issue, right of private defence of property did not vest in him.³⁷⁶

Where the complainant party was about 300 feet away from the disputed land and it was further found that the accused had not shown that there was any injury on the person of the accused, it was held that no right of private defence arose in favour of the accused.³⁷⁷

[s 97.7] Open space.—

Though private defence is available in respect of criminal trespass or mischief as against the property owned by himself or of any other person, but criminal trespass is not enumerated as one of the offences under section 103 IPC, 1860. Therefore, the right of private defence of property will not extend to the causing of death of the person who committed such acts, if the act of trespass is in respect of an open land. Only a house-trespass committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence is enumerated as one of the offences under section 103.³⁷⁸ But in another judgment Supreme Court held that there is no law that right of self-defence cannot be exercised in relation to a dispute over an open space.³⁷⁹ Where the trespasser was in settled possession of the field in question, and the party who claimed ownership started ploughing the field, it was held that the trespasser (accused) had the right of private defence of his possession over property and offer resistance, but that he exceeded that right in causing death. His act fell under exception 2 to section 300 and punishable under section 304, Part I.³⁸⁰ Where a goat of the accused entered the field of another and he was trying to take it way, the other struck him with *lathi* blows and also his companion who came to his rescue. Only then the accused retaliated with *lathi* blows resulting in death. Supreme Court upheld the acquittal.³⁸¹ The right is subject to restrictions imposed by section 99, the accused party was in possession of the land, the deceased party wanted to enter into possession forcibly. One of the aggressors was killed and another grievously hurt. The accused that caused the death was held to be guilty of exceeding the right of private defence. The acquittal of the person who caused grievous hurt with a spear was held to be not proper. He was liable to be convicted under section 326.³⁸² Accused having not been in settled possession had no right to self-defence to defend the possession of the property.³⁸³ Occurrence took place on the land which was in possession of deceased. Accused cannot take the plea of private defence.³⁸⁴ No right of private defence of property to a person who was not in possession of the property.³⁸⁵

Where the accused to a certain stage acted in defence of their property but exceeded it in breaking into the room of their victim, striking him with a *lathi* blow and also his wife and daughter who were also there in the room, the victim subsequently dying, their

conviction was shifted from under section 302 to that under section 304 Part 1.³⁸⁶ The right of private defence of property (share in land) was held to have been exceeded when the deceased's side being armed with *lathis* only, the accused party fired at them with a gun, killing one and injuring others. The right of private defence was not available to them.³⁸⁷

Where the finding of the Courts below was that the accused and his companions were aggressors because they assaulted the victim and his children when they came out to protest against cutting of their by the accused, it was held that the benefit of the right of private defence was not available to the accused.³⁸⁸

Defence of property may create circumstances ripening into the right of defence of person. This is so because even in defending property, the attack and counter-attack is likely to be on person. This was the situation in a case in which the accused while defending land over which they had possession; they became the victim of attack on person with sharp cutting weapons. It became their right to repel the danger of grievous hurt or even death and to use for that purpose reasonably appropriate force. Their right extended to cause death of the aggressors if that could be the only way of saving themselves.³⁸⁹

[s 97.8] CASES.—Exceeding private defence.—

The father of the accused was attacked by the deceased with a *lathi* and suffered a simple injury on his head, whereupon the accused in order to protect his father administered a fatal blow on the chest of the deceased with a *ballam*. It was held that though the accused had the right of private defence, he had obviously exceeded it and was, therefore, liable under section 304-Part I, [IPC, 1860](#).³⁹⁰ A somewhat contrary view has, however, been taken by the Supreme Court in a later case where too the accused had exercised his right of private defence against a *lathi* blow on the head. Thus, in *Deo Narain*'s case it has been held that the accused was justified in using his spear though the other party had aimed only a *lathi* blow on the head, which being a vulnerable part even a *lathi* blow could prove dangerous.³⁹¹ It thus, appears that the part of the body against which the attack is directed is more important than the weapon used. Where the deceased attacked the accused with a stick and the accused retaliated by stabbing the former to death his offence fell under section 304-Part I, [IPC, 1860](#), as he had exceeded the right of private defence.³⁹² Evidence on record showed that accused had received many injuries on his person, and exercised right of private defence of person in good faith. He had sustained four injuries on various parts of his body including on vital parts, thus, case would be covered by Exception 2 to [section 300 of IPC, 1860](#). The nature of weapon used, circumstances in which incident took place, injuries on body of accused as well as deceased, showed that there was no premeditation. He had exercised his right of self-defence but having regard to the injuries inflicted by him on deceased, he exceeded same.³⁹³ Where the accused, a person with only one hand was attacked with a bamboo and sustained several injuries and then to ward off further attack gave only one blow with a pen-knife on the aggressor which unfortunately fell on a vital part resulting in his death, it could not be said that he had exceeded his right of private defence. For the accused it was a case of life or death struggle and his case, therefore, squarely fell within the ambit of clauses (1) and (2) of [section 100, IPC, 1860](#), and he could not be held guilty of any offence.³⁹⁴ In a sudden group clash over a house both sides received injuries and one person was killed. There was no prior enmity between two groups and the whole incident developed suddenly. Accused persons received quite a number of injuries, some on vital parts, and the prosecution was not able to explain those injuries. It was held that the accused could not be said to have exceeded the right of private defence. Their conviction was set aside.³⁹⁵ Two

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 Chhattisgarh*, 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 *Mehruddin 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 Yelv 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 sheeping 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 Cherian 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 scetion 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*, 2013Cr LJ2248 (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 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 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.
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).

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

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

COMMENT.—

This section indicates the limits within which the right of private defence should be exercised.

[s 99.1] First clause.—

This clause applies to those cases in which the public servant is acting in good faith under colour of his office, though the particular act being done by him may not be justifiable by law.⁴⁰⁵ Where officers of Delhi Municipal Corporation acting in good faith by virtue of powers delegated to them by the Commissioner attempted to seize the buffalo of the accused with a view to recover arrears of milk tax, the mere fact that no prior notice was issued to the accused as required by the Municipal Act would not make their act entirely outside the law and as such accused had no private defence under section 99 of the Code. The officers had merely erred in exercise of their powers.⁴⁰⁶ The clause applies to a case where an official has done wrongly, what he might have done rightly, but not to cases where the act could not have been done rightly at all by the official concerned.⁴⁰⁷ The clause applies where a public servant acts irregularly in the exercise of his powers, and not where he acts outside the scope of his powers.⁴⁰⁸ Where a police officer acting *bona fide* under colour of his office arrests a person but without authority, the person so arrested has no right of self-defence against the officer.⁴⁰⁹ If the act of a public servant is *ultra vires* the right of private defence may be exercised against him.⁴¹⁰ A police-officer, holding a search, without a written authority, cannot be said to be acting 'under colour of his office'.⁴¹¹

[s 99.2] CASES.—Resistance to officer acting without warrant.—

A police-officer attempted without a search-warrant to enter a house in search of property alleged to have been stolen and was obstructed and resisted. It was held that, even though the officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that the officer was acting otherwise than in good faith and without malice.⁴¹² Where a raiding party organized by the official of the Municipal Corporation to round up stray cattle within the limits of the Corporation, was attacked when it had rounded up some cattle and was leading the cattle to the cattle pound, it was held that the act of the raiding party was fully justifiable by law and that the accused had no right of private defence.⁴¹³ Where a party was fired at to dispel them from their attempt to rescue their friend from an illegal police detention, it was held that this was sufficient to cause reasonable apprehension in their mind of death or grievous injury.⁴¹⁴

[s 99.3] Illegal attachment does not justify resistance.—

Where articles protected from attachment were attached, it was held that this act did not justify resistance.⁴¹⁵ Where the property of a person was wrongfully attached as the property of certain absconders, it was held that the rightful owner had no right of private defence of his property, as the police-officer was acting in good faith under colour of his office, and that even supposing the order of attachment might not have been properly made, that would in itself not be sufficient ground for such a defence.⁴¹⁶

[s 99.4] Second clause.—

The first clause speaks of acts done by a public servant, this clause, of acts done under the direction of a public servant. It is not necessary that the doer should be a public servant. Explanation 2 must be read conjointly with this clause.

[s 99.5] CASE.—Resistance to execution of warrant.—

Where a police-officer attempted to execute a warrant the issue of which was illegal, it was held that the accused were justified in their resistance.⁴¹⁷

[s 99.6] Third clause.—

The third clause of this section must be read with the first clause of section 105.⁴¹⁸ It places an important restriction on the exercise of the right of defence. The right of private defence being granted for defence only, it must not and cannot legally be exercised when there is time to have recourse to the protection of public authorities. The right of private defence does not take the place of the functions of those public servants who are especially charged with the protection of life and property and the apprehension of offenders, and where the assistance of the public authorities can be procured, the right cannot be lawfully exercised. But the law does not intend that a person must run away to have recourse to the protection of public authorities when he is attacked instead of defending himself.⁴¹⁹ A person in possession cannot be

expected to leave his property at the mercy of armed trespassers. Where there is imminent danger to the property and the person in possession apprehends substantial damage thereto, he is entitled to raise his own arms in defence and retaliate to keep away the attack without applying for State aid.⁴²⁰ Where the accused was in rightful possession of the property by virtue of a Court order; under section 145 Cr PC, 1973, he had every right to throw out the complainant party from the land and demolish the construction stealthily put up thereon.⁴²¹ The important considerations which always arise in order to determine whether the action of the accused is covered by the right of private defence are, first, what is the nature of the apprehended danger, and, second, whether there was time to have recourse to the police authorities, always remembering that when both the parties are determined to fight and go up to the land fully armed in full expectation of an armed conflict in order to have a trial of strength the right of private defence disappears.⁴²²

[s 99.7] CASES.—Time to obtain protection of public authorities.—

The accused received information one evening that the complainants intended to go on his land on the following day, and uproot the corn sown in it. At about three o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the corn. Thereupon he at once proceeded to the spot, followed by the remaining accused, and remonstrated with the complainants, who commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. It was held that the complainants being the aggressors, the accused had the right of private defence and that they were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night attack on their property.⁴²³ In a case involving an old land dispute, one party (accused) offered resistance to prevent the other from ploughing the land and on refusal went up to the place where the other was sitting without arms and inflicted stick blows causing death, it was held that the accused was rightly convicted. The Court said that a rightful owner can defend his possession against any attempt to dislodge him, but that once a trespasser has established his foothold; resort should be had to public authorities.⁴²⁴

The right of private defence does not extend to inflicting of more harm than necessary for the purpose of defence. The prosecution party, in this case, had gone to plough the land which was in the possession of the accused (appellant). The latter had time to go and report the matter to appropriate authorities constituted under the law. But instead of so doing, they brutally attacked the other party resulting in the death of three persons. Thus, there was no right of private defence. It was held that there was no warrant for converting the conviction from u/section 302 to section 304 Part II.⁴²⁵

[s 99.8] Fourth clause.—

The right of private defence is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. The amount of force necessarily depends on the circumstances of the case, and there is no protection if the harm is caused by excessive violence quite unnecessary to the case.⁴²⁶ For example, a person set by his master to watch a garden or yard is not at all justified in shooting at, or injuring in any way, persons who may come into those premises, even in the night. He ought first to see whether he could not take measures for their apprehension.⁴²⁷ The measure of self-defence must always be proportionate to the *quantum* of force used by the attacker and which it is necessary to repel.⁴²⁸ In dealing with the question as to

whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity of a Court room. The means which a threatened person adopts or the force which he uses should not be weighed in golden scales.⁴²⁹ Though a person exercising his right of private defence is not expected to modulate his defence step by step or tier by tier, yet it is necessary to see that it is not totally disproportionate to the injury sought to be averted, e.g., to ward off a slap one cannot fire a gun. Thus, where the father of the accused was allegedly assaulted with *lathis* which resulted in simple injuries, the accused was not justified in firing his gun and thereby killing the attacker. In such a case it could not be said that there was a reasonable apprehension of death or grievous hurt within the meaning of clause (1) of [section 100, IPC, 1860](#).⁴³⁰ But at the same time it should also be remembered that if a man has real justification to exercise his right of private defence, he cannot be held liable if he slightly exceeds his right of private defence, e.g., where face to face with a murderous attack he fires two shots in quick succession, for these things cannot be weighed in golden scales.⁴³¹ The right of private defence should not be allowed to be pleaded or availed of as pretext for a vindictive, aggressive or retributive purpose.⁴³²

[s 99.9] CASES.—Justifiable harm.—

A party attempted to rescue a friend from unlawful police detention. Three rounds were fired to dispel them. This caused in their mind a reasonable apprehension of death or injury. They tried to snatch the police gun. A police informer intervened and died of injuries received in the process. The right of private defence was held to be not exceeded.⁴³³ In another case the Supreme Court accepted the defence version that there were four assailants who had come well prepared to assault at the door of their house. In such a situation accused persons could have a reasonable apprehension of death or at least of grievous hurt. It was a case of single gunshot which was not repeated. Therefore, it cannot be said that the accused persons had exceeded their right of private defence in any manner.⁴³⁴

In view of the fact that the accused was pursued, that he only picked up the weapon when he was chased and that he used it only once, his sentence was reduced to three years and nine months.⁴³⁵

[s 99.10] Attack on unarmed persons.—

No right of private defence can exist against an unarmed and unoffending individual,⁴³⁶ where the injury was caused to the victim on the vital parts of the body even though he and the witnesses present at the spot were all unarmed, it was held that the question of acting in self-defence did not arise.⁴³⁷

[s 99.11] Sudden quarrel.—

The right of private defence was held to be not available where the incident of *lathi* blows causing death took place in the course of a sudden fight.⁴³⁸

[s 99.12] More harm caused than necessary.—

Where a person killed a weak old woman found stealing at night,⁴³⁹ where a person caught a thief in his house at night and deliberately killed him with a pick-axe to prevent his escape;⁴⁴⁰ where a number of persons apprehending a thief committing house-breaking strangled him and subjected him to gross maltreatment when he was fully in their power,⁴⁴¹ and where a heavy and mechanically propelled vehicle like a jeep was used as a means or weapon for the exercise of the right of private defence,⁴⁴² the right of private defence was negated.⁴⁴³ Where the injuries suffered by the accused were of simple nature than those caused by him to the deceased persons and he went even to the extent of preventing a witness from carrying the victim to a hospital, it was held that the accused was an aggressor and was, therefore, not entitled to the right of private defence.⁴⁴⁴ Where, on the other hand, two drunk and armed raiders demanded money from the residents of a flat and in face to face with the inmates who resisted them, lost their lives, it being not known which inmate played what role, the Supreme Court held that it could not be said that more harm was caused than was necessary.⁴⁴⁵ Where the accused caused death in order to repel an attack by a party armed with lethal weapons and which had already caused injuries to the accused, it was held that the accused did not exceed his rights as it was not possible for him to have weighed in golden scales in the heat of the moment the number of injuries required to overcome the attack.⁴⁴⁶ Where the accused continued to assault the deceased even after he fell to the ground, the possibility of causing injuries in exercise of his right of private defence was ruled out.⁴⁴⁷

Where the accused received an injury on his neck first, the right of private defence was held to have arisen. But it was shown that three injuries were caused in return one of them entering deep into the chest and causing death. The right of private defence was held to have been exceeded. The conviction was modified to one under section 304(1).⁴⁴⁸

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).
405. *Dalip*, (1896) 18 All 246 , 252.
406. *Kesho Ram*, 1974 Cr LJ 814 : AIR 1974 SC 1158 [LNIND 1974 SC 130].
407. *Bhairo v State*, 1941 Kar 324 ; *Pagla Baba*, (1957) Cr LJ 769 ; *Ouseph Varkey*, (1964) 1 Cr LJ 592 .
408. *Deoman Shamji*, (1958) 61 Bom LR 30 .
409. *Mohamed Ismail v State*, (1935) 13 Ran 754.
410. *Jogendra Nath Mukerjee*, (1897) 24 Cal 320 ; *Tulsiram v State*, (1888) 13 Bom 168; *Haq Dad*, (1925) 6 Lah 392; *Achhru Ram*, (1925) 7 Lah 104.
411. *Ram Parves*, (1944) 23 Pat 328.
412. *Pukot Kotu*, (1896) 19 Mad 349.

413. *Kanwar Singh*, (1965) 2 Cr LJ 1 : AIR 1965 SC 871 [LNIND 1964 SC 194] .
414. *State of UP v Niyamat*, 1987 3 SCC 434 [LNIND 1987 SC 391] : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1989 Cr LJ 1881 . See also *Ramji Lal v State of Rajasthan*, 1990 Cr LJ 392 Raj, police party arriving at a village at night to recover a woman and to hand her over to her father, the act being illegal and without jurisdiction, this section did not give protection to the police against resistance by villagers.
415. *Poomalai Udayan*, (1898) 21 Mad 296.
416. *Bhai Lal Chowdhry*, (1902) 29 Cal 417 .
417. *Jogendra Nath Mukerjee*, (1897) 24 Cal 320 .
418. *Narsang Pathabhai*, (1890) 14 Bom 441.
419. *Alingal Kunhinayan*, (1905) 28 Mad 454.
420. *State of Orissa v Rabindranath*, 1973 Cr LJ 1686 (FB-Ori).
421. *Akonti Bora*, 1980 Cr LJ 138 (Gau).
422. *Satnarain Das*, (1938) 17 Pat 607.
423. *Narsang Pathabhai*, (1890) 14 Bom 441; *Pachkauri*, (1897) 24 Cal 686 .
424. *Maguni Charan Pradhan v State of Orissa*, (1991) 71 Cut LT 710 : (1991) 3 SCC 352 [LNIND 1991 SC 191] : 1991 SCC (Cr) 580 : 1991 Cr LR (SC) 463 .
425. *Ritaram Besra v State of Bihar*, (2007) 15 SCC 383 .
426. *Gokool Bowree*, (1866) 5 WR (Cr) 33.
427. *John Scutty v State*, (1824) 1 C & P 319.
428. *Ram Prasad Mahton*, (1919) 4 PLJ 289 , 20 Cr LJ 375.
429. *Jai Dev*, (1963) 1 Cr LJ 495 : AIR 1963 SC 612 [LNIND 1962 SC 249] ; *Amjad Khan*, 1952 Cr LJ 648 : AIR 1952 SC 165 [LNIND 1952 SC 20] ; *Puran Singh*; 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] ; followed in *Pattu v State of MP*, (1995) 2 Cr LJ 1970 MP, father and son were entitled to ward off an attack on them while they were digging a water channel on their ground. *Hira*, 1972 Cr LJ 225 : AIR 1972 SC 244 .
430. *State of UP. v Ram Swarup*, 1974 Cr LJ 1035 : AIR 1974 SC 1570 [LNIND 1974 SC 472] . Where both parties raised guns in a quarrel but one of them lowered his gun, even so the other fired at him. No occasion for private defence. Conviction for murder upheld, *Mohd. Yusuf v State of UP*, AIR 1994 SC 1542 [LNIND 1994 SC 126] : (1994) 1 Cr LJ 1631 : 1994 Supp (2) SCC 32 .
431. *Amjad Khan*, *supra*; See also *Jaidev*, *supra* and *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 .
432. *Munney Khan*, (1970) 2 SCC 480 [LNIND 1970 SC 338] : AIR 1971 SC 1491 [LNIND 1970 SC 338] .
433. *State of UP v Nyama*, (1987) 3 SCC 434 [LNIND 1987 SC 391] . *State of MP v Mishrilal*, 2003 Cr LJ 2312 (SC) : (2003) 9 SCC 426 [LNIND 2003 SC 390] , the prosecution party and the accused party cause to be engaged in firing against each other. The father, who was one of the accused, received five injuries dangerous to life. The firing accused apprehended danger to the life of his father and fired in self-defence. The accused did not exceed the right of private defence.
434. *State of UP v Gajey Singh*, 2009 Cr LJ 2274 : (2009) 11 SCC 414 [LNIND 2009 SC 437] : (2009) 3 SCC(Cr) 1412.
435. *R v Thompson*, (2001) 1 Cr App R (S) 72 [CA (Crim Div)].
436. *Gurbachan Singh*, 1974 Cr LJ 463 : AIR 1974 SC 496 .
437. *Baitullah v State of UP*, AIR 1997 SC 3946 [LNIND 1997 SC 1322] : 1997 Cr LJ 4644 , *Rukma v Jala*, AIR 1997 SC 3207 : 1997 Cr LJ 4641 , a case which hanged on appreciation of evidence. *Mavila Thamban Nambiar v State of Kerala*, AIR 1997 SC 687 [LNIND 1997 SC 24] : (1997) 1 JT

[367](#) private defence not available because the deceased was unarmed, accused persons armed with a pair of scissors. *Vishal Singh v State of MP*, [1998 Cr LJ 505 : AIR 1998 SC 308 \[LNIND 1997 SC 1362\]](#) , land dispute, revenue record not clear, accused in possession were fully armed, others came in wholly unarmed and became the victim of attack, private defence not allowed to accused.

[438. Bihari Rai v State of Bihar](#), [\(2008\) 15 SCC 778 \[LNIND 2008 SC 1927\] : AIR 2009 SC 18 \[LNIND 2008 SC 1927\] : 2009 Cr LJ 340 .](#)

[439. Gokool Bowree](#), (1866) 5 WR (Cr) 33.

[440. Durwan Geer](#), (1866) 5 WR (Cr) 73. See *Bag*, (1902) PR No. 29 of 1902; *Mammun*, (1916) PR No. 35 of 1916.

[441. Dhununjai Poly](#), (1870) 14 WR (Cr) 68.

[442. Marudevi Avva](#), [1958 Cr LJ 33 .](#)

[443. See also Madan Mohan Pandey v State of UP](#), [AIR 1991 SC 769 ; 1991 Cr LJ 467 : 1991 Supp \(2\) SCC 603](#) , where the Supreme Court emphasised that the nature of the weapon and the number of shots fired are helpful circumstances in determining excessive use of the right of private defence. Indiscriminate firing here, held right exceeded. For a general study of the subject see, *Stanley Meng Heong Yeo*, Rethinking Goodfaith in Excessive Private Defence, (1988) JILI 443.

[444. Kanhiyalal v State of Rajasthan](#), [AIR 1989 SC 1515 : 1989 Supp. 2 SCC 263 : 1989 Cr LJ 1482 : 1989 BBCJ 117 : 1990 SCC \(Cr\) 168.](#)

[445. Kishore Shambudatta Mishra v State of Maharashtra](#), [AIR 1989 SC 1173 : 1989 Cr LJ 1149 : 1989 SCC \(Cr\) 464.](#)

[446. Buta Singh v State of Punjab](#), [AIR 1991 SC 1316 \[LNIND 1991 SC 177\] : 1991 Cr LJ 1464 : \(1991\) 2 SCC 612 \[LNIND 1991 SC 177\] . Vidya Saran Sharma v Sudarshan Lal](#), [AIR 1993 SC 2476 : 1993 Cr LJ 3135 \(SC\)](#), accused injured by the deceased, apprehending further danger he hit back with a single blow which proved fatal, acquittal on the ground of private defence; *Thakarda Hamirji Gajuji v State of Gujarat*, [1992 Cr LJ 3966 \(Guj\).](#)

[447. Harabailu Kariappa v State of Karnataka](#), [1996 Cr LJ 321 \(Kant\). Man Bharan Singh v State of MP](#), [1996 Cr LJ 2707 \(MP\)](#) injuries disproportionately severe as against minor injuries, right exceeded, conviction under section 304 Pt. I. *Naranjan Singh v Kuldip Singh*, [1998 Cr LJ 845 : AIR 1998 SC 1490 \[LNIND 1997 SC 1574\]](#) , the accused was not shown to be present on the spot and, therefore, the question of his exceeding the right of private defence did not arise. *Achhaibar Prasad v State*, [1997 Cr LJ 2666 : 1997 All LJ 705](#), the accused attacked and fired at a police constable in his bid to arrest him. Right of private defence not available to him.

[448. Udaikumar Pandharinath Jadhav v State of Maharashtra](#), [\(2008\) 5 SCC 214 \[LNIND 2008 SC 1007\] : AIR 2008 SC 2064 \[LNIND 2008 SC 1007\] : 2008 Cr LJ 2627 .](#)

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 100] When the right of private defence of the body extends to causing death.

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

449 [Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.]

COMMENT.—

The law authorizes a man who is under a reasonable apprehension that his life is in danger or his body in risk of grievous hurt to inflict death upon his assailant either when the assault is attempted or directly threatened, but the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self-defence. It must be proportionate to and commensurate with the quality and character of the act it is intended to meet and what is done in excess is not protected. Where the accused was attacked by three persons and sustained an injury on the forehead, a vital part, he had reasonable apprehension of some hurt to be caused to him and had the right of self-defence but had exceeded by causing more harm to his assailants than needed. He was liable under section 304, Part I, and not under section 302.⁴⁵⁰ Where after receiving nine injuries, two on vital parts, the accused fired one shot from his gun which hit fatally an innocent person, the right of private defence extending to cause death was still available to the accused. His conviction under section 304, Part I was set aside.⁴⁵¹ Where the complainant's party had deliberately gathered near the house of the accused and scolded them and caused injuries to his father, the accused was held justified in exercising the right of private defence to defend his father and his conviction under section 300 was set aside.⁴⁵² It is the reasonable apprehension of death or grievous hurt that gives rise to the right of private defence under clauses (1) and (2) of [section 100, IPC, 1860.](#), and it has got nothing to do with the actual injury that the person exercising the right of private defence has suffered, which may or may not be grievous.⁴⁵³ Where the accused fails to make out a case of reasonable apprehension, he cannot claim the right of private defence.⁴⁵⁴ Where the life of the accused was not endangered by the ladies armed with broom sticks and 'chappals', the accused was not entitled to stab one of the ladies to death in exercise of right of private defence.⁴⁵⁵

The extended right of private defence to the extent of causing death of the assailant arises only if the offence which occasions the exercise of the right is of one of the kinds mentioned in this section.⁴⁵⁶ Following some earlier rulings, the Supreme Court has re-emphasised that the mere fact of the accused sustaining some injuries in the course of the same transaction does not make it out conclusively that the accused had the occasion to cause death in private defence.⁴⁵⁷ Where the attacking party chanced to get at the wife of the accused and the latter pounced upon them with a weapon attacking one of them which was warded off, another came forward and the accused successfully struck him and he died, the accused was held to be within his rights.⁴⁵⁸ As against this where two were fighting with *lathis* and the brother of one of them, who was outside the danger, struck a *lathi* blow to the other killing him, he was held to be guilty under section 304-I.⁴⁵⁹ In a communal tension, both sides pelted stones. The accused fired a gun shot causing death of a person of the other group though no one had sustained any injury as a result of pelting of stones by the other group. It was held that the accused had no occasion to act under the right of private defence.⁴⁶⁰

In order to justify the act of causing death of assailant, the accused has simply to satisfy the Court that there was reasonable apprehension of death or grievous hurt. Question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no straitjacket formula can be prescribed in this regard. Weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not. In the instant case, accused G was assaulted on head by a sharp-edged weapon which caused a bone-deep injury. As per the defence version there were four assailants who had come well prepared at the door of accused's house to commit assault. Reasonable apprehension of death or at least of grievous hurt, therefore, could not be ruled out. In such a situation, if single gunshot was fired it could not be said that the accused persons had exceeded their right of private defence in any manner.⁴⁶¹

[s 100.1] 'Abducting'.-

On a plain reading of clause fifth of this section, there does not seem to be any reason for holding that the word 'abducting' used in the clause means anything more than what is defined as "abduction" in section 362. All that the clause requires is that there should be an assault which is an offence against the human body and that assault should be with the intention of abducting, and whenever these elements are present the clause will be applicable.⁴⁶² Thus, a woman could not be taken away by force even by her own husband from a paramour's house and if in these circumstances the paramour and his brother killed the husband to prevent her abduction by the husband, they would be protected by sub-clause (5) of [section 100 of the Penal Code](#).⁴⁶³ Here law seems to be contrary to our social conscience, but this interpretation is perfectly in accord with the language of [section 100, IPC, 1860](#), and the decision of the Supreme Court in *Viswanath's case*⁴⁶⁴, where too the husband was put to death by a clean stab by his brother-in-law as he was trying to take away his wife by force from his father-in-law's house and in the process had merely dragged his unwilling wife to some distance.

[s 100.2] Rescuing woman-folk from attack on modesty.-

The accused heard the cries for help of his widowed sister-in-law. He ran to her house with *gandasa*. He found the attacker grappling with her and trying to outrage her modesty. The accused saved her from his clutches and inflicted a *gandasa* blow while he was going to run away. The act of the accused was held to have been done in the exercise of the right of private defence. The accused was acquitted.⁴⁶⁵

[s 100.3] CASES.—Exceeding the right.—

The accused was being chased. He assaulted the chaser. The latter died. The injuries found on the person of the deceased were more grievous than those on the body of the accused. It was held that the accused exceeded his right of private defence his conviction was altered from under section 300 to one under section 304, Part I.⁴⁶⁶. Whenever accused-party sustains injuries in the same occurrence and when the injuries are grievous in nature it is incumbent upon the prosecution to explain the injuries on the person of the accused.⁴⁶⁷. Where the accused might have acted on self-defence in the beginning, but once the deceased was. The prosecution party consisted of four members. They carried blunt weapons. They assembled in front of the house of the accused. They came as aggressors. The accused suffered a bone deep injury on his head. The accused fired a single gunshot which caused death of one of the members on the prosecution side. The Court held that the right of private defence was not exceeded. The accused was given the benefit of doubt.⁴⁶⁸.

Where the victim was throwing broken bricks at the accused who received simple injuries and the accused fired at him with his gun, it was held that he exceeded the right of private defence. There was no justification for using the gun in such as to cause death. Conviction under section 304 Part I was restored.⁴⁶⁹. The right of private defence was not allowed to be claimed merely on the ground that there was a quarrel and the accused sustained injuries in the course of it.⁴⁷⁰.

[s 100.4] No danger.—

Two friends were sitting together and consuming liquor. They quarrelled and exchanged blows. One of them inflicted two knife wounds on vital parts of the body of the other. The victim had posed no danger to the attacker, nor did he have any weapons with him. The plea of self-defence was held to be not available. The accused was convicted for murder.⁴⁷¹. The deceased came to his land and asked the accused party to get the land measured and also tried to dislodge a pole fixed by them. There was no imminent danger to person or property from any act of the deceased. No injuries caused to anybody. It was held that there was no right of self-defence in the exercise of which the deceased could have been killed.⁴⁷².

[s 100.5] Private defence.—

The accused was without any arms when the quarrel started. His action of picking up a stick lying on the ground and hitting the deceased on his head with it showed that he was trying to save himself from the attack by the deceased and his son. The accused was acquitted because the circumstances made it obvious that he was acting in self-defence.⁴⁷³.

[s 100.6] Burden of proof.—

The right of private defence is a plea which is available to the accused by the burden of proving the same is on him.⁴⁷⁴. Proof by preponderance of probabilities is sufficient.⁴⁷⁵. The burden of proving the right of private defence is not as onerous as that of the prosecution to prove its case. Preponderance of probabilities in favour of the defence is enough to discharge the burden.⁴⁷⁶. While the prosecution is required to

prove its case beyond reasonable doubt, the accused need not establish his plea of self-defence to the hilt and may discharge onus by showing preponderance of probabilities in favour of that plea on basis of material on record, injuries received by an accused, imminence of threat to his safety, injuries caused by accused and circumstances whether accused had time to have recourse to public authorities were held to relevant factors. But number of injuries is not always considered to be a safe criterion for determining who the aggressor was. Whenever injuries are on the body of the accused person, presumption need not necessarily be raised that accused person had caused injuries in his defence. Defence has to further to show that injuries so caused on accused probabilise version of private defence. Non-explanation of injuries sustained by the accused at about the time of occurrence or in course of the altercation is a very important circumstance but mere non-explanation may not affect prosecution case in all cases.⁴⁷⁷.

The burden stands discharged by showing preponderance of probabilities in favour of the plea of the accused either by himself adducing positive evidence or by referring to circumstances transpiring from prosecution evidence itself. Proof beyond reasonable doubt is not required. The Court can consider the plea even if not taken by the accused if the material on record makes it available for consideration.⁴⁷⁸.

[s 100.7] Acid Attack (Clause 7).—

The right of private defence of the body extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the assailant if the offence which occasions the exercise of the right against an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act. This new category of offence (acid attacks) to which a right to private defence is inserted by the [Criminal Law \(Amendment\) Act, 2013](#)⁴⁷⁹. on the recommendation of Justice Verma Committee.

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).*
449. Ins. by Act 13 of 2013, section 2 (w.r.e.f. 3-2-2013).
450. *Scaria v State of Kerala, AIR 1995 SC 2342 : 1995 Cr LJ 3990 .*
451. *Wassan Singh v State of Punjab, 1996 Cr LJ 878 : (1996) 1 SCC 458 [LNIND 1995 SC 1195] ; Ghurey Lal v State of UP, (2008) 10 SCC 450 [LNIND 2008 SC 1535] ; Dattu Shamrao Valake v State of Maharashtra, 2005 Cr LJ 2555 : AIR 2005 SC 2331 [LNIND 2005 SC 383] : (2005) 11 SCC 261 [LNIND 2005 SC 383] .*
452. *Shive Chand v State of UP, 1995 Cr LJ 3869 (All).*

453. *Raja Ram*, 1977 Cr LJ NOC 85 (All); See also *Abdul Kadir v State of Assam*, 1985 Cr LJ 1898 : AIR 1986 SC 305 : 1985 Supp SCC 603 .

454. *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] . Where there is no right of private defence, e.g. causing death of a person in order to prevent him from exercising lawful rights on lawfully held land, it would be punishable as murder, *Asha Ram v State of Rajasthan*, (1994) 2 Cr LJ 2431 (Raj).

455. *Vishnu Narayan Moger v State of Karnataka*, 1996 Cr LJ 1121 (Kant). Right of self-defence not available where the accused came prepared for fight and attack on unarmed victim, *Baj Singh v State of Punjab*, AIR 1995 SC 1953 : 1995 Cr LJ 3605 .

456. *Ram Saiya*, (1948) All 165 . See also *Kishore Shambudatta Mishra v State of Maharashtra*, AIR 1989 SC 1173 : 1989 Cr LJ 1149 : 1989 Supp (1) SCC 399 , discussed under the preceding section. Also *Raza Pasha v State of Maharashtra*, AIR 1984 SC 1793 [LNIND 1984 SC 255] : (1984) 4 SCC 441 [LNIND 1984 SC 255] : 1984 SCC (Cr) 605, the person shot at from house top and killed was outside the house at that time, held that there was no occasion for private defence, conviction under section 302. *Wassan Singh v State of Punjab*, (1996) 1 SCC 458 [LNIND 1995 SC 1195] : 1996 Cr LJ 878 , the accused surrounded by a number of assailants who were all inflicting injuries on him, he shot at them hitting an innocent person who died, right of private defence not lost thereby.

457. *Paras Nath Singh v State of Bihar and Hare Krishna Singh v State of Bihar*, 1988 Cr LJ 925 : AIR 1988 SC 863 [LNIND 1988 SC 139] : (1988) 2 SCC 95 [LNIND 1988 SC 139] , relying on *Onkar Nath Singh v State of UP*, AIR 1974 SC 1550 [LNIND 1974 SC 154] : 1974 Cr LJ 1015 : (1975) 3 SCC 276 [LNIND 1974 SC 154] : 1975 SCC (Cr) 884. But injuries suffered by the accused must be explained to be not caused in the same episode and if the information as to injuries on the accused is suppressed by the prosecution, the case becomes doubtful. *Prem Singh v State of HP*, 1989 Cr LJ 1903 HP. Dispute over turn for irrigation, both sides injured, the fact of injuries on the accused suppressed and FIR also filed after delay, acquittal, *Desa Singh v Punjab*, 1996 Cr LJ 3381 (P&H). Another similar dispute and death in mutual fight, *State of Haryana v Karan Singh*, 1996 Cr LJ 3698 (P&H).

458. *Purna Chandra Barik v State of Orissa*, 1988 Cr LJ 731 Orissa. Where the finding of the High Court was that the accused, a police sub-inspector, was assaulted by the deceased and his companions and he used firearms causing death under the apprehension that otherwise he would be killed, this finding was held by the Supreme Court to be neither perverse nor palpably erroneous, *State of Punjab v Ajaib Singh*, AIR 1995 SC 975 [LNIND 1995 SC 136] : (1995) 2 Cr LJ 1456 : (1995) 2 SCC 486 [LNIND 1995 SC 136] . Warding off two successive attacks by the complainant party, clause 'firstly' and 'secondly' were held to be attracted, *Raj Singh v State of Punjab*, (1995) 1 Cr LJ 680 P&H.

459. *Sudhir Mahanta v State of Orissa*, 1980 Cr LJ 1918 Orissa. *Kesha v State of Rajasthan*, AIR 1993 SC 2651 : 1993 Cr LJ 3674 : 1995 Supp (3) SCC 743 , accused causing death without any reasonable apprehension of death or grievous hurt to himself, punishment for exceeding the right of private defence. *Baijnath Mahton v State of Bihar*, 1993 Cr LJ 2833 : AIR 1993 SC 2323 : 1993 Supp (3) SCC 1 , right of private defence exceeded in a group clash. *Dular Mahto v State of Bihar*, AIR 1993 SC 927 : 1993 Cr LJ 165 : 1993 Supp (3) SCC 467 , excesses in a group clash. *Babu Ram v State of Haryana*, 1993 Cr LJ 3788 (P&H), the case is of doubtful validity because aggressors were given the benefit of the right of private defence.

460. *Parshottam Lal Ji Waghela v State of Gujarat*, 1992 Cr LJ 2521 : 1992 Supp (3) SCC 194 . In a direct confrontation, there was the possibility of the accused becoming apprehensive of danger to himself and his family, he fired only one round, plea of private defence sustained, *Harish Kumar v MP*, 1996 Cr LJ 3511 : AIR 1996 SC 3433 [LNIND 1996 SC 1027] .

461. *State of UP v Gajey Singh*, (2009) 11 SCC 414 [LNIND 2009 SC 437] : 2009 Cr LJ 2274 : (2009) 3 All LJ 647.
462. *Vishwanath v State of UP*, 1960 Cr LJ 154 , (1960) 1 SCR 646 [LNIND 1959 SC 150] : AIR 1960 SC 67 [LNIND 1959 SC 150].
463. *Nankau v State*, 1977 Cr LJ NOC 116 (All).
464. *Vishwanath, supra*.
465. *Bhadar Ram v State of Rajasthan*, 2000 Cr LJ 1174 (Raj). *Badan Nath v State of Rajasthan*, 1999 Cr LJ 2268 (Raj), causing injury to save daughter from being raped.
466. *Suresh Singh v State of Haryana*, AIR 1999 SC 1773 [LNIND 1999 SC 324] : 1999 Cr LJ 2585 ; *Shankar Balu Patil v State of Maharashtra*, (2007) 12 SCC 450 : (2008) 2 SCC (Cr) 591, the nature of injuries upon the accused and those upon the deceased clearly showed that the accused exceeded the right of private defence. Conviction under section 304 Pt. I and seven years imprisonment justified.
467. *Manphool Singh v State of Haryana*, AIR 2018 SC 3995 .
468. *Gajey Singh v State of UP*, 2001 Cr LJ 2838 (All); *State of UP v Laeeq*, 1999 Cr LJ 2877 at p 2879 : AIR 1999 SC 1742 [LNIND 1999 SC 476] , no allegation of any fear, no right of private defence. *Ram Dhani v State*, 1997 Cr LJ 2286 (All), the accused exceeded the right of private defence in causing death in circumstances in which justification for causing death was not available to him.
469. *Shingara Singh v State of Haryana*, (2003) 12 SCC 758 [LNIND 2003 SC 945] : AIR 2004 SC 124 [LNIND 2003 SC 945] : 2004 Cr LJ 828 . *Anil Kumar v State of UP*, 2004 All LJ 3779 : 2005 SCC (Cr) 178, the accused receiving minor injuries fired at the deceased to cause death, private defence exceeded.
470. *Chacko v State of Kerala*, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] : (2004) 1 KLT 884 [LNIND 2004 SC 86] .
471. *Inacio Manual Miranda v State of Goa*, 1999 Cr LJ 422 (Bom); *State of MP v Ramesh*, 2005 Cr LJ 652 SC : AIR 2006 SC 204 [LNIND 2005 SC 881] : (2005) 13 SCC 247 [LNIND 2005 SC 881] , the plea of private defence cannot be based on surmises and conjectures, and guess work. Father asked his son to get his gun and shoot because they were irresponsible, death and injuries caused, conviction for murder because there was no danger which could create the right of private offence.
472. *Dhaneswar Mahakud v State of Orissa*, 2006 Cr LJ 2113 SC : AIR 2006 SC 1727 [LNIND 2006 SC 252] : (2006) 9 SCC 307 [LNIND 2006 SC 252] .
473. *Krishanan v State of TN*, 2006 Cr LJ 3907 : AIR 2006 SC 3037 [LNIND 2006 SC 612] : (2006) 11 SCC 304 [LNIND 2006 SC 612] .
474. *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.
475. *V Subramani v State of TN*, 2005 Cr LJ 1727 : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .
476. *Dharminder v State of HP*, AIR 2002 SC 3097 [LNIND 2002 SC 537] .
477. *Dharam v State of Haryana*, (2007) 15 SCC 241 [LNIND 2006 SC 1108] . *Raghbir Singh v State of Haryana*, (2008) 16 SCC 33 [LNIND 2008 SC 2228] : AIR 2009 SC 1223 [LNIND 2008 SC 2228] : (2009) 73 AIC 93 , right of private defence not made out on facts.
478. *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] , *Laxman Singh v Poonam Singh*, (2004) 10 SCC 94 [LNIND 2003 SC 767] : AIR 2003 SC 3204 [LNIND 2003 SC 767] , *Kulwant Singh v State of Punjab*, (2004) 9 SCC 257 [LNIND 2004 SC 105] : AIR 2004 SC 2875 [LNIND 2004 SC 105] , right of private defence could not be proved. *Bagdi Ram v State of MP*, (2004) 12 SCC 302 [LNIND 2003 SC 1047] : AIR 2004 SC 387 [LNIND 2003 SC 1047] : 2004 Cr LJ

632 , no right of private defence to use dangerous arms when the other side was absolutely unarmed.

479. Act 13 of 2013, section 2 (w.e.f. 3-2-2013).

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 101] When such right extends to causing any harm other than death.

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

COMMENT.—

Any harm short of death can be inflicted in exercising the right of private defence in any case which does not fall within the provisions of section 100. Thus, where only some mischief was caused to the factory and some brickbats were thrown by agitating workers, the owner of the factory was not justified in killing a worker by firing a shot from his revolver. As there was no apprehension of death or grievous hurt to his person, the accused could not get the benefit of clauses (1) and (2) of **section 100 or section 103, IPC, 1860**. He had only a limited right of private defence to cause any other harm than death within the meaning of **section 101, IPC, 1860**, and as such having exercised his right of private defence he was liable to be convicted under section 304-Part I, **IPC, 1860**.⁴⁸⁰ The accused was hit by a single brickbat or a stone piece and suffered a simple head-injury. After sometime he fired at the unarmed assailant causing grievous injury to his abdomen. The Supreme Court held that keeping in mind his simple hurt and the time gap between that and the gunshot wound caused by him, his action was a retaliation rather than act of private defence. His conviction under section 326 was accordingly upheld.⁴⁸¹ The right of private defence was held to have been exceeded where a member of the opposite side was killed after snatching his pistol.⁴⁸² The person who died came along with his brothers to stage a fight with the accused because of an earlier act of insult on the part of the accused. A single stab wound was administered to him, which fell upon his lower abdomen, of which he died. The accused and his wife were also injured in the process. It was held that the accused had not exceeded his right of private defence.⁴⁸³

When dealing with questions relating to right of private defence of the body this section and section 100 should be read together.

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).
480. *Mahinder Paul v State*, 1979 Cr LJ 584 : AIR 1979 SC 577 [LNIND 1978 SC 389] ; See also *Yogendra Morarij*, 1980 Cr LJ 459 : AIR 1980 SC 660 .
481. *State of J&K v Hazara Singh*, 1980 Cr LJ 1501 : 1981 SCC (Cr) 537 : AIR 1981 SC 451 .
482. *Ghunnu v State of UP*, 1980 Cr LJ (NOC) 15 : AIR 1980 SC 864 : 1980 All LJ 397 : 1979 SCC (Cr) 438. See also *Chuhar Singh v State of Punjab*, AIR 1991 SC 1052 : 1991 Supp (2) SCC 455 : 1991 SCC (Cr) 1066, where the circumstances did not justify causing death by gun shot injuries. *Bandlamuddi Atchuta Ramaiah v State of AP*, AIR 1997 SC 496 : 1996 Cr LJ 4463 death of

neighbour caused at a time when there was no apprehension of loss of life or property. Right exceeded. Conviction under section 304 Part I.

[**483. Ramchandran v State, 1994 Cr LJ 2741**](#) (Mad); [**Sri Kumar Sharma v State of Bihar, 2003 Cr LJ 2258**](#) (Pat), right of private defence found justified, hence, acquittal.

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 *lathis*, 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. *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).
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).

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).