

PRIVATE DEFENCE IN INDIA- Bhanu Pant & Chetna Jain¹**Abstract**

Bentham once said:

“The right of private defence is necessary for the protection of life and liberty and property”

Bentham's this quote says that no one is always aided with help; you yourself should protect your body, your life, your liberty as well as your property from any danger. Therefore it is well said that self help is best help. And if in order to protect yourself, you ended up hurting someone or even causing someone's death you should not be punished because you never had an intention to cause any harm to the offender. You did only harm him to protect yourself and your property. The right of private defence therefore comes as an exception to the rule that you have no right to taking someone's life. IPC has specifically mentioned about the right of private defence under section 96-106. But this right also comes with some restrictions such as right of private defence cannot be exercised against a public servant and another restriction is that reasonable force should be used the offender.

Keyword: SELF HELP, PRIVATE DEFENCE, IPC, PUBLIC SERVANT, REASONABLE FORCE.

Introduction

Anything which is against the law or which is not legal under the law is an offence. Offences punishable under the Indian Penal Code, 1860 with an imprisonment or fine and both. But the IPC also States the exception of an offence, the right of private defence. Self - help should be the

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first priority of the person. IPC also stands on the fact that one should first help himself. When an offence is committed in exercise of right of private defence it is not an offence. A person shall not be liable for that offence.

Right of private defence can be of a body or a property also. The state has the power to protect the right and property of the citizen living in the state but the state cannot take a watch on each and every citizen so there are certain situations where the person himself has to act. So IPC has given a right of private defence of a body and property to everyone but it is mere to exceptions. The right of private defence should be subjected to some exceptions otherwise the individual will get a vast power in his hands and there may be misuse of the right of private defence.

This right of private defence is given under Section 96 to 106 of Indian Penal Code. This right has been evolved through various judgement of the Supreme Court.

Private Defence

Private Defence means action taken in a reasonable time for the safety of one's body or property. Some people believe Private Defence and Self Defence are different but is a synonym of each other having a same meaning. Experts believed that if a person is being attacked by someone he will do some act to defend himself which is known as a Private Defence.²

Right of Private Defence

Under section 96 of Indian penal code, 1860 anything which is done as a defence shall not constituted an offence but the court will take into consideration various factors which is i

- A injuries received by the accused
- Imminence of threat to his safety
- injuries caused by him
- Whether the person was having a reasonable time to reach to the public authorities

²Available at,<https://asl-law.com.sg/2019/11/06/what-is-private-defence-and-when-is-it-applicable/> last accessed on 15/10/2021

In **Bhan Singh vs State of Punjab**³ the court held that when a person is fully prepared for a fight or a quarrel and then attacks a person armed or unarmed. The person will not be entitled to the benefit of right of private defence under IPC.

The court in **Jagdish Chandra vs State of Rajasthan**⁴ held that when a person who is of intemperate nature fires another person and the other person returns the fire causing death then the later person will be justified in taking the plea of private defence.

Types of Right of Private Defence And Limitation

Under Section 97 of The Indian Penal Code, 1860 a person has the right to Private Defence against the

- Person's Body
- Property

Person's Body – The Right of Private Defence can be one's own body and the body of other person against any offence affecting the human body. When an offence is committed on a body for example a person fires a gun on the targeted person the targeted person in his own self defence can fire and it constitutes no offence. In **State of UP vs Niyami**⁵ the Supreme Court held that the right of self defence can be taken for one's own body or for another person body or property.

Property – Private Defence can be taken for property which can be movable or immovable. Property can be of himself or of other person on whom an offence is committed. Offence can be of theft, robbery, mischief etc. Man can't take the right of private defence for the body only but it extends to the protection of property also. The property can whether of his own or of another person on whom an offence is committed. In **Ramnarain vs State**⁶ the court held that illegal taking of a cattle with the view to impounding them is a theft therefore anything done in right of private defence, cattle of the property is no offence.

But Section 97 is subject to limitation mentioned under Section 99 of IPC.

³AIR 1995 SC 1953

⁴ 1987 CR LJ 649(Rajasthan)

⁵ AIR 1987 SC 1652

⁶ (1965)G LJ 18(SC)

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The use of Right of Private Defence should not be excessive. The force used by the accused should be reasonable not much more than the force used by the person.

For example- A hit B by lathi then B fires a gun then in his case right of private cannot be exercised as the force was excessive then the used by the person.

Can a Right of Private Defence be taken against unsound person, Minor or Intoxicated Person?⁷

Many persons are confused whether the right of private defence can be taken against a normal person only or for intoxicated, unsound person or any other person exempted. Under Section 98 of Indian Penal Code the right of private defence can be taken against a normal person also and also the person are not liable due to certain defence in IPC. The person consists of intoxicated person, minor, unsound person or the misconception on the part of the person.

For Example- A an unsound person tried to kill B. A is guilty of no offence. But B can do an act for his private defence and can take the plea of right of private defence.

Limitation of Right of Private Defence

Under Section 99 of IPC the right of private defence is subject to certain limitation which are-:

- Act done by Public Officer in good faith - When an act is done by public officer in exercise of his duty in a good faith then a person cannot take the defence of right of private defence. When Police officer arrest a person in good faith then the person can't take the plea of right of private defence against the police officer but police officer makes an illegal arrest and without authority then the person can take the right of a private defence.
- Act done under direction of public servant – When an act is done under the direction of Public servant in good faith then no right of private defence exist. It is not necessary that person must be a public servant. But when a person does not know or has no reason to believe act is done under direction of public servant then he is entitled to defence.

⁷ Available at/<https://blog.ipleaders.in/privathe-defence-under-ipc/> last accessed on 17/10/2021

- The force used in self defence must not be excessive –The force in right of private defence shall not be in excessive then it is necessary for the purpose of defending himself from the act or an offence. The excessive force used by the person cannot be taken under the plea of right of private defence. In **Mohinder Pal Jolly vs State of Punjab**⁸ there was a dispute between the labour and the worker. The worker throw the brickbats at the factory. The owner of the factory fires with the gun causing death of the person. The court in this case held that the force used by the owner of the factory was excessive and therefore it can't be taken under the plea of the right of private defence and shall be guilty of an offence under section 304 IPC.
- When there is a reasonable time to reach to public authorities - A person shall not take the law in his hands when he has the time to seek to the public authorities for the redressal of his problem. Therefore when a person has a reasonable time to reach out to the public officer then he can't be given the right of private defence. The court will take into the consideration the two aspects:-
 1. Danger apprehended on the accused.
 2. Does the accused was having the reasonable time to seek to the public authorities.

Right of Private Defence extend to causing death

Under Section 100 of IPC there are certain situation in which a person does not have any alternative except causing death of the aggressor in exercise of the right of private defence

- When there is a reasonable apprehension of death and imminent danger and such danger is real not imaginary.
- Grievous hurt
- Rape
- Unnatural offence
- Abduction or Kidnapping
- Wrongful confinement of a person where he can't be able to have recourse to the public authorities for his release

⁸ AIR 1979 SC 577

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In these Situation the person causes death of the aggressor than also he cannot be liable of an offence.

In **Vishwanath v. State of U.P**⁹ the husband went to in-laws house to take his wife who left him. The family refused to sent the girl therefore the husband forcefully dragged the wife to take her. The brother-in-law of the deceased husband stabbed him to death. The court accepted the defence under clause 5 of Section 100 of IPC resulting in his acquittal.

Under Section 101 of IPC if the offence is other than mentioned in Section 100 of IPC than the person cannot cause death but can cause any other harm and should not come under the ambit of Section 99 of IPC.

Under Section 102 the right of private defence commences when there is reasonable apprehension of threat or injury and continues till there the reasonable apprehension does not end so after this time if a person causes harm he cannot take defence of the Section 102 of IPC.

Right to private defence of property extends to causing death:

Section 103 deals with right to private defence of property extends to causing death, following some restrictions as such mentioned under section 99 of IPC. The above right of private defence against property can only be exercised where the wrong doer tried to commit any of the below mentioned offence against someone's property:

1. Robbery
2. House – breaking by night
3. Mischief by fire committed on any building, tent or vessel which is used as a human dwelling, or as a place for the custody of property;
4. Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.¹⁰

This right of private defence can only be exercised against the offences mentioned above. Section 103 is bit similar to section 100 and the only difference is section 100 speaks about right

⁹ AIR 1960 SC 67

¹⁰ Available at <https://www.legalserviceindia.com/article/1470-Private-Defence.html>/last accessed on 19/10/2021

of private defence to the body of any person whereas section 103 deals with right to private defence of property. This section further mentioned that the person claiming the right of private defence of property must be the true owner of the property or must be in true possession of the property and even more if the above mentioned acts or offences are committed within his knowledge then the person cannot claim right to private defence of property.

Jassa Singh V. State of Haryana¹¹

In the above mentioned case, supreme court strictly ruled that the right of private defence of property can only be claimed in the occasions as mentioned under section 103 and not in any other circumstances. Such and right can only be exercised if there is house trespass and not in the case of trespass on an open land.

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

Section 104 is applicable when a person in the occasion of theft, mischief, or criminal trespass or any other situation mentioned under section 103 causes grievous hurt or any other harm except death to the wrong-doer subjects to the restrictions mentioned under section 99. This section further states that the aggression used against the wrong-doer must have to be reasonable in terms. For example: if a person whom you saw going out of your house from a glass window with some of your precious ornaments and you hit him so hard with an iron rod on his head that caused his death on that very moment. Then you cannot claim right to private defence of property because you used more force than required which caused his death, then you would be considered guilty under section 304.

Commencement and continuance of the right of private defence of property:

Section 105 further mentioned the situations till then the right of private defence of property can be exercised. It states that the right can only be exercised till the wrong doer is in continuation of his act and possess threat to you, till some public authorities arrived there, when there is fear of instant death of someone. The right of private defence of property cannot be exercised when the offender has left the property or when he himself had no possession of the property.

¹¹ 1994 CRILJ 916

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

Section 106 stated that in order to protect yourself from the deadly assault of someone you ended up risking the life of any innocent person which you don't want then you can claim right to private defence against deadly assault. It clearly mentioned that without risking the life of some innocent it was merely impossible for you to extend your right of private defence.

For example: in order to save yourself from the attack of the mob, you fired against the mob that hit a young innocent present in between the mob. Then you had committed no offence.

Conclusion:

Right of private defence was provided to every citizen of India to defend himself in dire situation where he is left with no option of hurting someone in order to save his life and property from imminent threat. Where such person has no recourse of any other means of protecting himself nor he has any public authority present with him. But nowadays such a good right is being misused in many of the situations. Some used this right to take their revenge. It's very difficult these days to examine whether such right was used in good faith or not. Therefore the court examined certain facts before deciding the case. Those facts are:

1. The entire accident
2. Injurious caused to the accused
3. Situation whether the accused had time to call to public authorities or not.
4. The level of threat he was exposed to.

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