

General Exceptions - IPC/ASR

- Covered u/s 76-106 of IPC
- Defences that can be pleaded by a person who is accused of an offence
- **Allow the accused to avoid criminal responsibility**
- Burden of proof is on the accused, as per Sec 105 of the Evidence Act
- **Defences can be dealt under 2 heads**
 - (i) excusable acts**
 - (ii) justifiable acts**

Excusable acts

- The accused will not be liable for an offence because he *lacks the necessary mens rea* for the offence *due to existence of certain circumstances*.
- These circumstances are:
 - Mistake of fact (Sec 76, 79)
 - Incapacity (Sec 82-86)
 - Infancy (Sec 82-83)
 - Insanity (Sec 84)
 - Intoxication (Sec 85-86)
 - Accident (Sec 80)

Justifiable acts

Here the accused will not be liable for an offence

because of the existence of certain circumstances
which justify him in doing the act although he **knows**
that it is likely to cause harm.

These circumstances are –

- Judicial acts (Sec 77-78)
- Necessity (Sec 81)
- Consent (Sec 87-92)
- Communication in good faith (Sec 93)
- Compulsion (Sec 94)
- Trifles (Sec 95)
- Private Defence (Sec 96-106)

Mistake of fact

- A person commits an offence
- but under misconception of fact (not law)
- believes in good faith
- was commanded by law to do it (Sec 76)
- or justified by law to do it (Sec 79)
- **Illustration =A**, the SHO of Dehradun, is asked by the Court of Mussoorie to execute an arrest warrant against **X**, a resident of Dehradun for an offence committed in Chamoli. **A** executes the warrant and arrests **X**. Later he discovers that the Mussoorie Court had no jurisdiction in the case. Has A committed an offence?

Justified by law to do it (Sec 79)

- **Illustration** =The accused, a police constable, saw the complainant early one morning carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen, he questioned the complainant. The complainant gave answers that were not satisfactory and refused to allow the constable to inspect the cloth. A scuffle ensued. The complainant was arrested by the constable but released by the Inspector of Police. The complainant prosecuted the accused for wrongful restraint and confinement.
- Q. Can the constable plead the defence of mistake of fact?

Justified by law to do it (Sec 79)

- 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.

If it turns out that Z was acting in self-defence, has A committed an offence?

Incapacity

The acts of the following individuals are not considered as offences due to the presumption that they have no *mens rea*

Infancy

- Act of child below 7 years (Sec 82)
- Act of child above 7 but below 12 years but of immature understanding (Sec 83)

Insanity

- Act of person of unsound mind (Sec 84)

Intoxication

- Act of an intoxicated person
 - provided that the thing that intoxicated him was administered
 - **without his knowledge or against his will**
 - Man voluntarily intoxicated is deemed to have the same knowledge but not the same intention, as if he was sober
- ability to understand its consequences
- knows the circumstances in which the offence was committed

Accident (S.80)

- That the act was done by misfortune or accident
- without criminal intention
- it was the doing of a lawful act
- in a lawful manner
- by lawful means
- with proper care and caution

Illustration = While **A** is at work with an axe; the head of the axe flies off and kills a man standing nearby.

Q. Would **A** be liable for culpable homicide or can he plead the defence of accident?

Judicial acts and Necessity

- **Judicial acts** (Sec 77-78)
 - Act of a judge when acting judicially (Sec 77)
 - Act done pursuant to a judgment or Court order (Sec 78)
- **Necessity** (Sec 81)
 - Act likely to cause harm
 - but done without criminal intent
 - to prevent other harm

Illustration=A, in great fire, pulls down houses in order to prevent the conflagration from spreading.

Has A committed any offence?

Consent

- (i) - Act **not intended and not known** (Sec 87)
 - **to cause death or grievous hurt**
 - done by consent
 - is not an offence

- (ii) - Act **not intended to cause death**
 - done by consent of person or guardian (insane/
minor)
 - in good faith
 - for the benefit of person/ minor / insane person
 - is not an offence

Illustration =A and **Z** agree to fence with each other for amusement. **A** while playing fairly, hurts **Z**.

Q. Is he guilty of causing hurt?

Illustration =A, a qualified surgeon, knowing that a particular operation is likely to cause the death of **Z**, who is suffering under severe pain, 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. As a consequence of the operation, **Z** dies.

Q. Can **A** claim the benefit of Sec. 88 IPC or will he be liable for culpable homicide?

Without Consent

(iv) Act done in good faith (Sec 92)

- for the benefit of the person
- even though without his consent
- is not an offence

Illustration

A is in a house which is on fire, with **Z** as a child. People below hold out a blanket. **A** drops the child from the housetop, 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. The child **Z** dies as a consequence of the fall.

Q. Is **A** liable for causing the death of the child since there was no consent of **Z**'s guardian?

Communication in good faith (Sec 93)

- Communication - made in good faith
 - for the benefit of a person - even if it causes harm to a person - is not an offence

Illustration = A, a surgeon informs **B**, the patient, that he is suffering from an incurable disease and that in his opinion, he cannot live but they will start treatment immediately. **B** dies of shock.

Q. Is the doctor guilty of an offence?

Compulsion

- A person is excused (Sec 94)
 - for consequences of any act
 - except murder and offence against the State punishable with death
 - if he does them under threat of instant death

Illustration ==A, a blacksmith, is forced by a gang of dacoits, under threat of death to accompany them for a dacoity. **A** uses his tools to break open the door of the home for the dacoits to enter and commit the offence.

Q. Can **A** be liable for dacoity?

Private Defence

- Covered under Sec 96 to 106
- Nothing is an offence which is done in exercise of the right of private defence (Sec 96)
- The right is available to defend (Sec 97) –
 - own body and body of another person, against any offence affecting human body
 - property, whether movable or immovable, of himself or any other person against theft, mischief, robbery, criminal trespass and attempts to commit these offences
- The right is defensive and not retributive or punitive, i.e. the injury inflicted by the person exercising the right, should be commensurate with the injury with which he is threatened (Sec 99)

Private Defence

- Right of private defence of body extends to causing death in the following cases (Sec 100):
- Assault, which reasonably causes apprehension of
 - **death**
 - **grievous hurt**
 - **rape**
 - **gratifying unnatural lust**
 - **kidnapping or abduction**
 - **wrongful confinement where the persons apprehends that he will not have recourse to public authorities for release**
 - **throwing or attempting to throw acid which causes reasonable apprehension of grievous hurt**

- **Illustration** =A communal riot breaks out between Sindhi refugees and local Muslims in a locality and spreads to **A's** locality. People start closing their shops. The mob approaches **A's** locality and breaks into a portion of **A's** brother's shop and loots it. The crowd starts beating the doors of **A's** shop with lathis. **A** fires a couple of shots and kills one and injures three persons of the mob.
- Q. In your opinion, would **A** be entitled to the benefit of the right of private defence?
- Q. Has **A** exceeded his right of private defence and caused more harm than is necessary?

Private Defence of Property

- Right of private defence of property extends to causing death in the following cases (Sec 103):
 - robbery
 - house-breaking by night
 - mischief by fire
 - theft, mischief or house trespass where there is reasonable apprehension of death or grievous hurt

Illustration

A is attacked by a mob, who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob.

Young children have also mingled with the mob. He fires in self-defence and one of the children is killed.

Q. Has he exceeded his right of private defence and caused death?

Private Defence not available - when?

Section 99

- No right of private defence is available against an act which is not itself an offence under the Code
- No right of private defence is available against acts done by or on the directions of a public servant acting in good faith
- No right of private defence where there is right to have recourse to the protection of public authorities

Heinous offences by children

- Special provisions for heinous offences committed by children above the age of sixteen years
- Under Section 15, special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years. The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a Children's Court (Court of Session) after conducting preliminary assessment.
- Thus, also attracts a minimum 7 years of imprisonment. Also, no child under the Juvenile Justice (Care & Protection of Children) Act, 2015 can be awarded a Death Penalty & Life Imprisonment.

PROBLEMS

1. M, a male of 25 years of age performs sexual intercourse with W, an unmarried women of 20 years of age with her consent. While they were in a compromising position, F the father of W sees them. Out of anger, F with a sharp weapon injures M and causes grievous hurt .Can F take the plea of private defence on prosecution.
2. A passerby, sees B beating his wife BW mercilessly. A tries to save BW from B and in the process a scuffle ensues and A causes grievous hurt to B. Can A take the plea of private defence on prosecution.
3. Right of PD of body extends to causing death in the case of assault which reasonably causes an apprehension of grievous hurt(True/False)

4. According to Sec 95, the law takes no account of trifles. This section covers not only accidental but also deliberate acts which cause harm(Tru/Fals)
5. A 13 year old child is treated as an adult for the purpose of fixing criminal liability (True/False)
6. If a person is intoxicated without his knowledge or against his will, he can plead the defence of intoxication (True/False)
7. Act intended and known to cause death or grievous hurt done by consent of the victim is not an offence(True/False)