

General Exceptions under the IPC

In another landmark judgment, the Supreme Court criminalized sex with a minor wife aged between 15 and 18 years. The court overturned an exception in rape law which allowed a husband to have sex with his wife aged 15 years and above regardless of consent, including punishment. NGO Independent Thought filed a PIL in court which paved the way for this ruling and this rule will be applicable even in the case of Muslim Personal law. Criminal law deals with such type of cases in India which are assorted in different sections depending upon their nature.

The Criminal law covers various punishments which vary from case to case. But it is not always necessary that a person gets punished for a crime which he/she had committed. The Indian Penal Code (IPC), 1860 recognizes defences in Chapter IV under "General Exceptions". Section 76 to 106 covers these defences which are based on the presumption that a person is not liable for the crime committed. These defences depend upon the circumstances prevailing at that point of time, mens rea of person and reasonability of action of that accused.

Object of Chapter IV

Every offence is not absolute, they have certain exceptions. When IPC was drafted, it was assumed that there were no exceptions in criminal cases which were a major loophole. So a separate Chapter IV was introduced by the makers of the Code applicable to the entire concept.

In short, the object of Chapter IV includes:

- Exceptional circumstances in which an individual can escape liability.

- Making Code construction simpler by removing the repetition of criminal exceptions.

Burden of Proof

- Generally, Prosecution has to prove its case beyond reasonable doubt against the accused.
- Before the enforcement of the Indian Evidence Act 1882, the prosecution had to prove that the case does not fall under any exception, but section 105 of Evidence act shifted the burden on the claimant.
- But in exceptions, as per [Section 105](#) of Evidence Act, a claimant has to prove the existence of general exception in crimes.

The fabric of Chapter IV

- Section 6 of IPC

“Throughout this code, every definition of offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to exceptions contained in the chapter titled General Exceptions”.

The **General Exceptions** are divided into 2 categories:

- Excusable Acts
- Judicially Justifiable Acts

Excusable Acts	Justifiable Act
A mistake of Fact under section 76 and 79.	An act of Judge and Act performed in pursuance of an order under Section 77 and 78.

Accident under Section 80.	The necessity under 81.
Infancy – Section 82 and 83.	Consent under Section 87 – 89 and Section 90 and 92.
Insanity – Section 84.	Communication under Section 93.
Intoxication – Section 85 and 86.	Duress under Section 94.
	Trifles under Section 95.
	Private Defence under Section 96 – 106.

Excusable Acts

An Excusable Act is the one in which though the person had caused harm, yet that person should be excused because he cannot be blamed for the act. For example, if a person of unsound mind commits a crime, he cannot be held responsible for that because he was not having mens rea. Same goes for involuntary intoxication, insanity, infancy or honest mistake of fact.

A mistake of Fact under Section 76 and 79

Under Section 76: Act done by a person bound or by mistake of fact believing, himself to be bound by law is included. Nothing is an offence which is done by a person who is or by reason of a mistake of fact, not by mistake of law in good faith believes himself, to be, bound by law to do such act. It is derived from the legal maxim "*ignorantia facti doth excusat, ignorantia juris non excusat*".

- Example: If a soldier firing on a mob by the order of his officer in conformity through the command of the law, then he will not be liable.

Under Section 79: Act done by a person justified or by mistake of fact believing, himself justified, by law is included. 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 mistake of law in good faith, believes himself to be justified by law, in doing that particular act

- Example: A thought Z to be a murderer and in good faith and justified by law, seizes Z to present him before authority. A has not committed any offence.

Case law for Section 79

In [*Kiran Bedi v. Committee of Inquiry*](#), petitioner refused to depose to the

beginning of the inquiry as she believed that she could depose only at the end of

the inquiry

Accident under Section 80

Includes an Accident committed while doing a lawful act. Nothing is an offence which is done by accident or misfortune, 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.

- Example: Suppose M is trying to shoot a bird with a gun but unfortunately the bullet reflected from the oak tree causing harm to N, then, M will not be liable.

Case law for Section 80

In [*King Emperor v. Timmappa*](#), a division bench held that shooting with an unlicensed gun does not debar an accused from claiming defence under Section 81 of IPC. The appeal of acquittal was dismissed and the order of trial magistrate was upheld. The court was of the opinion that there is no reason why sentence awarded under Section 19(e) of the Indian Arms Act should be enhanced. The respondent was liable under the provision but no more. He just borrowed a gun for few minutes to kill as he thought a wild animal might attack him and his partners. The application was dismissed regarding enhancement of sentence.

Infancy – Section 82 and 83

Section 82: It includes an act of a child below seven years of age. Nothing is an offence which is done by a child under seven years of age.

- Suppose a child below seven years of age, pressed the trigger of the gun and caused the death of his father, then, the child will not be liable.

Section 83: It includes an act of a child above seven and below 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 yet attained sufficient maturity of understanding to judge the nature and repercussions of his conduct during that occasion.

- Example: Suppose a child of 10 years killed his father with a gun in the shadow of immaturity, he will not be liable if he has not attained maturity.

Case law for Section 83

In [*Krishna Bhagwan v. State of Bihar*](#), Patna High Court upheld that if a child who is accused of an offence during the trial, has attained the age of seven years or at the time of decision the child has attained the age of seven years can be convicted if he has the understanding and knowledge of the offence committed by him.

Insanity – Section 84

Act of a person of unsound mind. Nothing is an offence which is done by a person who at that time of performing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

- Example: A, who is insane or unsound, killed B with a knife, thinking it to be a fun game, will not be liable for B's death as he was not aware of the nature of act and law. he was incapable of thinking judiciously.

Case law for Section 84

In *Ashiruddin Ahmed vs. State*, the accused Ashiruddin was commanded by someone in paradise to sacrifice his own son, aged 4 years. Next morning he took his son to a Mosque and killed him and then went straight to his uncle, but finding a chowkidar, took the uncle nearby a tank and told him the story.

The Supreme Court opined that the accused can claim the defence as even though he knew the nature of the act, he did not know what was wrong.

Intoxication – Section 85 and 86

Section 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 involuntarily without his will or knowledge.

- Example: A drank alcohol given by a friend thinking it to be a cold drink. He became intoxicated and hit a person on driving his car back home. He will not be liable as alcohol was administered to him without his will and knowledge.

Section 86: Offence requiring a particular intent or knowledge committed by one who is intoxicated. This applies to cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in 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.

- Example: A person intoxicated, stabs another person under influence of alcohol which was administered to him in the party against his knowledge or will, will not be liable. But if that person had stabbed that person under voluntary intoxication, then he will be liable.

Case law for Section 86

In [Babu Sadashiv Jadhav case](#), the accused was drunk and fought with the wife. He poured kerosene and set her on fire and started extinguishing the fire. The court held that he intended to cause bodily injury which was likely to cause death under section 299(20) and sentenced him under section 304, Part I of code).

Justifiable Acts

A justified act is one which would have been wrongful under normal conditions but the circumstances under which the act was committed makes it tolerable and acceptable.

Act of Judge and Act performed in pursuance of an order under Section 77 and 78

Section 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.

- Example: Giving Capital Punishment to Ajmal Kasab was done under the judicial powers of judges.

Section 78: Act done pursuant to the Judgement or order of the 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 no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction.

- Example: A judge passing an order of giving lifetime jail punishment, believing in good faith that the court has jurisdiction, will not be liable.

Necessity under 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 is done without any criminal

intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

- Example: A Captain of a ship turned the direction of the ship of 100 people in order to save their lives, but harming the life of 30 people of a small boat, without any intention or negligence or fault on his part. He will not be liable because necessity is a condition in which a person causes small harm to avoid great harm.

Case law for Section 81

In [*Bishambher v. Roomal*](#), 1950, the complainant Bishambhara had molested a girl Nathia. Khacheru, Mansukh, and Nathu were accused related to father of the girl. The Chamars were agitated and determined to punish Bishambher. Rumal Singh, Fateh Singh, and Balwant Singh intervened and tried to bring a settlement. They collected a panchayat and the complainant's back was blackened and given shoe beating. It was found by the court that accused had intervened in good faith but the panchayat was having no authority to take such a step.

Consent under Section 87 – 89 and Section 92

Section 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 which is likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or to be intended by the doer to cause, to any person, above 18 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 that risk of harm.

- Example: A and E agreed to fence each other for enjoyment. This agreement implies the consent of each other to suffer harm which, in the course of such fencing, may be caused without foul play and if A while playing fairly hurts E, then A, has committed no offence.

Case law for Section 87

In *Poonai Fattemah v. Emp*, the accused who professed to be a snake charmer, induced the deceased to believe him that he the power to protect him from any harm caused by the snake bite. The deceased believed him and got bitten by the snake and died. The defence of consent was rejected.

Section 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.

Case law for Section 88

In *R.P Dhanda V. Bhurelal*, the appellant, a medical doctor, performed an eye operation for cataract with patient's consent. The operation resulted in the loss of eyesight. The doctor was protected under this defence as he acted in good faith.

Section 89: Act done in good faith for the benefit of a child or insane person, by or by consent of the 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

Section 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 causes 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.

Section 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,

1. if the consent is given by a person under fear of injury, or under a misconception of fact, 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
2. 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
3. Consent of children, the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Case law for Section 90

In *Jakir Ali v. State of Assam*, it was proved beyond doubt that the accused had sexual intercourse with the victim on a false promise of marriage. The Gauhati High Court held that submission of the body by a woman under fear or misconception of fact cannot be construed as consent and so conviction of the accused under sections 376 and 417 of the Indian Penal Code was proper.

Section 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.

Communication under 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.

- Example: A doctor in good faith tells the wife that her husband has cancer and his life is in danger. The wife died of shock after hearing this. The doctor will not be liable because he communicated this news in good faith.

Duress under Section 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 done by a person compelled to do it under 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 reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

- Example: A was caught by a gang of dacoits and was under fear of instant death. He was compelled to take gun and forced to open the door of house for entrance of dacoits and harm the family. A will not be guilty of offence under duress.

Trifles under Section 95

Act causing slight harm is included under this section. 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.

Case law for Section 95

In *Mrs. Veeda Menezes v. Khan*, during the course of exchange of high tempers and abusive words between appellant's husband and the respondent, the latter threw a file of papers at the former which hit the appellant causing a scratch on the elbow. SC said that the harm caused was slight and hence, not guilty.

Private Defence under Section 96 – 106

Section 96: Things done in private defence.

Nothing is an offence in which a person harms another person in the exercise of private defence.

Section 97: Right of private defence of body and property.

Every person has a right to private defence, provided under reasonable restriction under Section 99.

1. Protecting his body or another person's body, against any offence in which there is a danger to life.
2. Protecting his or another person's movable or immovable property, against any offence like theft, robbery, mischief or criminal trespass or an attempt to commit theft, robbery, mischief or criminal trespass.

- Example: A father, in order to protect the life of daughter from the attack of a thief, shoots him in his leg. But the father will not be liable as he was protecting the life of his daughter.

Case law for Section 97

In *Akonti Bora v. State of Assam*, the Gauhati High Court held that while exercising the right of private defence of property the act of dispossession or throwing out a trespasser includes right to throw away the material objects also with which the trespass has been committed.

Section 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.

- Example: A attempts to kill Z under influence of insanity but A is not guilty. Z can exercise private defence to protect himself from A.

Section 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 color 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.
- The harm caused should be proportional to that of imminent danger or attack.

Case law for Section 99

In *Puran Singh v. State of Punjab*, the Supreme Court observed that where there is an element of invasion or aggression on the property by a person who has no right of possession, then there is obviously no room to have recourse to the public authorities and the accused has the undoubted right to resist the attack and use even force, if necessary.

Section 100: When the right of private defence of the body extends to causing death.

- Assault causing reasonable apprehension of death.
- Reasonable apprehension of grievous hurt.
- Committing rape
- Unnatural lust
- Kidnapping or abducting
- Wrongfully confining a person in which that person reasonably apprehends the assault and not able to contact public authority.
- Act of throwing or attempting to throw acid, causing apprehension in the mind that assault will cause grievous hurt.

Case law for Section 100

In *Yogendra Morarji v. state*, the SC discussed in detail the extent and limitations of the right of private defence of the body. There must be no safe or reasonable mode of escape any retreat for the person confronted with imminent peril to life or bodily harm except by inflicting death.

Section 101: When such rights extend 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.

Case law for Section 101

In *Dharmindar v. State of Himachal Pradesh*, that onus of proof to establish the right of private defence is not as onerous as that of a prosecution to prove its case. Where the facts and circumstances lead to a preponderance of probabilities in favor of the defence case it would be enough to discharge the burden to prove the case of self-defence.

Section 102: Commencement and continuance 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; it continues as long as such apprehension of danger to the body continues.¹

- Example: A, B, and C were chasing D to kill him in order to take revenge, but suddenly they saw a policeman coming from another side. They got afraid and turned back to run. But D shoots B in his leg, even when there was no imminent danger of harm. D will be liable as there was no apprehension of death or risk of danger.

Section 103: When the right of private defence of property extends to causing death.

1. Robbery;
 2. House-breaking by night;
 3. Mischief by fire committed on any building, tent or vessel, building, tent or vessel used as a human dwelling, or a place for the custody of property;
 4. Theft, mischief, or house-trespass, under such circumstances, as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.
- Example: C Attempts to stab D maliciously while committing burglary in D's house. There is a reasonable apprehension in the mind of D that C will hurt him grievously, so in order to save himself and property, C throttled D with a knife in his chest, causing Death. C will not be liable.

Case law for Section 103

In [*Mohinder Pal Jolly v. State*](#), the deceased worker and some of his colleagues were shouting slogans for demands outside the factory. Some brickbats were also thrown by them which damaged the property of the owner who fired two shots from outside his office room, one of which killed the deceased worker. The court held that it was a case of mischief and the accused will not get the defence of this section.

Section 104: When such right extends to causing harm other than death.

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

- Example: If A has committed criminal trespass in order to annoy B or hurt him, then B will have the right to harm A in proportional manner, not causing death of the person.

Case law for Section 104

In [*V.C Cheriyan v. State*](#), the three deceased along with other persons had illegally laid a road through private property of the church. A criminal case was pending against them. The three accused belonging to church put up barricades across this road. The deceased was stabbed by accused and Kerala HC held that private defence does not extend to causing the death of a person in this case.

Section 105: Commencement and continuance of the right of private defence of property.

The right of private defence of the property commences when:

- A reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues until the offender has effected his retreat with the property
- Or, either the assistance of the public authorities is obtained,
- Or, the property has been recovered.
- The right of private defence of property against robbery continues as long as the,
- Offender causes or attempts to cause to any person death or hurt

- Or, wrongful restraint
- As long as the fear of instant death or
- Instant hurt or
- Instant personal restraint continues.
- The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

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

- Example: Suppose a thief enters the house of an individual, and attempts to hurt him instantly with a knife, then that individual has the right to act in private defence and harm that thief to save life and property.

Case law for Section 105

In *Nga Pu Ke v. Emp*, paddy sheaves belonging to the accused were removed illegally by a person. Accused attacked the cartmen and that cartmen jumped off the carts and ran away leaving sheaves. The accused still chased him and attacked him leading to death. The court held him as guilty of offence.

Section 106: Right of private defence against deadly assault when there is a risk of harm to innocent person.

If in the exercise of private defence against an assault, a person causes apprehension of death, in which defender has no choice but harming an innocent person, his right will extend to that running of risk. 4

- Example: C is attacked by a mob who attempts to murder him. He cannot exercise his right to private defence without firing on the mob.

In order to save himself, he is compelled to hurt innocent children while firing so C committed no offence as he exercised his right.

Conclusion

So these were the general exceptions which are available to the accused to escape liability or save himself from the offence committed. It may extend to even causing the death of a person or harm an innocent person too depending upon the circumstances. The accused should also have the right to be heard, keeping in view the democratic character of our nation. That's why these exceptions are provided so as to represent oneself in the court of law.