



## Analysis of Right of Private Defense Under Indian Penal Code

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**Abstract:** Private defence is a right available to every citizen of India to protect himself from any external force that may result in any harm or injury. In layman's terms, it means using an otherwise illegal act to protect oneself or another person, protect property, or prevent any other criminal activity. Sections 96 to 106 of the Indian Penal Code, 1860 contain provisions relating to the right of private defence, which is available to every citizen of India. Citizens of every free country should have the right of private defence to protect themselves from any imminent danger at a time when state aid is not available or possible. This right should be understood with the duty of the state to protect its citizens as well as their property. It was granted as a right of self-defence to every citizen of India, but it is often misused by many people by treating it as an excuse for committing any crime or misdemeanour. Therefore, this right of private defence is subject to certain restrictions and limitations. Although the right of private defence has been granted to the citizens of India as a weapon for their self-defence, it is often used by many people for evil or illegal purposes. It is now the duty and responsibility of the court to examine whether the right has been invoked in good faith or not. The extent of the exercise of this right does not depend on actual danger, but instead on a reasonable suspicion of danger. This right can be extended by the accused in certain circumstances, but only to a certain extent that would not violate the right to private defence.

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### Introduction

The state as a policy of law identifies some circumstances which are some extremely compelling circumstances and are not self created rather they arrives out of some external sources and the accused, owing to the external compulsive circumstances acts in a particular manner resulting into the commission of so called **offence**. The state has a duty to protect its citizens and their property from harm. However, circumstances may arise when the aid of state government is not available on time and there is imminent danger to a person or his property. In such situations, person may have to use force to ward off the immediate threat to his or someone else's person or property.

In layman's terms, it means using an otherwise illegal act to protect oneself or another person, protect property, or prevent any other criminal activity. Sections 96 to 106 of the Indian Penal Code, 1860 contain provisions relating to the right of private defence available to every citizen of India. This right can only be exercised in case of imminent danger and state support or assistance is not available.

This law has essentially evolved over time through the judgments and decisions of the Supreme Court of India. One of the most important principles of private defence is the "adequacy" of the defence

used. There are various limitations and exceptions to this right which will be set out in the post. Some remedies are also available in case of abuse of this right according to the principle "ubi jus ibiremedium", that is, where there is a right, there is a remedy. Every citizen of India has the right to protect himself from any external force that may lead to any harm or injury. In layman's terms, it's basically the right to self-defence. It is mentioned in Sections 96 to 106 of the Indian Penal Code, 1860. "Nothing is an offense which is committed in the exercise of the right of private defence" - It means any harm done or injury caused to any person in the course of his defence of external force or damage is not an offense under the Indian Penal Code 1860.

The right of private defence has evolved in modern India, but was originally proposed by the ebullient Macaulay 150 years ago in his draft code with the aspirational task of strengthening "the manly spirit among the natives or locals". An ideal Indian would endure in case of any risk or danger and would not hesitate to protect his body or property or that of a stranger. He would react with caution to avoid certain hurt and injury, even to the point of causing death to someone.

In most common parlance, this means the use of generally or otherwise illegal actions to protect

oneself or another individual, protect property, or prevent any other criminal activity. It can simply be termed as any action taken in the course of self-defence. Under Article 51(a)(i) of the Constitution of India, the State has a fundamental duty of the State to protect public property and to renounce violence.

It follows that the basic duty of the state is to protect its citizens and their property from any harm, and in the event that the help or assistance of the state is not available and the danger is imminent and unavoidable at the moment, a person is entitled to use his force to protect himself from any harm or injury.

The term private defence is not properly defined anywhere in the criminal code, it has generally evolved and developed over the years through the judgments of various courts. The main motive behind giving this right to every citizen was to remove his hesitation in taking any measure (usually illegal) to protect himself for fear of prosecution.

#### **Right of Private Defence:**

A man is justified in repelling force by force in defence of his person, habitation or property against one who manifestly intends and endeavors by violence or surprise to commit a felony upon either. This right is recognized in every system of law and the extent of the right varies in reverse ratio to the capacity of the state to protect the life and property of the subject. This right is of two kinds: –

1. Right of private defence of body.
2. Right of private defence of property.

#### **Right of Private Defence and Criminal Liability:**

- The right of private defence can be exercised only to repel unlawful aggression and not to retaliate. Sec. 96 of IPC describes that nothing is an offence which is done in the exercise of the right of private defence.

- According to Sec. 97 of IPC, every person has a right to defend his own body and the body of any other person, against any offence affecting the human body. The right is extended only to the offence affecting human body prescribed in IPC.

- The right of private defence commences as soon as a reasonable apprehension of danger continues. The person demanding for the right of private defence must not be an aggressors. This right extends to the protection of own body as well as others body. Indian law is wider than the English law on this point. The right of private defence of body for other person in English law is available only if the other person is his near relative. But no such restriction lies in Indian law. In Indian law, the right of private

defence of body for other person extends to the unknown person also. **For example:** A killed his father when he was trying to cut the throat of A's mother. In this example since A was protecting the life of his mother, then he has the right of private defence.

- The right of private defence of body is available against the whole world. Sec. 98 provides that when an act, which would otherwise be a certain offence is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act, which he would have if the act were that offence.

#### **Nature**

Self-help is the first principle, that is, it is man's first duty to help himself. Citizens of every free country should have the right of private defence to protect themselves from any imminent danger at a time when state aid is not available or possible. This right must be understood as the duty of the state to protect its citizens and their property. But no state, no matter how rich or how great its resources, can afford to deploy police officers for every single citizen to protect themselves from any outside harm or injury.

Therefore, in order to fulfil its basic duty, it has given this power to the citizens themselves, that they are authorized by the state to take the law into their own hands when it comes to their self-defence. One thing to consider in exercising this right is that the right to private defence can only be exercised if there is no time to call the police or assistance from the state authorities cannot be provided at that time, i.e. assistance from the state. not available. Any unlawful act committed by any person in self-defence is not considered a criminal offense and therefore does not create any right of private defence in return. The right is not dependent on the actual criminality of the person being resisted. It matters only the illegal or apparently illegal nature of the attempted act, if the arrest is real and reasonable, it does not matter that it is false.

#### **Scope of private defence**

Section 97 of the IPC states that every citizen has this right subject to certain limitations (stated in Section 99) to defend his own body or the body of any other person; any offense affecting the human body; property, immovable or movable, of himself or any other person against any act which is an offense falling under the definition of robbery, theft, larceny, felony, or which is an attempt to commit larceny, robbery, larceny, or a misdemeanour. It follows that Self-help

is the first principle, i.e. a person's duty to help himself, and subsequently a social duty to help other members of society arises. Social duty arises from human sympathy to protect others and their property. Under Section 98 IPC, where an act which would otherwise be a certain offense is not such an offense because of the youth, lack of maturity of understanding, unsound mind or drunkenness of the person doing the act or because of any misconception on the part of that person that every person the same right of private defence against that act as he would have if the act were that crime.

And according to 106 of Indian Penal Code, if in the exercise of the right of private defence against an attack reasonably apprehensive of death, the defender is so situated that he cannot effectively exercise that right without risk or injury to an innocent person, his right of private defence extends to taking that risk.

The extent of the right of private defence and the limitations on the exercise of that right may be summarized as follows:

There is no right to private defence against an act which in itself is not a criminal act according to this Code. This does not apply to exception cases.

The right arises as soon as there is a reasonable fear of endangering the body from an attempt or threat of committing a criminal act. The right is used only against imminent, present and actual danger.

It is a defensive right, not a punitive or retaliatory right. In no event does the right extend to causing more harm than is necessary for the purpose of defence, although reasonable allowance should be made for a bona fide defender.

The right applies to the killing of the actual assailant, if there is a reasonable and immediate danger of the brutal crimes listed in the six clauses of section 100.

There shall be no safe or reasonable means of escape by retreat for a person who is exposed to imminent danger to life or serious injury, except by causing the death of the assailant.

The right, which is essentially a defensive right, does not arise and cannot be used when it is time to use the protection of public authorities.

### Misuse

It has been given as a right of self-defence to every citizen of India but it is often misused by many people by considering it as an excuse to commit any crime or offence. It is a right granted for defence, not for revenge, and cannot be used as a measure of revenge. This right of private defence is not available against any lawful act, i.e. if the person's conduct is lawful and does not lead to any offence, the right of private defence cannot be exercised.

Sometimes some people provoke others into aggression and use it as an excuse for causing harm or even murder. However, this cannot be used in a situation where only the accused has shown aggression. Many people see this as a license to kill because the IPC is not clear on the situation where an attack can be provoked as a pretence to kill. However, the court confirmed that private defence is only available to those who act in good faith and do not use it as a pretext to justify their wrongdoing or aggression. Furthermore, the court stated that "while ensuring the right to private defence, the criminal code certainly did not devise a mechanism by which an attack could be provoked as a pretext for killing".

### Right of private defence in other legal systems:

#### American law

The right of private defence in the American legal system is very similar to the Indian legal system. Two points of utmost importance in the American legal system:

The principle of proportionality, i.e. the right arises as soon as, and not before, there is a reasonable fear of endangering the body from an attempt or threat to commit a crime. The right is used only against imminent, present and actual danger.

Force should be proportionate to the harm, i.e. only the amount of force necessary to prevent imminent injury or harm should be used.

#### English law

In the English legal system, the right to private defence is granted under the Criminal Law Act 1967. Section 3(1) of that Act provides that a person may use such force as is reasonable in the circumstances in preventing or committing an offense or to assist in the lawful arrest of offenders or suspected offenders or persons unlawfully at large.[1]

Section 3(2) - Subsection (1) above supersedes the common law rules as to when force used for a purpose mentioned in the subsection is justified for that purpose.

In the English legal system, this right helps in the complete discharge or acquittal of the accused because the force he used was not illegal. Whether he should be acquitted or not is up to the court. The court analyses the adequacy of the defence used by it. The court analyses:

Adequacy of defence, i.e. the right arises as soon as, and not before, there is a reasonable fear of endangering the body from an attempt or threat of committing a crime. The right is used only against imminent, present and actual danger.

Injuries caused by the accused

Injuries caused to the accused

The accession of a threat to his security

According to the jury, one should act in good faith and not try to abuse this right by using it as an excuse to justify one's legal actions and be acquitted of one's crime. Like the Indian legal system, the right of private defence in the English legal system has evolved over the years with court decisions and judgments.

### **Beckford v The Queen [1988] AC 130 Privy Council**

The appellant was a police officer. He was issued with a shot-gun and ammunition and sent with a number of other armed police officers to a house. According to the appellant a report had been received from Heather Barnes that her brother Chester Barnes was terrorising her mother with a gun. Heather Barnes, however, denied that she had made a telephone call to the police or that her brother was armed.

The appellant said that on arriving at the house, he saw a man run from the back door with an object which appeared to be a firearm. As the police followed him, the appellant stated that Barnes fired at the police, in response to this he fired back, shooting and killing Barnes. In fact no gun was ever found. The trial judge directed the jury:

"A man who is attacked in circumstances where he reasonably believes his life to be in danger or that is in danger of serious bodily injury may use such force as on reasonable grounds he thinks necessary in order to resist the attack and if in using such force he kills his assailant he is not guilty of any crime even if the killing is intentional." The jury convicted him of murder (which carries the death penalty in Jamaica). He appealed contending the judge was wrong to direct that the mistake needed to be reasonably held.

#### **Held:**

The appeal was allowed and the conviction was quashed. The test to be applied for self-defence is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another.[2] Palmer (1971) AC 814 Privy Council

### **On appeal from the Court of Appeal of Jamaica**

The appellant and two others were chased by three men after they stole some ganja. The three men had sticks and stones. During the chase the appellant fired shots. One of the men chasing them died of as a result of gun shot. The appellant's case was that he had not fired the shot which killed the man although the trial judge directed the jury on self-defence. The jury convicted him of murder. He appealed contending that the judge in directing the jury on self-defence should

have put an alternative verdict of manslaughter to the jury.

#### **Held:**

Appeal dismissed. There is no option for a verdict of manslaughter where a defendant uses excessive force in self-defence. The defence either succeeds in its entirety or it fails. Juries may take into account the situation of the defendant in deciding if the force is excessive and in so doing may take into account the position of dilemma facing the defendant.

#### **Lord Morris:**

"If there has been an attack so that defence is reasonably necessary it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If a Jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary that would be most potent evidence that only reasonable defensive action had been taken." [3]

In the case of Palmer vs. The Queen, on appeal to the Privy Council in 1971, defined the concept of reasonable force:

The defence of self-defence is one that any jury can and will easily understand, It's a straightforward concept. It does not contain any comprehensible legal considerations. Only common sense is needed to understand it. It is good law and common sense that a man attacked may defend himself. It is good law and common sense that he may, but may only do what is reasonably necessary. But everything will depend on specific facts and circumstances. In some cases it may be reasonable and clearly possible to undertake some simple avoidance. Some attacks can be serious and dangerous. Others may not be. If there was some relatively minor attack, it would not be reasonable to authorize any retaliatory action that was totally disproportionate to the needs of the situation. If the attack is serious, putting someone in immediate danger, immediate defensive action may be necessary. If it is a moment of crisis for someone who is in imminent danger, they may need to avert the danger with some immediate response.

If the attack is over and no danger remains, then the use of force may be a form of revenge or punishment or settling an old score, or it may be outright aggression. There may no longer be any connection with the necessity of the defence. If the jury were to think that the person attacked, in a moment of unexpected anxiety, did only what he honestly and instinctively thought necessary, that would be the most effective evidence that only reasonable defensive action was taken .[4]

In the case of Wassan Singh versus the State of Punjab (1995) 1996 SCC (1) 458, JT 1995 (8) 434 There was a fight between two groups of people. The accused received nine injuries and in exercising private defence, he shot at the assailants with his gun, which hit an innocent woman bystander, causing her death. The Supreme Court held that the accused had the right of private defence and hence, he was acquitted. Section 106 read with Section 100 of the IPC, therefore, applies to a case of extreme necessity in which a person is entitled to run the risk of harming an innocent person in order to save himself/ herself from mortal injury.[5]

- [5]. <https://theleaflet.in/the-right-of-private-defense-a-legal-view/> (Last visited: 14/10/2022).

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### Judicial Perspective And Leading Cases

The drafters of the Indian Penal Code have left this concept of private defence in an "imperfect state", i.e. the concept of private defence is not properly defined in the provisions of the Penal Code, it has usually evolved or evolved over the years with the judgments and decisions of the courts.

The provisions were framed by the code makers so that such provisions could be interpreted and analysed by the judiciary and could be modified according to different situations and cases so as to maintain the principle of justice in providing justice to the people of our country i.e. leaving it in a flexible state. They followed Rawls' principle of justice that it is the moral duty of the court to act on the basis of fair adjudication between competing claims. As such, it is associated with justice, entitlement and equality.

And also justice cannot be sacrificed for cost, speed and expediency. However, their intention was only partially fulfilled, because the local judiciary interprets the term private defence somewhat more strictly compared to the higher judiciary, and this discrepancy between the judicial interpretation and the intention is mentioned in sections 100 and 102 of the Criminal Code. Explained under the heading "reasonable concerns"). The Court has interpreted and analysed the right to private defence in various landmark cases.

### References

- [1]. <http://www.e-lawresources.co.uk/Public-and-private-defences.php> (Last visited: 12/10/2022).
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