

## GENERAL EXPLANATIONS

Chapter IV of the Indian Penal Code deals with the 'General Exceptions' of IPC. This chapter spanning from Section 76 to 106 exempts the criminal liability imposed on the certain individual subject to their acts being covered under any one of the general exceptions. In other words, a person who has committed an offence may due to the application of general exceptions escape liability.

There are two broad categories under which the exceptions can be categorized and those are – excusable and justifiable exceptions. The first is when the law excuses certain offenders, even though their act constitutes a crime. The latter category is where the act amounting to an offence is justifiable under the circumstances they were committed and thereby are supplemented with the exception to escape liability.

The burden to prove to all the elements of a crime and establish the guilt of the accused beyond a reasonable doubt never shifts from the prosecution. As soon as the prosecution establishes the guilt of the accused beyond a reasonable doubt, the defence can be adopted in two ways to seek exemption under any one of the general exceptions. One way is to adduce direct and positive evidence that the exception pleaded by him exists.

The second way is to adduce sufficient material evidence indicating a reasonable probability that the circumstances as narrated by the defence actually existed, thereby casting doubt on the version of the prosecution. Therefore, this dislodges the initial presumption of the non-existence of any exculpable circumstance in his favour.

### Mistake of Facts

Section 76 excuses a person from criminal liability who is bound by law to do something and thereby executes it, or who in good faith, due to a mistake of fact believes that he is bound by law and so does it. However, Section 79 exempts a person who owing to a mistake of fact and not a mistake of law, believes that his actions are justified by law.

Section 52, IPC, defines the term 'good faith' as: "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention." Due care refers to the degree of reasonableness in the care exercised. The enquiry must be of such depth that any prudent and reasonable man would do with the intent to know the truth.[1]

Mistake as a mitigating factor refers to the rule that when a person who is not aware of the existence of the relevant facts or has mistaken them, commits a wrongful act, he neither had an intention to commit it nor were the consequent unlawful results foreseen by him. Hence his trial must commence on the fiction of the facts as were mistakenly believed by him and not in accordance with how they actually are.

It is important to note here that protection under Section 76 and 79 are only applicable to mistake of facts and not to mistake of law which is based on the Common law maxim, "ignorantia facti doth excusat, ignorantia juris non excusat" which means ignorance of fact excuses, ignorance of law does not excuse. The underlying objective of the rule says that everyone is expected and presumed to know the

law. Hence, ignorance of such things which everyone is duty-bound to know cannot absolve a person by justifying his ignorance on the particular subject matter.

However, wherein the act committed is itself wrong, although not criminal, ignorance of facts due to the circumstances which make the act criminal is no defence.[2] For example, A hits B making him fall unconscious. However, A presuming that B is dead, set his body on flames, leading to his death. A cannot be discharged off his criminal liability, though he acted under a bona fide mistake of fact. The primary reason being, his actions were intended to disappear the evidence of his previous wrongful act.[3]

Judicial Acts: S. 77-78

Section 77 and 78 renders safeguards to judges and their ministerial staff, who are acting as judicial officers to execute the orders of the judges. The underlying objective of this Section is to ensure that the judges should discharge their duties independent of fear of any consequences. The entire idea behind this concept is to protect public policy. Hereunder is the rationale for providing immunity to judges under Section 77:

“Judges and judicial officers have in all ages been the target of malice and spite. Their function often leads to exhibition of temper and feeling of retaliation. If, thus, judges had been placed on the ordinary footing as regards the defence of their act or conducts, they would soon have forsaken their legitimate duties in order to find time to vindicate themselves.

Moreover, exposure to the shafts of unsuccessful party or of condemned convict would have made their position one of considerable peril and precarious advantage. For no one would come forward to seek a situation in which his very fearlessness and independence would make him the butt of unscrupulous attack and organized opposition.”[4]

In the case of *Ram Pratap Sharma v. Dayanand*,[5] a judge of Punjab & Haryana High Court while addressing the members of the Bar, began criticizing the govt policies and its ineffectiveness in operation of the administration. Some members of the Bar wrote a letter to the Prime Minister of India, stating that the speech of the judge was not appropriate and hence actions be taken against him. A notice of contempt was issued to the signatories of the letter by the Punjab & Haryana High court.

In reply to the letter, the members of the Bar stated that the letter was sent not with the purpose of vile and ill-will, but only with good faith. Moreover, there had been no publicity regarding the same. Also, the intention was to create a privileged communication regarding the inappropriate conduct of the judge and with a view to upholding the dignity of the court. However, they also tendered apologies if the letter amounted to contempt. As a result, the petitioners were discharged of their liability by a full bench of the high court.

Further, the immunity to a judge by virtue of Section 77 is not only with regards to the power exercised under judicial authority, but also acts done by him in the application of judicial authority which he

reckons in good faith was authorised to him by law.[6] Although the burden of proof lies on the judge to show that his act was because of his good faith.

Accident and Misfortune: S. 80 – 81

Section 80 absolves a person from criminal liability if the act was done accidentally, by misfortune, without a trace of criminal intent or knowledge and the accident occurred while doing a lawful act in a lawful manner and employing lawful means. Additionally the act must have been committed with exercise of due care and caution.

The entire idea is not to impose on person criminal liabilities because the acts which he did was not only unintentional but also the results were so little expected that it came as a surprise. The act leading to the injury was neither negligent nor wilful and occurred in the ordinary course of things.

Further, it is important to note the distinction between the term “accident” and “misfortune”. Accident involves only injury to another, while misfortune causes the same amount of injury to the author as much has been inflicted on the person who was unconnected with the act.[7]

In the case of *Girish Saikia v. State of Assam*,[8] the accused was attacked by his brother who tried to strangle him. Thereafter, both of them in struggle rolled out of the room. Consequently, the accused caught hold of bamboo and while trying to strike his brother, accidentally ended up giving a blow to his father on his head. The father died as a result of the blow. The High Court acquitted the accused holding that the case fell within the scope of Section 80.

However, if a blow is aimed at an individual for an unlawful purpose, and it accidentally strikes another, then the accused will be held guilty.[9]

In another case, *Sita Ram v. State of Rajasthan*,[10] the deceased had come to collect mud, while the accused was digging the earth with his spade. The spade accidentally hit the deceased who died eventually. The Rajasthan High court did not exempt the accused under Section 80 and said that as the accused was well aware that there were workers around who would come to collect mud and therefore he failed in exercising proper care and caution.

Section 81 basically provides immunity to those accused persons who did an act which was although evil, was committed in order to avert a bigger evil. The section actually embodies the principle laid down by the maxims hereunder:

*Quod necessitas non habet leegem* (necessity knows no law)

*Necessitas vincit legem* (necessity overcomes the law)

Here it is worthwhile to notice the difference between section 80 and 81. Section 80 contemplates the absence of criminal intention and criminal knowledge as well. However, Section 81 contemplates the absence of criminal intention alone. Immunity under Section 81 is only stipulated under such situations

wherein the accused committed an offence without any trace of criminal intent and in good faith in order to avoid or prevent other harm to a person or property.

In the landmark case of *United States v. Holmes*,<sup>[11]</sup> did not convict a crew member in a shipwreck, threw 16 male passengers overboard into the water after he was ordered by mates.

He was still convicted of manslaughter. In a similar Common Law case, *R v. Dudley*,<sup>[12]</sup> both the accused, Dudley and Stephen were on a yacht which was cast away due to storm. Both of them killed the cabin boy, who seemed to them to have become fragile enough to die first. They ate the flesh and drank his blood for 4 days, until they were finally rescued. The jury rendered a special verdict:

“If the men had not fed upon the body of the boy, they would probably would or have survived to be so picked up and rescued, but would within the four days have died of famine; that the boy, being in a much weaker condition, was likely to have died before them; that at the time of the act there was no sail in sight, or any reasonable prospect of relief; that assuming any necessity to kill anyone, there was no greater necessity for killing the boy than any of the other three men; but whether upon the whole matter, the prisoners were and are guilty of murder, the jury are ignorant, and refer to the court.”

The divisional court convicted the accused of murder and sentenced them to death. The three principles which emanated from this judgment are:

Self-preservation is not an absolute necessity

Taking another's life in order preserve his own is not a right given to anyone

Homicide cannot be justified by any necessity

Infancy: S. 82 – 83

Section 82 states that a child below the age of 7 years is incapable of committing a crime i.e. he is *doli incapax*, and hence cannot be guilty of any offence. The adequate mental ability necessary to give birth to *mens rea* is absent and he is just not capable of understanding the nature and consequences of his actions.

Section 83, however states that any child between the age of 7 to 12 years depending on the maturity of understanding can be deemed capable of committing a crime or not. The burden of proof is on the prosecution to show beyond reasonable doubt that the *actus reus* so committed was concomitant to a *mens rea* and he was capable of distinguishing between mischief and a 'wrong'. Therefore, what is more important is not his age but the degree of requisite maturity required to comprehend the consequences while committing the crime.

Hence, it is important that the judge first conducts an enquiry to ascertain whether the child has attained the requisite comprehension capabilities to be aware of the nature of the results of his actions.

The case of Pratap Singh v. State of Jharkhand,[13] the high court held that the date to be considered for determining the age of a juvenile is the date on which he had committed the offence and not the date when he produced before the Juvenile Board or court.

Insanity or Mental Abnormality: S. 82 – 83

Section 84 exempts a person of criminal liability if the following ingredients are satisfied:

Accused was of unsound mind when committed the offence; and

Was not capable of knowing the nature of the act; or

Act was contrary to law; or

Act was wrong

In the landmark M’Naghten case, the accused Daniel M’Nagthen had delusions that Sir Robert Peel who was the then Prime Minister had injured him. The accused shot and killed Edward Drummond whom he mistook for Mr Robert. The jury after considering the medical evidence adduced by the accused which indicated that he suffered from morbid delusions acquitted him on the plea of insanity.

The verdict resulted in furore amongst the public and there was a debate in the House of Lords with respect to the verdict. A set of five questions were formulated as a result of it to make the law more lucid on the topic and the answer to it has become the core principles of the law of insanity as an absolving factor:

Until the contrary is proven, every person is presumed to possess an adequate amount of reason to be apprehended for the crimes he commits

To obtain the plea of insanity it must be established that the person while committing the crime was insane to the extent where he could not know about the nature of his acts

Test of the wrongfulness of the act is in the power to differentiate between right and wrong with respect to the particular incriminating act

The existence of unsoundness of mind after or before the crime was committed is not relevant, though it may be taken into account to ascertain whether the accused was insane or not.[14] Further Section 105 of the Indian Evidence Act says:

“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 IPC or within any special exception or proviso contained in any other part of the same code, or in law defining the offence, is upon him, and the court shall presume the absence of such circumstances.”

Intoxication: S. 85 – 86

Section 85 accords immunity from criminal liability to a person who was intoxicated involuntarily and Section provides for a limited exemption wherein the person was voluntarily intoxicated, however for certain cases. To avail exemption under Section 85 the following have to be established:

The inebriated state rendered him incapable of knowing the nature of his acts

The act was wrong or contrary to law

The intoxication was administered either without his will or without his knowledge

Normal persuasion acting as an incentive is out of the scope of the expression “against his will”, unless there exists an element of compulsion to consume the intoxicant against his will.[15]

A person who consumes the intoxicant voluntarily is not absolved of criminal liabilities due to self administration even if he is rendered incapable of knowing the nature of his acts which is either contrary to law or wrong.[16] However, Section 86 exculpates a person who due to self administered intoxicant is rendered incapable of forming the specific intent or knowledge which is essential to constitute that particular crime committed by him.[17]

Consent and Compulsion: S. 87 – 94

Section 90 defines consent in a negative manner and provides a description of what does not amount to consent. The following acts of consent would not amount to valid consent if given:

under a misconception of fact or fear of injury

by an insane or an intoxicated person

person below the age of 12 years

The doer of the consented act is not absolved of the incriminating act.[18] Section 87, 88 and 89 describe the acts which would have amounted to an offence but are not due to the existence of valid consent. For Section 87, consent can act as an immunity when:

harm, short of grievous hurt, is done by consent

harm resulting even in death was committed without an intention or knowledge of likelihood of death

the person who had consented was above 18 years of age

Section 87 is premised on the concept that every person is the best judge for himself and so will not consent to something which will hurt him.[19]

Section 88 is the consented acts which are committed by the doer in good faith. This section stipulates that the consent be obtained from the person so harmed in the process.[20]

Section 89 deals with the acts committed for the benefit of a person below 12 years of age or a person with unsound mind, where the consent is provided by the guardian or person having charge of the

person. Similarly, Section 92 deals with the provisions wherein consent is not rendered by the person to whom the harm is caused.

It provides for such consented acts wherein the act was for the benefit of the person and in good faith required it to be done even when he could not consent for the reason of his incapability to signify such consent. Both these sections are affixed with a proviso which an absence of criminal intent to cause the death, although the doer might possess the knowledge that the act could likely cause death provided that the act was necessary to prevent death or grievous hurt.

Further, Section 91 stipulates a situation wherein, despite obtaining consent, an act would amount to an offence not by reason of the harm caused or intended to be caused, but due to the illegality of the act.

Section 93 – Communication made in good faith: “No communication made in good faith is an offence by reason of any harm to the person to whom it is made if it is made for the benefit of that person.”

Section 94 provides immunity to a person who commits an act due compulsion. No compulsion is a restraint upon a person, whereby a person is urged to do which he will reject committing if the decision rests upon him or his judgment disapproves of.

The underlying objective of the section is embodied in a maxim, “actus me invite factus non est meus actus”, which means “an act which is done by me, against my will is not my act, and hence I am not responsible for it.” However, immunity under this exception is not extended to the offence of murder and an act against the state.

Trivial Acts: S. 95

Section 5 operates on the principle which emanates from the maxim, “de minimis non curat lex” which means, “law does not concern itself with trifles”.

In the case of Bindhewari Prasad Sinha v. Kali Singh,[21] the accused had taken away the certified copy of judgment meant for the complainant by signing his name. The complainant got another copy thereafter. The court held that the accused should be acquitted under Section 95.

Private Defence: S. 96 – 106

The provisions regarding private defence are premised on the principle that it is every person’s primary duty to help him. Self-preservation is the prime instinct of every human being.[22] Bentham has said that:

“The right of private defence is absolutely necessary. The vigilance of Magistrates can never make up for the vigilance of each individual on his own behalf. The fear of law can never restrain bad men as the fear of the sum total of individual resistance. Take away this right and you become in so.”[23]

Section 96, which asserts that “Nothing is an offence which is done in the exercise of the right of private defence”, is just a general rule. While Section 97 asserts for the right to defend a person’s own body or another body another person or any immovable property if act of theft or mischief is being committed

with respect to such property. However, an immunity under this section is only sanctioned when there are circumstances to justify the exercise of such private defence.

It is only justified to oppose unlawful aggression[24] and not to punish the aggressor for the offence he has committed.[25] Exercise of such a right must not be malicious or vindictive.[26] Also, the private defence exercised must be proportionate to the injury caused.

Further, an act done in exercise of private defence cannot give birth to the right of defence in favour of the aggressor in return.[27] Since, individuals involved in a free fight have a common intention and common object, that is why no private defence is available to the parties for the reason that the consequences have emanated from their own will.

A trespasser is entitled to right of private defence of a property sometimes even in against the owner of the land. The Apex court in the case of Puran Singh v. State of Punjab[28] has stipulated certain conditions for the same:

Actual physical possession of the land must rest with the trespasser over a sufficiently long period

Knowledge of such possession must exist with the owner either expressly or implied and without any concealment

The trespasser must have dispossessed the true owner with complete and final effect

In the case of cultivable land, if the crop has been grown then even the true owner has no right to destroy the crop

Section 98, deals with the right of private defence to immunise acts which would be offences, but for the reason that they are acts in retaliation to acts of youth, persons of unsound mind, a person in an inebriated state or committed under a misconception of facts.

Section 99 enumerates certain situation wherein the right to private defence is not available and they are:

against acts of public servants, if the act committed by the authority is done in good faith and under the colour of office, even though its actions may not be legally justifiable

when there was time to have recourse to the protection of public authorities[29]

the right must not exceed more harm than is necessary to stop the wrongful act of the offender[30]

Section 100 provides for the exercise of the right to private defence to cause death under certain circumstances provided hereinbelow:

assaulter might cause death as a consequence of the assault

assaulter might grievous hurt as a consequence of the assault



assaulter might commit rape with an intention to do so

assaulter might gratify unnatural lust with an intention to do so

assaulter might kidnap or abduct with an intention to do so

wrongfully confine the person with an apprehension that no recourse to public authorities exists

commit an act of throwing or administering acid

While Section 101 provides for the situations wherein the right to private defence cannot provide immunity for committing death as a result of defence. It says, except for the situations enumerated under Section 100, a person's right to private defence only extends till causing any "harm", short of death. The right to private defence subsists only till the time there is a reasonable apprehension to the body as is laid down by the provisions under Section 102.

Also, the apprehension of danger must be apparent, real and present. Only when a person is confronted with an immediate necessity to avert an impending danger that is not created by him, that the person can exercise his right to private defence.[31]

Section 106 comes to the rescue of a person acting in pursuance to private defence when this right could not have been exercised without causing harm to an innocent person, then in such situations law protects the person if harm is caused to the innocent person.

Hereunder are the situations when private defence will operate to either cause death or grievous hurt as envisaged by Section 103:

robbery

house-breaking by night

mischief by fire committed on any building, vessel or tent, used for human dwelling

house-trespass, theft, mischief resulting in reasonable apprehension of death or grievous hurt

Except for the situations mentioned above, right to private defence of property does not extend voluntarily causing death or grievous hurt. This is laid down by Section 104.

Further, Section 105 says that the right to exercise private defence of the property only subsists as long as the theft continues till the offender has effected his retreat with property or recourse of the public authorities is secured, or recovery of property is done. Similarly, with respect to robbery, the right continues until the apprehension of death, hurt or wrongful restraint subsides. In case of criminal trespass or mischief or house-breaking, the right continues till the fear of the aforementioned continues.

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[1] Re SK Sundaran [2001] Cr LJ 2932 [SC]

- [2] King-Emperor v. Tustipada Mandal AIR 1951 Ori 284
- [3] King-Emperor v. Sree Narayan AIR 1949 Ori 48
- [4] Hari Singh Gour, Penal Law of India, vol I, 11 Edn., Law Publishers, Allahabad, 1998, p 434.
- [5] AIR 1977 SC 809
- [6] Kamala Patel v. Bhagwan Das AIR 1934 Nag 123
- [7] RC Nigam, Law of Crime in India, Asia, London, 1965, p 320
- [8] [1993] Cr LJ 3808 [Gau]
- [9] AIR 1924 Oudh 228
- [10] [1998] Cr LJ 287 [Raj]
- [11] 26 Fed Cas 360 [1842] [Circuit Court, Eastern District, Pennsylvania]
- [12] [1884] 14 QBD 273
- [13] [2005] 5 SCC 488
- [14] Ratan Lal v. State of Madhya Pradesh AIR 1974 SC 216
- [15] Jethuram v. State of Madhya Pradesh AIR 1960 MP 242
- [16] Jojo@Jojomon v. State of Kerala [2011] ILR 2 Kerala 789
- [17] Dasa Kandha v. State of Orissa [1976] Cr LJ 2010 [Ori]
- [18] Tulhsidas Kanolkar v. State of Goa [2003] 8 SCC 590
- [19] State of Maharashtra v. Miss Joyee [1975] 77 Bom LR 218
- [20] Pan Singh v. Emperor AIR 1935 All 282
- [21] AIR 1977 SC 2432
- [22] James Martin v. State of Kerala [2004] 2 SCC 203
- [23] Bentham, Principles of the Penal Code, p 269.
- [24] Rajesh Kumar v. Dharamvir AIR 1997 SC 3769
- [25] Deo Narain v. State of Uttar Pradesh AIR 1973 SC 473
- [26] Munney Khan v. State of Madhya Pradesh AIR 1971 SC 1491

[27] Chacko v. State of Kerala [2001] 10 SCC 640

[28] AIR 1975 SC 1674

[29][29] Mazidar Rahman v. State of Assam [1977] Cr LJ 1293 [Gau]

[30] State of Uttar Pradesh v. Ram Swarup AIR 1974 SC 1570

[31] Laxman Sahu v. State of Orissa AIR 1988 SC 83

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