

Empowering Self-Preservation: Understanding the Right of Private Defence Under IPC

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Abstract

“I may help me until others come to rescue”

Human beings are one of the most wonderful creations on earth. God says, *I created man and woman from a single pair i.e., from Adam and Eve and neither made them into nations and tribes for the reason that they may recognize each other* (The Holy Quran), But living in coordination on the earth can never be imagined nor be easy under any law. Human beings by nature desire to rule over each other which ultimately brings the system into Might is right. To dilute that greed, the law has provided certain mechanisms whereby the interests of its citizens are secured irrespective of caste, creed, religion sex etc. Therefore, every law-abiding citizen has been bestowed with the right to protect his person and property against the aggressors which in legal parlance is called Self-help, the first rule of criminal law. This principle is incorporated in chapter four of the Indian Penal Code falling from sections 96- 106 generally known as the right of private defence or general exceptions. Section 96 excuses any act which is done in the exercise of the right of private defence (**Indian Penal Code, K.D Gaur**).

Keywords: Criminal Law, Section 96, Human beings, Religion and sex, Indian Penal Code, Self-Preservation.

Introduction

Why right of private defence is recognized?

It is the primary duty of the state to protect the life, limb and property of its subjects. But no state however resourceful it might be, will be in a position to appoint a policeman to every individual to guard his body and property. A state can never extend its help to all at all times and in all cases. In such a situation an individual to protect and defend his basic instinct of self-preservation will be urged to resort to all the possible means at his hand to protect himself and his property. He is neither expected to surrender nor to escape, but to defend and exercise so much of power as the situation requires or demands from him. He is entitled to stay and overcome the threat. He is expected to use force that is just required to counter the danger or until the state comes to his rescue. An unrestricted right to defend will inevitably result in the ***might is right*** rule and thereby will create serious law and order problems. Hence to prevent such disorder the restrictions on its exercise have been prescribed under the code. It states that there is no right of private defence against an act which does not reasonably cause the apprehension of death or grievous hurt if done or attempted to be done by a public servant in good faith and under the colour of his office or is done or attempted to be done by the direction of public servant acting in good faith and under

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colour of his office. Likewise, the right of private defence cannot be taken recourse where there is time to seek the help of public authorities. Let us take an example if X gives a threat call to Y that tomorrow I will lay you on forever. Here X has enough time (of one day) to reveal the facts of the threat before the public authorities hence X in this situation cannot take the help of private defence. Had the threat been given abruptly where he cannot have any assistance from the authorities his private defence may then even extend to the causing of death to the Y at that time if the situation so requires or if the threat arises out from section 100 (**Professor SN Mishra Indian Penal Code**) This section speaks of specific situations where the right of defence can extend even causing to the death or of any other hurt to the attacker but this section is self-controlled by the conditions itself laid down. Likewise, the right of private defence in no case extends to the inflicting of more harm than is necessary for defence. In one of the cases where two accused, having received simple injuries ran back to their house, fetched a sword and inflicted fatal blows on the head of the deceased with that sword. The court held that even assuming that the accused had inflicted simple injuries on the accused, there could be no justification for any of the accused to hit the deceased with a sword on a vital part of the body such as the head. Their acts bear a stamp of design. The right of private defence cannot therefore be availed by the accused. But where there is a reasonable apprehension of death or grievous hurt right of private defence can be embraced. A boy of twenty-one years, who was charged with murdering his father was held entitled to the right of private defence. The accused was living with his mother and father. The relations between the husband and wife were strained and his father frequently used to quarrel with his mother whom he believed to be unfaithful. On the night of the fatal incident, there was a quarrel between the accuser's father and mother. The accused's mother called out murder, murder, as the father forced her to the top of the stairs and threatened to knife her. The accused shot and killed his father, but there was no evidence to show that the father had a knife, The jury gave the verdict of not guilty because he had reasonable apprehension in respect of the death of his mother. (**Reg v. Rose**).

Hari Singh Gour observed in his criminal law: Based on the cardinal principle that it is the first duty of man to help him. It is next based on the principle that the police of the state are not ubiquitous and a person may then strike out for himself or another. But such a rule, if unqualified might encourage vendetta which would lead to social disorder. It therefore lays down the limits which must be satisfied utterly. (**P S A Pillai criminal law, 2010**)

The Supreme Court ruled that the accused who pursued the assailants running from the scene and inflicted injuries does not have the right of private defence as reasonable apprehension ceased to exist then. It is for the simple reason that after the assailants ran away from the incident there was no more reasonable apprehension of death or grievous hurt to the accused.

Bentham, in his *Principle of the Penal Code*, says the right of defence is necessary. The vigilance of Magistrates can never make up for the vigilance of each individual on his behalf. The fear of the law can never restrain bad men as the fear of the total individual resistance takes away this

right and you become in so. The right of self-defence revolves around the general adage that “Necessity knows no law” and it is the primary duty of man to first help himself. The right of self-preservation is inherent in every person but to achieve that end nothing could be done which militates against the right of another person.

The right of private defence has been recognised in the IPC starting with section 96 which states that **nothing is an offence which is done in the exercise of the right of private defence** while the remaining sections make provisions for varied forms of this right. The right provided by section 96 is not exhaustive in the sense that it has been controlled by section 99 which says that the right in no case extends to the inflicting of more harm than it is necessary for defence and forbids the application of this defence to certain circumstances which does not befit in it. However, section 100 extends the causing of death or inflicting any other harm provided there is a threat of instant death or instant grievous hurt in certain instances like Assault which may reasonably cause apprehension that death would be the consequence of such assault, an assault to commit rape, to gratify unnatural lust etc. In these situations, a person can cause the death of an assailant when there is apprehension of death or rape to his or her body. It must be kept in mind that the right of private defence is not only available to the person's own body and property but extends also to the body and property of others. For instance, when A enters his own house to which he is legally entitled, Z in good faith presumes him to be a house breaker and attacks him. Here Z under misunderstanding commits no offence but A has the same right of private defence against Z which he would have if Z were not acting under such misunderstanding or misconception. **(Section 99-100 Indian Penal Code)**

Right of Private Defence And Beyond Reasonable Doubt

It is the general principle of criminal law that where an offence is alleged to have been committed it has to be proved by the prosecution without leaving any reasonable doubt. Thus, the burden of proof lies on the prosecution to establish the guilt of the accused until then accused will be deemed innocent regardless of the seriousness of the offence. But the position changes when the accused takes recourse to general exceptions. It is very crucial here to mention section 105 of the Indian evidence to understand things in more clarity. It states that when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within the general exceptions or proviso contained in any part of the IPC is cast on him and the court must presume the absence of such circumstances. So, under section 105 burden shifts on the accused once a plea of general exception is taken by him. If the accused fails to prove his innocence, he will be held guilty. For example, A, accused of murder alleges that because of unsoundness of mind, he did not know the nature of the act or that he was wrong or contrary to the law. Now the burden of proof is on A to establish the truth of his fact that he is of unsound mind and the court will presume that A is of sound mind **(Section 84 IPC)**. A presumption will arise against the accused although he may be given the right to rebut that inference by adducing evidence to disprove such presumption and establish his innocence. This presumption is known as rebuttable presumption. The common instance of such a case is K M Nanavati's case where the court held that normally the burden of proof lies on the prosecution to prove the case beyond reasonable doubt but once the plea of general exceptions is taken the burden shifts on the accused. In the present case, the accused Nanavati alleged that he shot Ahuja in grave and sudden

provocation and the heat of the moment after he came to know about the illicit relationship of his wife with the deceased. The high court found him guilty. On an appeal to the Supreme Court by the accused, the court held that the murder was preplanned and that the defence of grave and sudden provocation does not arise in this case. Hence the murder was intentional and not in the heat of the moment. Therefore, his plea for private defence was rejected. **(Section 105 of Indian Evidence Act, 1872)**

Whether the general principle of proving the case beyond reasonable doubt equally apply to the accused with the same quantity?

Section 105 casts the burden of proving a defence or exceptions upon the accused. The law presumes such a person to be sane; it is the accused who has to prove that his case falls within the general exceptions. In **Beatty V/S Attorney General for Ireland 1961**, the accused was prosecuted for the murder of a girl by strangulating her. He had taken the defence of automatism or incapacity of forming an intention to murder. On appeal, the House of Lords confirmed the decision of the court of criminals who had found him guilty and convicted him for the murder in as much he failed to prove his defence to the satisfaction of the jury. However, where the accused takes the defence of exceptions the evidence act does not contemplate that the accused should prove his case with the same strictness and vigour but on the preponderance of probability i.e., he must sufficiently prove his case. **(Preponderance of probability)**

Reasonable apprehension

Section 99 in clear terms says that there must be reasonable apprehension of death or grievous hurt. What is reasonable apprehension court said that such apprehension must be real and not imaginary or illusionary. It must be present and immediate and not remote and distant. It is required to be judged from the subjective point of view of the accused and it cannot be subjected to microscopic and pedantic scrutiny. **(Section 99 of Indian Penal Code)**

Commencement and continuance of right of private defence

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises either 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. Similarly, private defence in respect of property commences when a reasonable apprehension of danger to the property commences in the given specific situations. What constitutes reasonable apprehension court said no straight jacket formula can be adopted rather it would depend upon the facts and circumstances of each case(**Section 102 of the Indian Penal Code)**

Guidelines in respect of the right of private defence

Darshan Singh v. State of Punjab (2010) 2 SCC 333

The Supreme Court laid down Guidelines for Right of Private Defence for Citizens. It observed that a person cannot be expected to act in a cowardly manner when confronted with an imminent

threat to life and has every right to kill the aggressor in self-defence. While acquitting a person of murder, the court said that by enacting Section 96 to 106 of the IPC, the Legislature intended to arouse and encourage the spirit of self-defence amongst the citizens, when faced with grave danger. **“The law does not require a law-abiding citizen to behave like a coward when confronted with an imminent unlawful aggression. As repeatedly observed by this court, there is nothing more degrading to the human spirit than to run away in the face of danger. Right of private defence is thus designed to serve a social purpose and deserves to be fostered within the prescribed limit”**

The Court laid down ten guidelines where a right of self-defence is available to a citizen, but also warned that in the disguise of self-defence, one cannot be allowed to endanger or threaten the lives and properties of others or to take personal revenge the Apex court concluded by saying that a person who is under imminent threat is not expected to use force exactly required to repel the attack and his behaviour cannot be weighed on “golden scales.”

The Court declared the legal position under the following 10 guidelines:

1. Self-preservation is a basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
2. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
3. A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, there doesn't need to be an actual commission of the offence to give rise to the right of private defence. It is enough if the accused is apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
4. The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
5. It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
6. In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for the protection of the person or property.
7. It is well settled that even if the accused does not plead self-defence, it is open to considering such a plea if the same arises from the material on record
8. The accused need not prove the existence of the right of private defence beyond a reasonable doubt.
9. The Indian Penal Code confers the right of private defence only when the unlawful or wrongful act is an offence.

10. A person who is in imminent and reasonable danger of losing his life or limb may, in the exercise of self-defence, inflict any harm (even extending to death) on his assailant either when the assault is attempted or directly threatened.

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