

Short Notes on General Exceptions IPC: An Overview

#GGSIPU_Syllabus



GENERAL EXCEPTIONS

INTRODUCTION

GENERAL PRINCIPLE OF LAW:

A person is presumed to know the consequence of her/his act and is therefore held liable for it.

However, there are certain exceptions to this general rule, wherein a person may be excused from criminal liability.

General exceptions extend from Section 76 to Section 106, IPC, 1860:

Criminal law outlines several punishments for the various crimes committed by a person. However, a person may not be held liable if the act committed by her/him falls under the category of general exceptions.

General exceptions are further classified into:

1. Excusable Acts: Refer to the acts where criminal knowledge and intent are absent. Eg: Mistake of fact (defined U/S 76,79, IPC,1860) Accident (defined U/S 80, IPC, 1860) Infancy (defined U/S 82, 83, IPC, 1860) Insanity (defined U/S 84, IPC, 1860) Intoxication (defined U/S 85, 86, IPC, 1860)

2. Justified Acts:

Refer to those acts where knowledge of the nature of act is there. However, malafide intention is absent. Eg: Judicial act (defined U/S 77, 78, IPC, 1860) Necessity (defined U/S 81, IPC, 1860) Consent (defined U/S 87 TO 92, IPC, 1860) Good faith (defined U/S 53 & 93, IPC, 1860)

Private defense (defined U/S 96-106, IPC, 1860)

GENERAL EXCEPTIONS AT A GLANCE

Mistake:

Defined U/S 76 and 79, IPC, 1860

These defenses exclude a person from criminal liability when s/he is ignorant of the existence of the relevant fact/information or have mistaken them to commit a wrongful act in good faith. (Sentence formation can be better, a bit confusing)

Illustration

A person A is burning leaves in his lawn. Another person B mistakes it as fire and enters to A's property to calm the fire.

Here, B is not liable for trespassing in A's property as the B's intentions were made in good faith.

ESSENTIAL ELEMENTS OF MISTAKE AS A DEFENCE

1. Mistake of fact:

The mistake of fact must be reasonable and there should not be any mistake of law.

Every person is expected to know the rule/law of land whether a citizen OR a foreigner

Example: Driving below 18 is an offence and there is no excuse for the same. No person can say s/he was not aware about it.

This has been derived from a legal maxim

"Ignorantia Facit Excuset Ignorantia Juris Non Excuset"

2. There should not be any malafide intention behind.

3. Act must be justified in the eyes of law.

4. Act should be done in good faith.

Section 76, IPC, 1860: Act done by a person bound, or by mistake of fact believing himself being bound, by law

It excuses a person from criminal liability, who, in good faith commits an act which s/he presumes that s/he is bounded by law to do such an act.

Person believes that s/he is under legal obligation to do such an act. As if law would have expected him to do so.

Example: If A assumed B to be a criminal and convicted him inside his house until police came. However, B wasn't involved in any wrongful act. In this case, A will not be held liable as he thought it was his legal duty as a responsible citizen. This was a mistake of fact on A's part here.

Ingredients:

1. Act committed by the person under the influence of mistake of fact and not mistake of law.
2. Act done with due care and attention and is done in good faith.
3. While performing the act, the person believes that s/he is bounded by law to do the same.

Case Law:

Gopalai Kailaiya vs. State (1923)

In this case the police had a warrant against a person. However, at the time of arrest, he arrested the wrong person. The arrested person filed a complaint. However, the police officer was not held liable as this was the case of mistake of fact and the police officer presumed that he was bound to do so.

Section 79, IPC, 1860: Act done by a person justified, or by mistake of fact believing himself justified, by law.

It excuses a person from criminal liability, if the act done by her/him was due to mistake of fact and was done with good faith and the person finds the act done by her/him justified in the eyes of law.

Illustration

A person "A" on seeing smoke coming from a person "B" s' lawn presumes that there is a potential fire in B's lawn and hence enters inside without seeking permission to quench the fire. Later, after entering he sees the smoke was not because of fire but because B was preparing for barbeque in his lawn.

Here, A would not be held liable as his intention to trespass was not malafide.

Ingredients:

1. Act shall be committed in good faith.
2. Due care shall be taken.
3. There shall be a mistake of fact and not any mistake of law.
4. The act committed shall be justified in the eyes of law.

(Write the clear difference between this and the preceding section to clarify things to the reader)

Section 76, IPC, 1860, deals with those cases where a person commits mistake in good faith and s/he is ignorant of a fact. On the other hand, in section 79, IPC, 1860, a person mistakes her/himself to be bounded by law to do an act in good faith.

Case Law:

State of Orissa vs Khora Ghasi

In this case the accused was an agriculturalist. It was presumed by him that an animal was attacking his field and could be a potential threat for him. Therefore, in order to protect himself and his field he fired towards the direction where he thought animal could be in. However, instead of an animal he had fired a human.

The accused was not held liable as it was a mistake of fact and not mistake of law and there was no intention to cause harm to the person been shot.

Judicial Acts:

It is defined U/S 77 and 78, IPC, 1860

Section 77: Act of judge when acting judicially.

It states nothing is an offence done by a judge when acting judicially in the color of his duty or in good faith, he believes the power to him to do so is given by law.

Illustration

Giving capital punishment to a wrongdoer is in the power of judges.

Section 78: Act done in pursuant to the judgement or order of court.

It states nothing is an offence which is done on the directions or orders of court.

Illustration

If judge has sentenced a wrongdoer with life imprisonment, in pursuance of that decree of court when the police puts the wrongdoer behind bars and doesn't let him go, then the police isn't liable for wrongful confinement as it is following the orders of court.

Accident:

Defined U/S 80, IPC, 1860

Section 80: Accident in doing a lawful act.

Nothing is an offence if committed due to an accident or misfortune, without any criminal intention and knowledge, while doing a lawful act in a lawful manner, where due care is taken.

Meaning -: An unintentional and an unexpected act.

There is no criminal liability for an act that is caused by an accident.

Illustration:

A person "A" works in a mine. He is working with a hatchet, which has no defect in it. However, suddenly the head of the hatchet flies and hits on the head of a man, resulting death of the man.

However, A will not be held liable for his act as he had no mala fide intent and there was no negligence from his side. (Doctrine of Proximity)

Ingredients of Accident:

1. An act due to misfortune.
2. Act should be unintentional in nature.
3. It should not be unlawful in nature.
4. Act should be done in a lawful manner.
5. Act should be done with due care and caution.

Note: Accident from an illegally possessed/unlicensed gun is also excusable (when there is no mala fide intention and knowledge behind the same).

Judgment given by Nagpur High Court: (Case law)

Shooting by an unlicensed gun cannot deprive anyone from one right to this defense.

Case Law:

State of Orissa vs Khora Ghasi

In this case the accused was an agricultural. It was presumed by him that an animal was attacking his field and could be a potential threat for him. Therefore, in order to protect himself and his field he fired towards the direction where he thought animal could be in. However, instead of an animal he had fired a human.

The accused was not held liable as it was an accident. Neither he had knowledge of the person being there nor did he have an intention of killing him.

Necessity:

It is defined U/S 81, IPC, 1860. It refers to an act which is likely to cause harm without any criminal intention behind.

Section 81: Act likely to cause harm, but done without criminal intent, and to prevent other harm.

It states nothing is an offence merely by its reason of being done. If it is being done with the knowledge that it is likely to cause harm and is being done in good faith or for the purpose of prevention of a greater harm.

Illustration:

In case of fire, if a person pulls down a hut in order to prevent other to protect other huts from catching fire. In this case the person will not be held liable for causing harm to hut, despite knowing the nature of his act because the act done by him was in good faith.

Ingredients:

1. Circumstances should compel to do the act.
2. Wrongdoer should not have a criminal intent.
3. The intention behind performing the act should be to prevent a greater harm.
4. Act must be justified under the circumstances.
5. Act must be done in good faith.

It is based on maxim Jus Necessitates which states that a person has a right to do what is required for which no legal punishment will be given which is explained in maxim Necessitas Non Habe Legum, which says that necessity knows no laws.

However, a person cannot kill another for self-preservation. This was established in Queen vs Dudley and Stephens. In this case, Dudley and Stephens were two sea men, along with them was a 17yr old boy. Their boat sank, however, somehow they managed to float on a wooden plank. On 8th day, in order to survive they killed the boy and ate him. On 12th day they were rescued from there. They were later prosecuted for murder. Their plea for self-preservation was rejected.

After this case following principles were laid:

1. Self-preservation is not an absolute necessity.
2. No person has right to take another person's life in order to sustain one's own.
3. There is no necessity that justified homicide.

Infancy:

This general exception deals with children, specifically.

It is defined U/S 82 and 83, IPC, 1860.

Section 82: Act of a child under seven years of age.

It states that nothing is an offence where act is done by a child under the age of seven years.

It is based upon principle of maxim *DoliIncapax*, referring to absolute incapacity to commit a crime. It states that the person is incapable of forming intent to commit a crime, especially by the reason of age.

In India there is a presumption of law which states that a child below seven years of age has no discretion to distinguish between right and wrong. Thus, no criminal liability on the child below seven arises.

Case Law:

Marsh vs Loader

In this case, the defendant caught a child while stealing a piece of wood from his premises. He gave the child in police's custody. However, child was below the age of seven. Hence, he was discharged.

Note: If anyone abets a child to commit an offence and the child does so. In that case, abettor is liable solely as the child is incapable of distinguishing between right and wrong.

Section 83: Act of a child above seven and under twelve of immature understanding.

This section states that nothing is an offence which is done by a child above seven and less than twelve years of age only if child belonging to this age group has not attained sufficient maturity of understanding the nature and consequence of his act.

If it is proven that the child has attained sufficient maturity to understand the nature and consequence of his act then the criminal liability arises.

This is based on maxim *MalitiaSuppletAetatem*.

Case Law:

Abdul Sattar's Case

The accused was under twelve years of age. The accused broke the lock of complainant's shop and stole some food items. The boy was held liable as the act was planned. Boy also had the intention to do so and he also understood the nature of the act done by him.

This shows that boy had developed sufficient maturity of understanding the nature of his act and hence was held liable

To distinguish whether the defense is applicable:

In a case, a girl under the age of 12 had stolen a watch. She hid it and sold it later in exchange of money. She was held liable as she was mature enough to understand the nature and consequence of her act.

On the other hand, there was a girl below 12 years of age. She had cut the head of her brother and thought her mother would be surprised and then would fix it. Here, the girl was incapable of understanding the nature and consequences of her act. Hence, she was relieved from the criminal liability.

Insanity:

It is defined U/S 84, IPC, 1860

Section 84: Act of a person of unsound mind.

Nothing is an offence which is done by a person, who at the time of doing the act, by reason of unsoundness of mind, is incapable of knowing the nature of the act.

It covers an important maxim Actus Non Facit Mens Sit Rea, which means that an act does not constitute guilt unless done with guilty mind or intention. In order to constitute crime, intention and action are needed together.

Essentials of Insanity

1. Accused should be of unsound mind.
2. He should be suffering from unsoundness of mind while performing the act.
3. He should not have knowledge of his act.
4. He should not be able to understand consequences of his act.

The defense of insanity is also based on Doli Incapax as the accused is presumed to be incapable of committing crime.

Case Law:

Bikhari vs State of U.P

In this case the accused was working in field. Few months before the incident took place, the accused had threatened to kill the family of a deceased person. On the day of an event in the village, there were several people around. However, the accused chose to kill the children of the deceased.

This shows that he had both, intention and knowledge of his act and thus was held liable for his act.

Intoxication:

It basically refers to a state wherein a person becomes incapable of normal speech, thought or actions because of ingestion of undue amount of alcohol.

IPC, 1860, interestingly provides the defense against the same under Section 85 and Section 86 Of IPC, 1860.

Section 85: Act of a person incapable of judgment by reason of intoxication caused against his will.

It states that nothing is an offence done by a person, who at the time of doing the act was of intoxicated without his will.

Involuntary intoxication is the most essential element of this defense as voluntary intoxication is not an excuse for commission of crime.

Principle of this defense:

It is presumed that intoxication is almost like insanity as the intoxicated person does not understand the basic things. The cognition of an intoxicated person is temporarily impaired.

Hence, s/he is unable to understand the consequences of her/his act.

However, this defense is only applicable when the intoxication is involuntary in nature.

I.e: the person was intoxicated against will or by fraud or was tricked to do same or was not aware about the same.

As in all such cases the person may not have acted as per her/his accord and therefore is not responsible for the consequences of the act.

Ingredients of involuntary intoxication:

1. Incapability of knowing the nature of act.
2. The act performed should be wrong/contrary to law.
3. Intoxication must be against will/knowledge.

Section 86: Offence requiring a particular intent or knowledge committed by one who is intoxicated

It states that nothing is an offence unless done with a particular knowledge or intent.

In case of voluntary intoxication, a person who does the act shall be held liable as if he would have committed, if he was not intoxicated.

If a person takes voluntary intoxication then he will not have benefit of this defense.

Case Law:

Mirza Ghani Baig vs State of Andrapradesh

Accused despite being intoxicated was persecuted as he had taken voluntary intoxication.

Consent

Sections 87 to 92, IPC, 1860, explain consent.

The term consent refers to, when a person willfully agrees for an injury/harm.

- Section 90, IPC, 1860, brings us closer to term consent.
- Section 90, IPC, 1860: Consent known to be given under fear or misconception.

It states that a consent due to fear of injury, coercion or misconception is invalid.

A valid consent is 'free consent'.

Free consent is known to be when it is made without any fear or apprehension and the person has complete knowledge about the act/event that has occurred/will occur and there is nothing unknown or misrepresented about the same.

Consent of an unsound person and consent of a child below 12 years of age is invalid as they are capable of understanding the nature of act. On their behalf, their guardian(s) give consent.

Types of consent:

There are two types of consent:-

1. Expressed consent: In this the person gives assent in an oral or written manner in order to convey his willingness.
2. Implied consent: In this the person explicitly doesn't mention his assent. However, the act performed by the person shows his assent

Example: Buying ticket for watching a match in stadium, there are chances that the person who went to watch match may get hit by the ball during the match.

Here when the person buys ticket for match and sits in the stands, shows that he is doing that willingly and knows that he might be subjected to injury during the match. However, yet he decided to indulge in that activity shows his agreement in the participation of event as he knows the risk involved.

This refers to implied consent given by the person.

Section 87: Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

It states that nothing is an offence which is not intended to cause death or grievous hurt or death and which is unknown by the doer to be likely to cause grievous hurt or injury, if done by the consent of the person.

Illustration:

Person "A" and person "B" participate in a boxing competition. A gets hurt grievously hurt by B.

In this case, B will not be held liable to cause injury to A as A had given voluntary assent for the same and it was known to A.

This is based on principle of Volenti Non Fit Injuria, which states that a person voluntarily gives assent for harm/injury.

Section 88, IPC, 1860: Act not intended to cause death, done by consent in good faith for person's benefit.

It states that nothing is an offence which is not intended to cause death by doer where harm is intended, if done in good faith for the benefit of the person.

This may involve grievous hurt to be caused in the act.

Illustration:

Surgery as it requires cutting, stitching.

This section is generally for the medical purpose.

Section 89, IPC, 1860: Act done in good faith for benefit of child or insane person, by or by consent of guardian.

It states that nothing is an offence done in good faith or benefit of a child below the age of 12 years or an insane person by the consent of their guardian.

The consent maybe expressed or implied.

Illustration:

In case a child has to undergo a surgery, the parents or legal guardian of the child gives consent to the doctor on behalf of child.

There are some provisos (provisions) to be taken care off:

1. This exception is not applicable if an act is being done to cause death.
2. It is inapplicable if a person knows the act may cause death. However, is applicable if the purpose of act is to prevent a greater harm of grievous hurt.
3. It is inapplicable if the act is voluntarily causing grievous hurt or attempt to cause

grievous hurt, unless it is for the purpose of prevention of death or grievous hurt.

4. This exception shall not extend to abetment of any offence.

The protection under this section is available only when the act is being done in good faith for the benefit of a child below 12 years or unsound mind.

Section 90, IPC, 1860: Consent known to be given under fear or misconception.

It states that a consent due to fear of injury, coercion or misconception is invalid.

A valid consent is 'free consent'.

Free consent is known to be when it is made without any fear or apprehension and the person has complete knowledge about the act/event that has occurred/will occur and there is nothing unknown or misrepresented about the same.

Consent of an unsound person and consent of a child below 12 years of age is invalid as they are capable of understanding the nature of act. On their behalf, their guardian(s) give consent.

Section 91: Exclusion of acts which are offences independently of harm caused.

This section excludes the acts which are offences independently. Consent for such acts in itself is an offence.

Sections 87, 88, 89, IPC, 1860, do not extend to acts which are offences independently.

Illustration:

Miscarriage after three months of pregnancy is an offence as the egg starts formulating into a human being.

Even if the termination of pregnancy after three months is made by the will of mother, it is an offence unless there is any medical compulsion to do so.

The consent for unlawful acts is invalid.

Section 92: Act done in good faith for benefit of a person without consent.

It says nothing is an offence by reason of harm which is caused to a person in good faith for the benefit of the person. Even without person's consent due to circumstances.

le: The person may not be in a state of giving the consent or guardian of the person is unavailable during that time.

Illustration:

In case of road accident, a person was hospitalized and his family members were not there while he was taken to the hospital. In order to save the person, doctor required to perform a surgery which required the consent.

In this situation, neither the person is in state to give consent nor are his family members available. Hence, doctor in good faith (to save life of the aggrieved) performed the surgery for his benefit.

Hence, doctor will not be held liable.

There are some provisos (provisions) to be taken care off:

1. This exception is not applicable if an act is being done to cause death.
2. It is inapplicable if a person knows the act may cause death. However, is applicable if the purpose of act is to prevent a greater harm of grievous hurt.
3. It is inapplicable if the act is voluntarily causing grievous hurt or attempt to cause grievous hurt, unless it is for the purpose of prevention of death or grievous hurt.
4. This exception shall not extend to abetment of any offence.

Communication Made In Good Faith:

Section 52, IPC, 1860, defines good faith.

It states that if an act is being done with due care for a good cause or benefit of another then it is not an offence.

Section 93: Communication made in good faith

It states that no communication is an offence which is made in good faith by the reason of harm.

Illustration

A doctor communicating his patient about a surgery which may result death. Here the surgery is vital for patient's treatment. If the patient after knowing about death goes into state of shock then doctor will not be held case liable. As communication made by doctor was in good faith and before undergoing treatment, it was doctor's duty to aware patient about all the risks involved.

Section 94: Act to which a person is compelled by threats.

In this section it is said that nothing is an offence done by a person who is compelled to do a wrongful act by fear of threats, which is accompanied by reasonable apprehension of instant death to the person who is performing the act under compulsion at that time.

Illustration

A person 'A', who is seized by goons and is under apprehension of instant death, he is forced to snatch money from a person 'B' will not be held liable for the same.

This defense excludes murder and offenses against state.

Provided: The person didn't accord himself in the situation where he became a subject to such constraints.

Illustration

A person 'C', who by his accord joins a group of dacoits and is under apprehension of threat/instant death, commits an offense will not be given benefit of this defense.

Essentials of section 94, IPC, 1860

1. Compelled to do an act against will.
2. There must be apprehension of instant death.
3. Person shall not join any such group or participate in any such event by his own accord where he may be subjected to such threat or apprehension of instant death.
4. No matter what may the circumstances be, person shall not commit murder or any offense against the state.
5. Threat or apprehension of instant death shall be present during the time of commission of the act.

Section 95: Act causing slight harm

This section states that nothing is an offense which causes slight harm.

It is based on maxim De Minimis Non Curat Lex meaning law doesn't deal with trifles

This section is only applicable when the harm caused is so slight that a person of ordinary sense and temper would not complain for the same.

Illustration

Small injuries like a scratch or a bruise.

Case law:

Mrs. Veeda vs Khan

In this case during the exchange of high tempers and abusive words between the appellant's husband and first respondent, the latter threw a file of papers at the former which hit the appellant causing a scratch on elbow.

The court applied this section after observing nature of the injury, position of the parties, intention and knowledge by which the act was done.

Private defense:

Sections 96 to 106, IPC, 1860, cover private defense.

Types of private defense:

There are two types of private defense

1. Private defense against person (from sections 96 to 102, and 106, IPC, 1860)
2. Private defense against property (from sections 103 to 105, IPC, 1860)

INTRODUCTION

These sections contain provisions which give authority to a person to use a necessary force against the wrong doer for the protection of one's own body or property.

These provisions are available to the aggrieved when the immediate help from the state machinery is unavailable.

Nature of private defense:

1. It is purely preventive and not punitive.
2. The danger of suffering from an injury/harm must be real.
3. It must be subjected to the limitations mentioned U/S 99, IPC, 1860.

The most essential element of private defense is that it arises from the necessity of self-preservation.

Section 96, IPC, 1860: Things done in private defense.

It states that nothing is an offense which is done under the exercise of right of private defense, in order to protect oneself from harm/injury.

The right to private defense is not absolute. It has certain restrictions mentioned U/S 99, IPC, 1860.

A person while exercising right of private defense can only inflict reasonable amount of harm.

Illustration:

A slapped B and then pushed him, in order to protect himself from A, B slapped A. However, B cannot kill A for merely slapping and pushing him.

There is no right to private defense in case of a free fight (two/more people fighting because of any conflict of interest)

There is no right to private defense if there are no reasonable grounds to exercise the same.

Section 97: Right to private defense of the body and property.

It states that every person has a right to private defense of his body and property.

Firstly, it enables every person to defend oneself and others against an offence affecting human body.

Secondly, it enables a person to protect one's property, whether movable or immovable.

However, these defenses should be in compliance with the restrictions mentioned U/S 99, IPC, 1860.

This section also distinguishes between private defense against body and against property.

NOTE: Right of private defense is also available to stranger.

le: Anyone may protect other person or other person's property. One doesn't need to be related to someone in order to protect her/him.

Section 98: Right to private defense against the act of a person of unsound mind etc.

It provides the right to private defense against person of unsound mind, child, intoxicated person etc.

This section enables an individual to exercise the right of private defense against offenses which may not be considered as offenses due to insanity, intoxication, infancy, mistake of fact etc.

As studied in previous sections that individuals may not be held liable for offenses if committed by them due to reason of mistake of fact, infancy, insanity, intoxication etc.

in this case wrong doer may get a clean chit and the act done by him may not be consider as an offense, however, this doesn't deprive the aggrieved from exercising his right to private defense in order to protect himself.

Illustration:

A person "A" attempts killing person "B" due to reason of insanity. Keeping section 84, IPC, 1860, A will not be held liable. However, B has right to protect himself from A.

A's right to dense of insanity will not take away B's right to private defense.

Every individual has right to protect oneself under right to private defense.

Right to private defense doesn't distinguish on the basis of unsoundness, age, mistake etc.

Section 99: Acts against which there is no right of private defense.

It mentions the acts against which there is no right to private defense available.

The acts against which there is no right to private defense are:

1. There is no right to private defense against the act performed by a public servant, which doesn't reasonably cause apprehension of death or grievous hurt under the color of his duty in good faith.
2. There is no right of private defense against the act done/attempted by a direction of public servant in good faith, under the color of his duty.

Example: A confines B till the time police reaches to the place, presuming B to be a criminal on the order of police then A will not be held liable for wrongful confinement as he followed the instructions of a public servant and B cannot harm A, under the veil of private defense.

3. There is no right to private defense in cases where a person has a chance to seek help from a public servant.

4. Right to private defense is available only to a reasonable extent.

Example: A slapped B and then pushed him, in order to protect himself from A, B slapped A. However, B cannot kill A for merely slapping and pushing him.

EXPLANATION 1:

A person isn't deprived from the right of private defense if he doesn't know about the act is being done by a public servant.

EXPLANATION 2:

A person isn't deprived from the right of private defense if he doesn't know about the act is being done on the directions of public servant.

Section 100: When the right of private defense of body extends to cause death.

It mentions the offenses under which the right to private defense of body may extend to cause death.

The right to private defense against body may extend to cause death under following offenses:

1. In case of assault which may create apprehension of resulting into death of the aggrieved.
2. In case of assault which may create apprehension of causing grievous hurt to aggrieve.
3. In case of an assault which has intention to commit rape.
4. In case of an assault to gratify unnatural lust.
5. In case of an assault which has intention to kidnap or abduct.
6. In case of an assault where there is intention of wrongfully confining a person.
7. In case of an act of throwing or administering acid or in case of an attempt to do so.

NOTE: mere exchange of words doesn't give rise to the right of private defense. Physical act is required to exercise the right to private defense.

Section 101: When such right extends to causing harm other than death.

It states when the right to private defense against body extends to cause any other harm than death.

Offences other than those which are mentioned U/S 99, IPC, 1860, the right to private defense may extend to cause any other harm than death in case of right to private defense against body.

Section 100, IPC, 1860, lays provisions under which right to private defense against body may extend to death.

Section 102: Commencement and continuation of right to private defense of body

It talks about commencement and continuation of right to private defense against body.

A person's right to private defense begins from the very moment he finds himself under the reasonable apprehension of harm/injury/assault etc. It arises from the very moment of the threat/attempt of any such act that may result death/grievous hurt/injury/assault etc.

Person's right to private defense arises from the very moment of reasonable threat/apprehension occurs and lasts till the apprehension/threat is there.

However, once the situation of threat/apprehension is over, the person no longer can exercise his right to private defense.

Illustration:

A week ago, A had attacked B. B saw A in the market after a week, now B cannot go and attack A under the veil of private defense, claiming that he was under apprehension of A attacking him, unless A does something again.

Section 103: When the right to private defense of property extends to cause death.

It talks about the situations where right to private defense against property may extend to death.

Under following circumstances right to private defense against property can extend to death:

1. In case of robbery.
2. In case of house breaking at night
3. In case of mischief by fire committed on any building, tent, vessel that is being used as a place of human dwelling or as a place of custody of property.
4. In case of theft, mischief or house-trespass, under such circumstances, if there is reasonable apprehension of death or grievous hurt as a consequence then right to private defense may extend to death.

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

It talks about situations when right to private defense against property may extend to cause any harm other than death.

In case of any offense other than those mentioned U/S 103, IPC, 1860, a person may exercise his right to private defense causing any other harm than death after taking care of restrictions mentioned U/S 99, IPC, 1860.

Section 105: Commencement and continuation of right to private defense of property.

It talks about commencement and continuation of right to private defense against property.

A person's right to private defense begins from the very moment he finds himself under the reasonable apprehension of harm/injury to his property. It arises from the very moment of the threat/attempts of any such act that may result to harm/injury etc. to his property.

Person's right to private defense arises from the very moment of reasonable threat/apprehension occurs and lasts till the apprehension/threat is there.

However, once the situation of threat/apprehension is over, the person no longer can exercise his right to private defense.

Illustration:

A & B trespassed into C's property in order to burn it. In this case C has the right to exercise his right to private defense against property until the time A & B are there with an intention to cause harm to C's property. However, if A & B leave from there without causing any harm then C cannot exercise his right to private defense against property to cause harm to A & B under the name of private defense.

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

It talks about right to private defense against deadly assault when there's risk of harm to an innocent person.

It states that in case of an apprehension of a deadly assault a person has the right to protect oneself by exercising his right to private defense. In a situation like this if a person harms an innocent person, he shall not be held liable as that would be the need of hour.

Illustration:

A is attacked by a mob, who attempt to murder him. In order to save himself, he needs to fire the mob. In this situation, he cannot fire the mob without risking the life of innocent children mingled in mob.

In this case, if any of the innocent children die, A will not be held liable as his intention wasn't to harm them but to protect himself from the mob.