

## A STUDY ON PRIVATE DEFENCE IN INDIA : A LEGAL ANALYSIS

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### Abstract

It is the first duty of man to help himself. The right of self-defence must be fostered in the Citizens of every free country. The right is recognised in every system of law and its extent varies in the inverse ratio to the capacity of the state to protect life and property of the subject( citizens). It is the primary duty of the state to protect the life and property of the individuals, but no state, no matter how large its resources, can afford to depute a policeman to dog the steps of every rouse in the country. Consequently this right has been given by the state to every citizen of the country to take law into his own hand for their safety. One thing should be clear that, there is no right of private defence when there is time to have recourse to the protection of police authorities. The right is not dependent on the actual criminality of the person resisted. It depends solely on the wrongful or apparently wrongful character of the act attempted, if the apprehension is real and reasonable, it makes no difference that it is mistaken. An act done in exercise of this right is not an offence and does not, therefore, give rise to any right of private defence in return.

**Keyword :** Defence, Private, India, Law

### INTRODUCTION

Nothing is an offence, which is done in the exercise of the right of private defence. Right of private defence cannot be said to be an offence in return. The right of self-defence under Section 96 is not absolute but is clearly qualified by Section 99 which says that the right in no case extends to the inflicting of more harm than it is necessary for the purpose of defence. It is well settled that in a free fight, no right of private defence is available to either party and each individual is responsible for his own acts. While it is true that law does not expect from the person, whose life is placed in danger, to weigh, with nice precision, the extent and the degrees of the force which he employs in his defence, it also does not countenance that the person claiming such a right should resort to force which is out of all proportion to

the injuries received or threatened and far in excess of the requirement of the case. The onus of proving the right of private defence is upon the person who wants to plead it. But an accused may be acquitted on the plea of the right of private defence even though he has not specifically pleaded it. Courts are empowered to exempt in such cases. It must be borne in mind that the burden of proving an exception is on the accused. It is not the law that failure to setup such a defence would foreclose this right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability. It is true that no case of right of private defence of person has been pleaded by the accused not put forth in the cross-examination to the eye-witnesses but it is well settled that if there is a reasonable probability of the accused having acted in exercise of right of private defence, the benefit of such a plea can still be given to them. The right of private defence, as the name suggests, is an act of defence and not of an offence.

**Ip Section 99. Act against which there is no right of private defence:**

There is no right of private defence against an act which does not reasonable 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 colour 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 reasonable 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.

Extent to which the right may be exercised:--The right to Private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

**Explanation 1:** - A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

**Explanation 2:** - A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such, demanded.

Section 99 lays down that the conditions and limits within which the right of private defence can be exercised. The section gives a defensive right to a man and not an offensive right. That is to say, it does

not arm a man with fire and ammunition, but encourage him to help himself and others, if there is a reasonable apprehension of danger to life and property. The first two clauses provide that the right of private defence cannot be invoked against a public servant or a person acting in good faith in the exercise of his legal duty provided that the act is not illegal.

Similarly, clause three restricts the right of private defence, if there is time to seek help of public authorities. And the right must be exercised in proportion to harm to be inflicted. In other words, there is no right of private defence:

- Against the acts of a public servant; and
- Against the acts of those acting under their authority or direction;
- Where there is sufficient time for recourse to public authorities; and
- The quantum of harm that may be caused shall in no case be in excess of harm that may be necessary for the purpose of defence.

The protection to public servants is not absolute. It is subject to restrictions. The acts in either of these clauses must not be of serious consequences resulting in apprehension of causing death or of grievous hurt which would deprive one of his right of private defence. To avail the benefit of those clauses (i) the act done or attempted to be done by a public servant must be done in good faith; (ii) the act must be done under the colour of his office; and (iii) there must be reasonable grounds for believing that the acts were done by a public servant as such or under his authority in the exercise of his legal duty and that the act is not illegal. Good faith plays a vital role under this section. Good faith does not require logical infallibility but due care and caution as defined under Section 52 of the code.

#### **Emperor vs Mammun:**

The accused, five in number, went out on a moonlit night armed with clubs, and assaulted a man who was cutting rice in their field. The man received six distinct fractures of the skull-bones besides other wounds and died on the spot. The accused on being charged with murder pleaded right of private defence of their property. Held under Section 99 there is no right of private defence in cases where there is time to have recourse to the protection of the public authorities.

#### **Public prosecute vs Suryanarayan:**

On search by customs officers certain goods were found to have been smuggled from Yemen into Indian Territory. In course of search the smugglers attacked the officers and injured them. They argued that the officers had no power to search as there was no notification declaring Yemen a foreign territory under Section 5 of the Indian Tariff Act. It was held, that the officers had acted in good faith and that the accused had no right of private defence.

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

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

First-Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly-An assault with the intention of committing rape;

Fourthly-An assault with the intention of gratifying unnatural lust;

Fifthly-An assault with the intention of kidnapping or abducting;

Sixthly-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

**To invoke the provisions of sec 100, I.P.C., four conditions must exist:**

- That the person exercising the right of private defence must be free from fault in bringing about the encounter.
- There must be present an impending peril to life or of great bodily harm
- There must be no safe or reasonable mode of escape by retreat;
- There must have been a necessity for taking the life.

Moreover before taking the life of a person four cardinal conditions must be present:

- (a) the accused must be free from fault in bringing the encounter;
- (b) presence of impending peril to life or of great bodily harm, either real or apparent as to create an honest belief of existing necessity;
- (c) no safe or reasonable mode of escape by retreat; and
- (d) a necessity for taking assailant's life.

**Yogendra Moraji vs. State:**

The supreme court through Sarkaria, J. discussed in detail the extent and the limitations of the right of private defence of body. One of the aspects emphasized by the court was that there must be no safe or reasonable mode of escape by retreat for the person confronted with an impending peril to life or of grave bodily harm except by inflicting death on the assailant. This aspect has create quite a confusion

in the law as it indirectly suggests that one should first try to see the possibility of a retreat than to defend by using force which is contrary to the principle that the law does not encourage cowardice on the part of one who is attacked. This retreat theory in fact is an acceptance of the English common law principle of defence of body or property under which the common law courts always insisted to look first as to whether the accused could prevent the commission of crime against him by retreating.

**Nand kishore lal case:**

Accused who were Sikhs, abducted a Muslim married woman and converted her to Sikhism. Nearly a year after the abduction, the relatives of the woman's husband came and demanded her return from the accused. The latter refused to comply and the woman herself expressly stated her unwillingness to rejoin her Muslim husband. Thereupon the husband's relatives attempted to take her away by force. The accused resisted the attempt and in so doing one of them inflicted a blow on the head of the woman's assailants, which resulted in the latter's death. It was held that the right of the accused to defend the woman against her assailants extended under this section to the causing of death and they had, therefore, committed no offence.

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

The Right of private defence of property commences when a reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues till 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 of as long as the fear of instant death or of instant hurt or of 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.

This right can be exercised if only there is no time to have recourse of public authorities. As soon as the trespass is accomplished successfully the true owner of the property loses right of private defence to protect property. No right of private defence to protect property is available to a trespasser when disputed land is not at all in possession of him.

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

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person his right of private defence extends to the running of that risk.

### Conclusion

To justify the exercise of this right the following are to be examined:-

- The entire accident
- Injuries received by the accused
- Imminence of threat to his safety
- Injuries caused by the accused
- Circumstances whether the accused had time to recourse to public authorities.

Right of private defence is a good weapon in the hand of every citizen to defend himself. This right is not of revenge but toward the threat and imminent danger of an attack. But people can also like misuse this right. Its very difficult for court to find out whether this right had been exercised in good faith or not.

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