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Exception of Right to Private Defence Under Indian Criminal Law

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Abstract

In the evolution of human society, the concept of "might is right" gave way to the establishment of the State, which took on the responsibility of safeguarding individuals' rights to life, liberty, and property. However, it is impractical to expect the State to provide constant surveillance and protection to every individual. The principle of "se defendendo" (self-protection) is fundamental, as noted by Hari Singh Gour in his work on Indian penal law. This principle justifies using force to protect oneself, property, or others against aggression, whether from criminals or innocent individuals. The law allows for protection against immediate threats and does not require retreat unless absolutely necessary. The right to self-protection remains paramount, although societal norms and pressures have led to its diminishing importance over time. The current paper examines the provisions regarding the right to self-protection under Indian criminal laws.

Keywords: *Private defence, Self-defence, Criminal Law, Defence, Indian Legal System, Law.*

Introduction

It is the responsibility of a state to keep its people and their property safe. However, situations can occur where the assistance of state machinery is unavailable and there is an immediate risk to a person or his property, regardless of how well-organized and resourceful they are. When someone's person or property is in urgent danger, they are permitted to use force to

protect themselves or others. The right to private defence is this. In certain situations, the right even includes putting the person posing the death threat. However, this kind of right has limitations and isn't always available. He must, of course, use whatever force is necessary to neutralize the threat or to hold off the state's intervention. An unbridled right to protect will ultimately lead to the "might is right" principle, which will seriously impair law and order. Thus, it does not promote individual fighting but rather aims to deter cowardice and docile submission to violence.

The right to private defence serves the interests of society. It strengthens the moral fiber of a free citizen in addition to suppressing immoral behaviour. In general, a citizen is not expected to use force to right injustices done to him or punish the offender for committing the offenses, nor is he expected to flee for his life when he faces a serious and immediate threat to his person or property as a result of unlawful aggression. In the case of *Dayanu Hariba Mali v State of Maharashtra* Supreme Court says that it is a highly prized and valuable right granted to a person to offer effective resistance against his assailant.

Mayne says:

- I. Society is tasked with defending people's lives and property;
- II. When society can assist, it must be sought;
- III. When society cannot assist, an individual must take all necessary action;
- IV. Violence must be proportionate to injury—it cannot be used to inflict harm or malicious intent.

It should be highlighted that the right to self-defence and the right to private defence are not the same thing. Self-defence has its limitations. It can only be used to shield oneself from personal harm.

In the case of *Barisa Mundi v. State*, It was decided that these clauses stand alone as entire legal documents, and their interpretation cannot be based on the common law rules governing the right to self-defence.

Jeremy Bentham, an English Legal Luminary, once opined that the right of defence is necessary. The vigilance of the Magistrates can never make up for the vigilance of each individual on his behalf.

Sections 96 to 106 of the Indian Penal Code, under the Subhead "Of the Right of private Defence" of Chapter IV "General Exceptions," provide a clear definition of a citizen's right to private defence, which essentially allows one to take law into one's own hands to defend one's person and property or that of others. These are purportedly predicated on the notion that human nature is rooted in the need for self-preservation.

Protection Of an Individual Body and Property

The first clause in this part is titled "Defence of the Person," while the second is titled "Defence of the Property." The following recommendations have been made by the Supreme Court to aid in understanding the type and scope of the statute's applicability under this section:

The right to individual safety is only available in cases when the offense for which the defence is being sought is likewise illegal under this article. This has been considered under sections 102 and 105 of the I.P.C. The defence under this provision will continue as soon as there is a reasonable fear of bodily harm or property damage, and it will continue until the threat is no longer present. Given that the threat must be genuine and imminent, this is retaliatory. This is completely defensive in nature; it is not intended to cause harm or injury to anyone. For example, it is not appropriate to enter a physical fight even though it is already in progress. Retaliation must be taken if someone has caused or is about to cause harm. The acts that fall under this section ought to be sincere. In the case of *Laxman v. State of Orissa*, it was decided that only those who are instantly faced with the necessity of defending themselves against an imminent danger—and not those who create it—are entitled to the right to private defence. In cases when the conviction is of a sort that, if left unchecked, could result in death and serious repercussions, it may also permit the killing of a person as defined by section 100 of the legislation. What matters is not whether the dread is warranted or not. The case which makes the provision clear is *Jai Dev v. State of Punjab*, the accused purchased land in a community, but the inhabitants viewed them strangely because they were outsiders. The people arrived armed in force to seize control of the field as the accused, who were armed, were ploughing it. The defendant shot and killed one person while acting in self-defence. The villagers then began to leave as soon as their right to private defence expired, but not before the accused shot two of them. The accused were found guilty of murder by the Supreme Court. When someone shoots someone in a fit of rage or instability, the target of the shot can defend themselves by claiming private or self-defence. This chapter will not apply unless all parties freely agree if it is recognized that the right to private defence does not apply in a free battle. Ultimately, it is important to read sections 96 through 100 together because the cases' main argument is that they are applied in real-world situations involving wrongful violence. However, section 97's defence and justification draw a much thinner line between breaking the law and exercising rights under this chapter, as using excessive force to defend oneself turns into a crime under the I.P.C.

Use Of the Right To Private Defence in The Case of Intoxicated And Unsound Individuals

This section covers actions taken by people who are drunk, mentally incompetent, or too immature to understand the ramifications of their choices. It says that anyone regardless of background, who is threatened with immediate danger or harm to their own or others' life, limb, or property by a mentally ill or drunk person has the right to defend themselves against them. This section's aim would have been utterly futile if the creators had not included exceptions for the insane, intoxicated, and unwell. The existence of this section will be in danger if the opposing party is not given a private defence since they have the ability to harm both people and property. It's also critical to keep in mind that a misperception or misconception regarding the property may give rise to a right of preventative defence dispute.

Where The Crime Seems To Be So Heinous That It Results In Death

The provisions under this section that address the deaths brought about by employing the defence are as follows:

- A deliberate act of dousing someone in acid with the purpose of causing them to become malformed; in severe cases, the victim may even kill themselves to protect themselves.

- In situations where there is a danger of death or serious injury as a result of the repercussions
- When the offender makes an attempt to rape a particular victim.
- Intentionally indulge in odd lustful situations.
- Under this paragraph, an attempt at kidnapping or kidnapping may also give rise to a defence.

A person who is an aggressor and seeks an attack on himself by his own aggressive attack cannot rely upon the right of private defence. This provision would allow for the investigation of even the slightest allegation of horrific activity. We can examine the following case study to gain further insight into the circumstances surrounding this restriction. "The Criminal Law Amendment Act, 2013, created a new category of offense that includes hurling or giving acid to a human being with the intent to kill them, causing them to suffer severe effects. This allows for the private defence of the body." This is predicated upon the Justice Verma Committee's directives and suggestions." The right of private defense has to be pleaded and proved by the accused. The rules regarding the burden of proof had been laid down by the Supreme Court in Pratap v. State, Narain Singh v. State of Maharashtra, Dahyabhai v. State of Bihar and K.M. Nanavati v. State of Maharashtra.

When An Innocent Person Is In Danger, Use Private Defence

The circumstances covered in this section are those in which it is difficult to determine whether an innocent person was harmed because of his lone presence. It is reasonable to assume that exercising the right to private defence in situations where doing so could harm someone else who does not have that right is not illegal under this section of the code because it does not restrict the person to their body but also their property.

In the case of Paramasukha case, A police sub inspector and a constable proceeded to check P's home after receiving incorrect information that P was in possession of certain stolen stuff. From P's wife, they requested the aforementioned property. She claimed her spouse would arrive shortly and that she did not know. She cried out for aid while the inspector touched her and made threats. After hearing the cry, P's cousin arrived, at which point the sub inspector attacked him. The sub inspector took two hits to the forehead from the accused using the cane. The Supreme Court ruled that the accused has a right to private defense against the police's two attacks on his person.

The initiation and perpetuation of the private guard of property right are supported by Section 105: When a reasonable concern about a risk to the property arises, the right to private property protection begins. Private property rights are perpetually protected from robbery until the thief has used the property to fund his escape, until the property is recovered, or until assistance from public experts is obtained. The right to privately protect property from burglary continues for as long as the perpetrator attempts to cause any individual's death, harm, or illicit restriction, or for as long as there is concern about a moment's passing, an individual's hurt, or a moment's limitation. In case of theft, the right of private defence continues till the offender has affected his retreat with the property; in case of robbery, as long as the offender causes or attempts to cause death to any person; or hurt or wrongful restraint or fear of any such offence continues in the commission of such offence; in case of house-breaking by night, so long as the house-breaking continues.

- As long as the wrongdoer continues to commit crimes of trespass or misbehaviour, the private guardian of property has the right to protect it from criminal activity.
- As long as the trespass that was caused by the evening break-in continues, the private guard of the property has the right to protect it from break-ins.

The right of a private guard against lethal attack is covered in Section 106 when there is a risk of mischief to an honest individual. This means that if, while exercising that right, the protector is positioned in a way that makes it impossible for him to exercise it without running the risk of mischief to an innocent person, then his right to private guard extends to the management of that gamble.

When the Right of Private Defense Of Body Extends To Causing Death: Section 100 IPC

Under the limitations outlined in the previous section, the right to private defense of the body includes the voluntary infliction of death or another injury on the attacker, provided that the offense giving rise to the right's exercise falls under one of the criteria listed below, namely:

- An attack that may plausibly give rise to concerns that the victim would die as a result of the attack;
- An assault that could plausibly give rise to the fear that it will otherwise result in severe injury;
- An attack with the purpose of rape;
- An attack with the purpose of sating an unnatural lust;
- An attack with the purpose of kidnapping or kidnapping;
- An attack with the purpose of wrongfully detaining a person in a situation that could reasonably lead him to believe that he will not be able to seek the assistance of the government for his release.
- The act of throwing or giving acid, or attempting to do so, in a way that could reasonably give rise to the fear that the result of such an act will be severe harm.

The right to private defense includes the ability to kill under the specified seven circumstances, however, this section is also constrained by the provisions of Section 99.

When a person exercises their right to self-defense, Section 100 permits and justifies the taking of their life as long as four requirements are met:

- The accused must not have caused the encounter;
- there must be a genuine or apparent threat to life or serious bodily harm that would lead one to believe that it was necessary honestly;
- there must be no feasible or safe way to flee; and
- there must have been a compelling reason to take a life.

Judicial View on Private Defence

In any civilized society, the guarantee of life and property is a given. However, as the State is unable to provide such protection in every situation—police officers are not unavoidable—each individual is granted the privilege of having a private guard. The ability to hire a private guard gives people the right and the legitimacy to take reasonable precautions to protect themselves in specific situations, the creators of the Penal Code commented, "We leave it still in an exceptionally defective state... we are leaned to imagine that it should be one 100% of the most inaccurate pieces of each arrangement of criminal regulation." regarding the implementation of the private guard arrangements. This suggests that they believed there had to be a period of latent doubt in order for them to judge the ability to read and apply the arrangements in order to achieve reasonableness. However, the neighbourhood courts have disregarded this caution and, after giving it some thought, have chosen an incredibly costly (and surprisingly absurd) interpretation of the arrangements to the point where private protection is no longer really adequate as a safeguard, defeating the purpose of the arrangement. The interpretation of "sensible trepidation" under Sections 100 and 102 is a prime example of the discrepancy between the legal translation and the intent of the Code makers. Granted that "sensible trepidation" is inherently ambiguous, it is evident that the local courts have adopted a strict, objective approach to determining it. This contrasts with the existing English rule, which evaluates the danger totally based on the insight of the blame (a completely abstract test).

Darshan Singh V. State of Punjab

Guidelines for Citizens' Right to Private Defence were established by the Supreme Court. It was observed that when confronted with an imminent threat to one's life, a person cannot be expected to behave fearfully and has the right and ability to murder the assailant. While defending a murder suspect, a bench consisting of Justices Dalveer Bhandari and Asok Kumar Ganguly stated that the Legislature had clearly intended for the passage of Sections 96 to 106 of the IPC to inspire and strengthen citizens' sense of self-defence in the face of serious danger. "When faced with an unavoidable unlawful enmity, the law doesn't need a respectable inhabitant to act like a defeatist. Running away from danger is the most corrupting thing a person can do to their soul, as this court has repeatedly witnessed. In this sense, the right to private protection aims to satisfy a social need and ought to be promoted internally whenever feasible." The court outlined ten guidelines for residents to exercise their right to self-defence, but it also issued a warning, stating that one cannot use the pretext of self-preservation to harm or risk the lives and property of others or exact personal revenge. The summit court concluded by stating that a person in imminent danger cannot be trusted to use the exact force needed to repel an attack and that his actions cannot be measured using "brilliant scales."

Yogendra Moraji V. State

The scope and obstacles to the private right to self-defence of the body were thoroughly investigated by the Supreme Court. One of the viewpoints emphasized by the court was that, except for killing the aggressor, there should be no safe or reasonable means for the person being threatened with death or serious physical harm to flee. This approach has caused a great deal of confusion since it suggests, rather than using force to defend oneself, that one should first try to see whether there is a possibility to flee. This goes against the principle that the law does not enable weakness in the case of an attacked party. Another viewpoint holds that the retreat hypothesis is, in fact, an acceptance of the English customary regulation guideline

of the guard of body or property, according to which precedent-based regulation courts required that, in 100% of cases, the accused look first to determine whether his withdrawal would prevent the commission of wrongdoing against him.

Nand Kishore Lal V. Emperor

The accused, Sikhs, took a married Muslim woman and converted her to Sikhism. The better half of the lady's family came and asked her to come back over a year after she was abducted. The accused refused to comply, and the woman herself made it clear that she was reluctant to return to her Muslim husband. Family relatives of the spouse immediately attempted to take her away by force. The charges objected to the endeavor, and as a result, one of them was struck for the upper hand by the lady's aggressors, resulting in the latter's death. It was decided that the accused had a right under this clause to defend the woman from her attackers, even if doing so resulted in death, and as a result, they had committed no major criminal.

Mithu Pandey V. State

Two persons, each equipped with a "tangi" and a "danta," were giving out a variety of natural products made by laborers from trees that belonged to the accused individuals who opposed the rally. One of the accused suffered multiple injuries in the ensuing struggle as a result of the attack. Death was brought upon by the blamed using their power. The Patna High Court ruled that the accused were eligible for private protection even to the point of inflicting death.

Conclusion

When it comes to self-defence, which starts as soon as there is a reasonable fear of harm to one's body or property as a result of an attempt or threat and lasts for as long as there is a reasonable fear of harm to one's body or property, the right to private defence is crucial. It includes the ability to kill the offender or inflict any other kind of harm on them. Generally speaking, any offense against a person or piece of property can be justified by private defence. It can be used to defend someone you don't know well and can be applied to both guilty and innocent aggressors.

It is important to remember that the defence is only permitted in cases of imminent necessity to prevent violence that is threatened. A person is protected if they act in accordance with an incorrect belief regarding the necessity of defence, provided that the error was reasonable.

The key is that the force used in defence must not only be reasonable—that is, proportionate to the harm threatened—but also necessary to prevent the attack. This requirement is best expressed in negative form: the force cannot be used in a way that would have been viewed by a reasonable person as being completely out of all proportion to the danger.

Therefore, we can conclude that, in situations where immediate assistance from the state apparatus is not readily available, the right of private defence is very helpful in arming citizens against an attacker or wrongdoer for the purpose of protecting both their own body and property as well as the body and property of another. In doing so, they are not held legally accountable for their actions. This reaffirms the existence of a threshold for state control. The state sympathizes with the parties and permits them to transgress certain laws when things go out of control.

It is evident that the law upholds an equitable interpretation of the right to private defence. Furthermore, while it is unquestionably vital to prevent the prosecution of the innocent responses, legislation must not be allowed to become politicized and the delicate line separating morality from legality must be upheld.

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