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**RIGHT TO PRIVATE DEFENSE OF BODY**

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**ABSTRACT**

The right to private defense of body is a right guaranteed by the Indian Penal Code, under the section 97. However, a variety of other sections like 98, 99, 100, 101 and even 102 explain the various situations to which it extends and how can it be used and interpreted under different circumstances. This paper aims at covering all the aforesaid sections and bring into light the various reasons of why and how does this right come into picture, what conditions must be taken care of while exercising it and even goes into the exceptions provided under it and finally mentions as to when does it come to a halt. After going through a variety of research paper, the researcher was able to find as to how different papers mentioned different aspects but none of them spoke about the right in a whole. This paper aims to fill the gap, by mentioning various factors about the right of private defense of the body and tries to keep hold of the readers by listing all possible details and making use of case laws and illustrations in order to help the reader gain an insight into the right.

**KEYWORDS:** Imminent, recourse, apprehension, commitment, assault.

**INTRODUCTION**

It is not possible to appoint every citizen with a police officer for their protection at all situations as it is not a practical solution. Neither can the state offer protection to all its citizens at once. This is where; the right of private defense of body comes into the picture. This right guarantees every citizen the right to protect themselves in a situation where they are attacked upon and the attack can be of a grievous nature or even because death of the one is being

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attacked, in such a situation, the individual being attacked can cause voluntary bodily harm to the attacker or even cause the death of the attacker. This right however, is not limited to one's own body and can be extended to an individual protecting someone else's body too. However, the danger of being attacked must be imminent and should be of a reasonable apprehension. The right will come into existence when reasonable apprehension is foreseen, and there is no sort of available to the public authorities. This right will also extend to causing someone's death in certain circumstances and is even available against people like those of unsound mind, under intoxication or even children below the age of 12 years of age who are otherwise supposed to be incompetent in the eyes of the law. However, a main point to look into here is that, the harm inflicted by the accused on the aggressor must not be of more than what was necessary or what was necessary to stop the attack or protect his own self. Just like certain situations give rise to this right, there are some actions to which the right will not extend which include the acts done by a public servant, who if acting in the course of his duty and lawfully even if imposes any threat, then this act cannot be claimed against him/her. When it comes to private defense, the burden of proof that the action taken was necessary to protect one's own life lies on the accused. Moreover, if not mentioned under the listed circumstances under Sec.100 of the IPC, the individual being attacked cannot cause the death of the attacker, he however, can cause bodily harm to the attacker in order to protect himself. Having such a wide scope, this right always holds a chance to be misused by those who seem to gain revenge or harm someone with their malicious intentions. The law, does take into consideration that this right can be misused and tries to take a very rational and reasonable decision in a case under this right. However, this often leads to delayed justice and it is not always possible to completely understand the circumstance and situation of the accused which in a few cases can also lead to the wrong judgment being delivered or injustice to the accused. This right will continue to exist till the danger continues to exist and comes to an end only when the danger has been subdued., and the individual cannot exercise his right after the apprehension of danger has ended.

### **WHEN DOES THE RIGHT OF PRIVATE DEFENSE OF BODY ARISE?**

Right of Private Defense sets out a social purpose and should be unstintingly interpreted.

However, the right will not come into the picture until there is a reasonable apprehension of danger or if the attack has not been set in motion. And will continue to be in motion until the apprehension continues to exist. Hence, if there is no attack, there will be no right of private defense. The danger occurring must be imminent and grievous. The following situations clarify

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as to when will the right begin and under what circumstances.

**Reasonable Apprehension Of Danger To Body :** The right of private defense is based on three basic principles, mainly, firstly the harm inflicted should be proportionate with the amount of defense which would be necessary at that moment.

The second principle being the existence of reasonable threat or apprehension to the danger of the body from the attempt of the offence. While the third principle states that the right will not come into the picture without reasonable apprehension.

While taking a note at the points mentioned above it has been very clear that in order for an act to be pleaded under the Private Defense of Body there must be an offence which has been committed or an attempt to commit that offence. However, it is not necessary that there needs to be an actual commission of the offense in order for the right to exist. The mere apprehension of the accused that an offence might occur or an attempt is likely to occur if the right to private defense against body is not exercised would be sufficient. Additionally, the whole purpose of the right would fail if it was supposed to be exercised after the commission of the offence.

Previous cases have been able to suggest as to when will there be reasonable apprehension of danger, if :

- i) the force was used in a communal riot causing death of the aggressor.
- ii) the harm was enough to give rise to a reasonable apprehension of grievous injury or death even when the injuries inflicted by the aggressor weren't as fatal.

In the case of **Deo Narain V. The State Of U.P.** - where the accused had attacked the invader using a spear who in turn had used a Lathi, the high court had given Its judgment against the accused stating that considering lathi as a simpler weapon and the non-fatal nature of the injury which had been caused by the invader the self defense of the accused was not justified or valid. However, this judgment was quashed by the Supreme court in its hearing clarifying that if the harm which is inflicted is able to give a reasonable apprehension of grievous apprehension of grievous injury or the death of a person, the person will be justified in causing death of the invader even if the injuries inflicted by him/her were not of a fatal nature.

In another case named **Dharamvir Singh V. State - The Punjab and Haryana** high court stated that the existence of apprehension of danger on a person depends on the state of their mind along with the situation in which they were at that particular point of time and no one else can say what was going on in their mind at that point of time. However if the accused is an aggressor they cannot claim any right of Private Defense of body.

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**Recourse to Public Authorities:**

This right of Private defense of the body will be available only when a recourse to the public authorities is unavailable to an individual. Which then forces that individual to make use of force in order to protect their own well being or the well being of others. Moreover, the force which is used in the defense should be enough to repel the attack and cannot be used as an offense to inflict further injuries onto the aggressor.

**SITUATIONS WHEN RIGHT TO PRIVATE DEFENSE OF BODY DOES NOT ARISE:**

When an Act is committed by a Public Servant: if an act is committed by a public servant, or under his direction and justifiable by law, then it does not come under the purview of the right to private defense. However, even in this situation it will be applicable only if the act does not cause any reasonable apprehension of grievous hurt or death. Public servants will be protected under this provision only when they are exercising their duty. Another necessary condition for such circumstances are that the individual must have the knowledge of the authority possessed by the public servant. For example, if a police officer, is about to shoot a criminal on his leg in order to stop him from escaping, the criminal cannot shoot he police officer first and claim the right of private defense.

**Sudden Fight :** In the law on the subject in Russell of Crimes it has been stated that, when a man is assaulted in the course of a sudden fight or a brawl or even a quarrel, under certain circumstances, if he in self-defense kills the individual attacking him then to plead self defense of body he will need to prove a set of conditions which are : at first, before the first move which was almost mortal or fatal he had decline any wishes or actions of combating, on a second note, he had to kill the individual attacking him out of necessity, to protect his own life. In all cases of homicide which is excusable by the right of private defense of body, it must be clear that the mortal blow was struck all of a sudden and was not planned with a malicious intention, along with the fact that it was necessary for the individual to the attack the deceased, not to take advantage of the opportunity but if not done so, he would have lost his own life. However, someone going with a planned motive to hurt someone cannot claim the basis of a sudden fight. The case would be considered as sudden fight only when two persons gather together at a place and some dispute suddenly arises, as a result of which the parties attack each other or one

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person attacks another. As it was observed in the case of Paras Ram V. Rex where on the 14th of June, there had arisen a sudden quarrel between parties A and B when arguing regarding the ownership of cattle, both the parties however, were armed with lathis. However, there wasn't any evidence which could state that they had any pre-determined plans of attacking one another. In the case it was seen that the deceased, which was B, had struck the first blow on A, without A initiating any attacks on him. Seeing this, A's son, C rushed to protect his father and he along with A struck blows on B, which resulted in his death. The judgment of the Allahabad court in this case, stated that the deceased had no right to strike the blow first, and the counter attack by A, would be taken as his self-defense. The court also held that in cases of spontaneous fight between two parties, one cannot claim self defense stating that at any point they could be struck by the other party.

**Free Fight:** a free fight is a situation where both parties have the intention to fight each other and use some amount of unlawful force against each other. In the case of 'free fight' none of the parties can take the defense of self defense as both of them are aggressors or attackers, and the question of the first attack is also immaterial. As observed in the case of Kabiruddin v. Emperor that, when both the parties are armed and are ready for a fight and it can nowhere be seen that they were acting in the legal limits provided to them by their rights, it will be immaterial as to who made the first attack. It could also be seen that in the cases of free fight, there is either the presence of a common object or common intention in a free fight and the parties do not have the recourse of sec.149 of the IPC, available to them in this case.

**Time To Recourse To Public Authorities :** the right to private defense will not be available to an individual when there is no imminent danger to his life and he has the time to seek help from any of the public authorities. The principle behind the restriction of Private Defense tries to make sure that every individual does not take law in their own hands, as it is the duty of the state to protect its citizens from any sort of unlawful aggression. But where the public authorities on account of their incompetence, imbecility or any other such cause are unable to avert the danger to the person and property of an individual, his right of Private Defense is not lost. Therefore, in every case it has to be seen that if there was the presence of any actual threat or not to the individual.

**Burden of proof:** As seen earlier a Court can also find that the action of the accused which

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which might be an offence may not be considered as an offence as that person was acting in the exercise of their right to private defense or in cases where the right to private defense has been exceeded the offence might be mitigated.

On a second note if the court feels that there were certain circumstances which might have existed and could have the action of the accused fall within the general exceptions as specified under the Indian Penal Code, the burden of proof would be on the accused prove the existence of those circumstances Moreover if the accused is unable to prove the existence of those circumstances but are able to show facts and circumstances under section 105 of the evidence act which are sufficient to cast a reasonable doubt on the case of the prosecution then the person will be entitled to an acquittal. Therefore it can be concluded that the burden which rests on the accused to prove the exception is not of the same intense nature as the burden on the prosecution to prove that the charge is beyond any reasonable doubt.

### **WHEN DOES RIGHT TO PRIVATE DEFENSE OF BODY EXTEND TO CAUSING DEATH:**

In certain situations in cases of private defense of body, this right extends to causing death of the person who poses such a danger and this is recognized by section 100 of the IPC. As it will not be possible to appoint a police officer for every single individual in the country, hence the IPC recognizes the right of every individual to protect their own self. This right is provided to ensure that every citizen is safe and an individual will not be liable for their actions performed in order to defend his/her own self. However, the exercise of this right is possible only in the presence of reasonable apprehension and danger or a threat of an instant injury or grievous hurt. This right however, is subject to certain exceptions mentioned under sec.99 of the IPC. The right of Private Defense of the body extends to causing of voluntary death of the assailant in seven circumstances that have been enumerated below :



An assault that may reasonably cause an the apprehension that otherwise death will be consequence of that assault. – this right is available when the assault caused is reasonable enough to cause the apprehension that death might be caused if no action of defense takes place. However, in such a case, the apprehension must be real and not illusionary and the danger foreseen should be imminent. Here, the accused can even cause death of the person who seems to attack him or make an attempt for the same, even if no fatal injuries are caused by the attacker. In the case of James Martin v. State of Kerala, it was laid down that a number of factors had to be considered in order to make sure whether the right of private defense is applicable or not. Factors including injuries received by the accused, imminence of danger to his safety, injuries that are caused by the accused and also the circumstances in which the injuries were caused are taken into consideration. It was also noted that the individual assessing the danger might not be able to do so very accurately at that moment, and he might also not be able to be composed and measure the exact amount of force which would be required.

An assault which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of the assault. – when it comes to grievous hurt, the accused has to prove that

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there was presence of reasonable apprehension, and the facts will determine whether the apprehension was reasonable or not. It was also stated in the case of *Puran Singh v. State of Punjab*, that an individual while exercising the right of private defense must employ proportionate amount of force. However, there is no set of scales that determines whether the accused has exceeded the right or not. It has to be judged according to the facts and circumstances of the case.

An assault with the intention of committing rape. – the third clause of Sec.100 talks about the apprehension of the accused of commitment of rape. In cases like this the burden of proof lies on the accused so they need to take precautions while exercising this right. As seen in the case of *State of Orissa V. Nirupama Panda* where the victim tried to enter the house of the accused and made an attempt to rape her, which resulted in a scuffle between them and in her defense, the woman stabbed him which caused instant death of the victim. However, in this case, the character of the woman was also questioned in order to keep her away from getting acquitted. But even after that she was not held liable as the attack was committed in an attempt to defend her body.

An assault with the intention of gratifying unnatural lust.- if an individual tries to commit assault with an intention to satisfy their unnatural lust, the person on whom the assault is committed can exercise their right of private defense and can even take it to the extent of causing death of that individual. As it was seen in the case of *Indu Kumari Pathak v. S. K. Pathak* where the wife had refused to have any sexual relations with the husband. The court held that, the husband cannot force her into having sexual relations with her and also the husband has no right to cause injury to his wife in enforcing sexual intercourse and wife has the right of private defense to retaliate the force used on her.

In another case of *Bhadar Ram v. State of Rajasthan*, where the appellant in an attempt to save her widow sister-in-law from the clutches of Nand Ram attacked him with a gandasa who was trying to attempt to rape her. It can be seen here that there was reasonable apprehension of danger to the body of appellant's sister and thus the right of Private Defense in this case was rightly availed against the danger that was real, present and imminent.

An assault with the intention of kidnapping or abducting.- the fifth clause of Sec.100 of IPC mentions that the right of private defense is available when the assault is committed with an attempt to kidnap or even cause abduction. Abduction is the offence against the human body

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and occurs when an individual is forced to move from one place to other. As observed in the case of *Nand Kishore Lal v. Emperor* where a married Muslim woman was abducted by the accused and was forced to convert into Sikhism. After almost a year, the husband of the woman demanded her to return back which was objected by the woman as well as the accused, the woman did not wish to go back. Therefore, the husband along with his relatives began to drag the woman with them, while she resented and in the attempt of resisting a fatal blow was made by the accused on the head of a female who was dragging the woman. The court exempted the accused on the basis of the fifth clause under Sec.100 of the IPC, as he did it in an attempt to rescue the woman. Here, it was clearly noted, that intention did not hold any importance, however reasonable apprehension was the basis of justifying the act of the accused.

An assault with the intention of wrongful confinement, under circumstances which may reasonably cause him to apprehend that recourse to public authorities will not be available. – the sixth clause under Sec.100 of the IPC states that the right to private defense of the body will extend to causing death if the assault is carried out with an attempt of wrongfully confining the accused. However, in order to avail this right there must be a proof that there was an assault and that was with the intention of wrongful confinement. Also, it has to be proved that the circumstances were such that caused reasonable apprehension in the mind of the accused that he will not be able to take recourse to the public authorities for his release. As it was stated in the case of *Abdul Habib v. State* where the appellant tried to steal the bicycle of Swaran Singh, who made an effort to stop him and caught the bicycle and was then attacked by the appellant who was trying to defend himself. Where, another man Naresh Kumar heard the cries of Swaran Singh and made an attempt to get hold of the appellant who again in his defense, struck a blow by his knife and stabbed him. The court held that the intention was more of wrongful confinement to let him move only within the limits of the place of arrest. It was also held that that the circumstances were not such that any reasonable person would have apprehended that he would not be able to secure the help of the public authorities in obtaining his release. There was no right of Private Defense of person given in this case.

An act of throwing acid or an attempt of throwing acid on someone which can cause the apprehension that grievous hurt might be caused. – the committee of Justice J. S. Verma, made the recommendations observing the increasing rates of the acid attacks as it was not mentioned in the original provision earlier. Under this provision, an individual can extend their right to

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private defense of body to causing death if the individual fears that the other person is going to throw acid or will make an attempt to throw acid which may lead to the individual being grievously hurt. The act of throwing or attempting to throw acid is an offence under Section 326A and 326B of the Indian Penal Code.

### **WHAT IS THE EXTENT OF PRIVATE DEFENSE AGAINST BODY IN A SITUATION WHICH IS NOT MENTIONED IN THE ABOVE 7 CATEGORIES UNDER SECTION.100? :**

If a situation arises which has not been mentioned in the above possible circumstances then an individual cannot extend his right to private defense of body to causing death as it would not be a case of reasonable apprehension or imminent danger. As it has been seen in the case of Mahinder Pal, where the factory owner had claimed that he shot his worker dead due to a mischief that was committed by the worker. He, however, was not excused of the charges and the liability.

### **WHEN ANY HARM OTHER THAN DEATH IS CAUSED :**

Under Sec. 101 it has been provided that, if an individual is under certain circumstances he can cause hurt to the one attacking him under the action of exercising his right of self defense, he however, cannot cause the death of the attacker. The section provides that – if the offence committed by the attacker is not of a nature as mentioned under Sec.100 then in that case, the right to private defense of the individual will not extend to causing death of the attacker. However, it does extend to causing any form of voluntarily harm, of-course, except death. Moreover, this right is subject to restriction under Sec.99 and does not stand as an absolute right. Hence, one can cause voluntarily harm if attacked other than the circumstances provided for in Sec.100 but cannot cause death and needs to keep the restrictions placed under Sec.99 in mind.

### **HARM TO AN INNOCENT PERSON :**

Sec.106 provides that if an individual is under circumstances where if he exercises his right to

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private defense to save his own self, he might be inflicting harm on an innocent person, if he cannot exercise his right without inflicting harm on the innocent, then he will not be held liable for the harm which is caused to them. In cases like this, the right of private defense of the individual will extend to causing harm to the innocent too. This can be further explained with the help of an illustration – suppose X is an individual who is being attacked by a mob, which includes small children, and X cannot exercise his right without harming them, so if in the course of exercising his right to self defense, if any sort of harm is inflicted by him onto those children, X will not be liable of any offence.

### **AGAINST A PERSON OF UNSOUND MIND :**

Former sections in the IPC, have brought it to our notice that certain category of individuals are excused by the law even when they commit a certain offence. These people can be : someone with an unsound mind, someone under intoxication or even children below 12 years of age. However, if there are circumstances where there is a threat of any form of grievous hurt or even death caused by anyone, which can be these people as well, the law permits the individual being threatened to exercise his/her right of private defense against these people even if it means causing them voluntarily harm and extends to causing their death too. If they are able to be a potential threat to someone, or cause their death, their legal incompetence is overlooked by the law. This exception, also includes the concept of misconception. To further elaborate, we can use the help of an illustration - for an instance, if a drunk man or a person of an unsound mind, tries to attack someone or cause them hurt, depending on the damage which can be apprehended by the actions of the attacker in this case, the individual being under the threat of the attack will not be deprived of his/her right of private defense.

### **MISUSE OF RIGHT TO PRIVATE DEFENSE OF BODY :**

As it could be very seen earlier that the right to private defense would not hold an existence in front of an action which is not an offence. Moreover, in circumstances where the actions of the party are lawful, even if they seem to be troublesome or as a nuisance, the claim of right to private defense will not hold any stand. It should also be noted that this is the only provision which excuses causing harm and even the death of an individual, and there are high chances of it being misused. For an example if a group of aggressors say that they fired only when their co-

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aggressors were injured after the ones being attacked were defending themselves, the aggressors would be liable for their attack and cannot claim the right of self defense in such a case. As we know, this right is for the purpose of defense and not retribution and cannot be hence used as a method of retaliation. The IPC even after taking measures so that this right does not become a way to commit murders have failed to take an account of the situations where an attack may be provoked as posturing for killing. This right however, is also used for providing unlawful justifications for the crimes which have been committed. It is also used sometimes with a malicious intention or to take a revenge. Such a misuse pressurises the courts to act with a lot of reasonability and rationality.

### **CONTINUANCE AND WHEN DOES THE RIGHT COME TO A HALT:**

Continuance: the right of private defense will continue being in the picture as long as the fear of the danger continues.

As it has been previously observed in the case of Sitaram V. Emperor, that an individual who is exercising their right of private defense, will be allowed to secure his victory till the continuance of the contest. He can defend himself till he feels he is out of danger.

End : the right of private defense, will come to a halt when the individual feels that there is no more the existence of danger. His right will no longer continue after the danger has ended, and if in case he commits an act after the danger cannot be foreseen, he cannot plead the right of self defense.

This can be further explained with the help of an illustration – if there exist two people M and N, now, if M had threatened N, that he will kill her and aimed his gun towards her when his mother arrived and asked him to retreat and he moves back, takes the aim down and stops walking in the other direction. Here, N cannot attack M now and if she does, then she cannot plead her right to private defense.

### **CONCLUSION**

The right to private defense of body is not limited to one's own body, it also mentions that the actions can be done in the attempt to protect the body of one's neighbour. The right is extended over a course of sections and has multiple provisions wherein, not just causing voluntary harm

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but even death in order to protect one's own or someone else's body is excusable under the law. In order to plead this right of self defense there needs to be an apprehension of imminent or grievous danger, which can even result in the death of the person. The apprehension however, must be imminent and the claim shouldn't be fake. A variety of conditions can give rise to an individual attacking an aggressor in order to protect himself. However, there are certain conditions where this right will not come into the picture even if it seems like it will be a threat, if however, done with a malicious intent or the intention of gaining revenge it will be a different situation altogether. This right, however, will only be possible to exercise if the individual has no recourse to any of the public authorities who can protect him/her from that reasonable apprehension of danger. The plethora of conditions makes it possible for an individual to misuse this right and use it to fulfil their malicious intentions or gain vengeance. Thus, the courts have to be extremely careful while looking at cases under this right, as it requires a lot of reasonability and rationality. Which, makes it clear that it requires a very detailed inspection and understanding of the circumstances which the accused was in and what were the possible other factors or sources of help available to him at that moment. Hence, proving that in cases like this, it is highly possible that by the time the investigation ends, there is often delay in miscarriage of justice. When it comes to right of self defense, the burden of proof is on the accused, to prove that he acted in the course of circumstances and if he had not acted that way, he would have probably been grievously hurt or maybe even dead.

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