



Analysis on the right of private defense under IPC

Pinky Sharma

Kath Mandi Samalkha, Panipat-132101, Haryana (India)

E-mail- pkgkmt@gmail.com

Abstract: Private defence is a right available to every citizen of India to protect themselves from any external force that can result into any harm or injury. In layman's language it implies the use of otherwise unlawful actions in order to protect oneself or any other individual, to protect property or to prevent any other crime. Section 96 to 106 of Indian Penal Code 1860 contains the provisions regarding the right of private defence available to every citizen of India. . Citizens of every free country should be provided with the right of private defence in order to protect themselves from any imminent danger at the time when the state aid is not available or possible. This right should be read with the duty of the state to protect its citizens as well as their property It was granted as a right for self protection to every citizen of India but it is often misused by many people by treating it as an excuse of committing any crime or offence. Therefore this right to private defence is subject to certain restrictions and limitations. Though the right of private defence was granted to citizens of India as a weapon for their self defence this is often used by many people for evil purposes or unlawful purposes. Now it is the duty and responsibility of the court to examine whether the right was exercised in a good faith or not. The extent of exercise of this right doesn't depend on actual danger but instead on the reasonable apprehension of the danger. . The right can be extended by an accused in some circumstances but only to a certain degree, which would not invalidate the right of private defence.

[Sharma, P. **Analysis on the right of private defense under IPC**. *Researcher* 2023;15(4):29-32]. ISSN 1553-9865 (print); ISSN 2163-8950 (online). <http://www.sciencepub.net/researcher>. 06.doi:[10.7537/marsrsj150423.06](https://doi.org/10.7537/marsrsj150423.06).

Keywords: extent, good faith, imminent, invalidate limitations, extent, reasonable apprehension, unlawful.

Introduction: In general private defence is a general exception which speaks about the defence which one can take for saving his own life or another person life and property only when there is necessary condition or the steps that are required to be taken at the particular time and at the particular condition.

One of the major things that are considered to be remember in taking the plea of private defence is that the actions that has been taken by the plaintiff to save his life from the defendant should be reasonable enough that can directly show that there is an intension to harm or to provide injury and the defendant is been able to commit the crime meeting all the necessary conditions.

The main objective of private defence taken by accused should be to only defence himself but not to just providing unnecessary harm to other harm if the defendant is not able to provide any harm to the plaintiff and it should be reasonable to take any action harming defendant in plea of private defence . The burden of proof is totally on accused that why he had taken such actions and what were the conditions that made the plaintiff do take such necessary steps to defend himself.

The rights of private defence and objective can be clearly understood from the case of *Arjun v. State of Maharashtra*[i]. The case discusses about whether there is was the conditions of taking the plea of private defence to protect himself from the defendant. Considering the background facts also because the incontrovertible fact that there was no premeditation and therefore the act was committed during a heat of passion which the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, the plaintiff cannot take the plea of private defence and hence case falls under the fourth exception to Section 300 IPC.

IPC Section 96 to 106 of the penal code states the law relating to the right of private defence of person and property.

The provisions contained in these sections give authority to a man to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available and in so doing he is not answerable in law for his deeds. Section 97 says that the right of private defence is of 2 types:

- (i) Right of private defence of body,
- (ii) Right of private defence of property.

Body may be one's own body or the body of another person and likewise property may be movable or immovable and may be of oneself or of any other person. Self-help is the first rule of criminal law. The right of private defence is absolutely necessary for the protection of one's life, liberty and property. It is a right inherent in a man. But the kind and amount of force is minutely regulated by law. The use of force to protect one's property and person is called the right of private defence.

Nature of The Right

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.

Right to Private Defence to the Body

The reason and objective of taking private defence should be taken to protect the body. The main reason to take private defence is to protect one's body is when there is only reasonable apprehension of danger to the body of a person arises from an attempt or threat to commit the offence though the offence might not be committed and it still continues as long intrinsically apprehension of danger to the body continues as mentioned in **Section 102 of IPC**.

According to this section, it generally state the whether there is immense need to take the private defence to protect oneself from any harm to their body in the form of any offence or any harm from anyone. The victim is not expected to wait until the act has been committed. The extent to which this right can be exercised does not depend upon the actual danger but the apprehension it has caused. The threat must give rise to imminent danger but not distant danger. The next phase is that of continuance which permits the

action to be in motion until the apprehension of danger continues.

In the case of *Sitaram Das v. Emperor*^[ii], that a person exercising the right of private defence is entitled to secure his victory as long as the contest is continued. He is not obliged to retreat but may still defend till he finds himself out of danger.

For claiming right of personal Defence extending to voluntarily causing death, the accused must establish that there have been circumstances giving rise to reasonable grounds for apprehension that either death or grievous hurt would be caused to him.

The enforceability of this act which states that once the danger of death or grievous hurt has disappeared, the person can't cause any harm to the other party and if he does, he cannot take the defence of Private defence.

Right to private defence regarding protection of body and its scope.

There are certain rights available regarding to one's protection of body under private defence which are mentioned in **section 100 and 101 of IPC** which mentions the situations and for the offences one can take private defence to protect oneself. The offences are:

1. Assault – Death
2. Assault – grievous hurt
3. Assault – committing rape
4. Assault – unnatural lust
5. Assault – kidnapping or abducting

With respect to these offences committed by the defendant, the one can even cause death of another person if these offences had been committed by the defendant on the plaintiff as mentioned in **Section 100 of IPC**. However certain offences are restricted by **Section 99 of IPC** which specifically mentions the conditions under which one can take the plea of private defence.

In the case of *Mohinder Pal Jolly v. State of Punjab*^[iii], there was a dispute between the workers and the management over demand for wages. The workers threw brickbats at the factory. The owner of the factory came out and fired with a revolver killing one worker. In this case, when small mischief was committed in the factory by the workers, the owner was not justified in doing his act when he shot dead one of the workers.

For claiming right of personal Defence extending to voluntarily causing death, the accused must establish that there have been circumstances giving rise to reasonable grounds for apprehension that either death or grievous hurt would be caused to him just like in the case of *Vishvas Aba Kurane v. State of Maharashtra*[iv].

One another major point in right to private defence is that one can defend himself from the people of unsound mind if there is any reasonable apprehension of fear and or attempt or act done by the unsound mind person on one's body then one can defend himself from any bodily harm or any grievous hurt from that person which is mentioned in section 98 of the IPC as it is very important exception in the case of private defence as people of unsound mind are immune from getting punished for any offences.

Private Defence Regarding Private Property

Private Property can be legally defined as property owned by private parties – essentially anyone or anything other than the government. Private property may consist of real estate, buildings, objects, intellectual property upon which every individual has the right to defend his property from being getting harm or stolen from another person.

The main reasons and objectives for private defence should be taken regarding property.

The main reason to take private defence to protect its property is that when there is only *reasonable apprehension of danger*[v] to the property arises from *an attempt or threat* to commit the offence on the property of the person though even the offence has not been committed yet as stated in **Section 105 of IPC**. The plaintiff can only take action upto the point of time when the defendant is within the reach of the plaintiff i.e. the defendant is able to be caught by the plaintiff at that moment only not after the defendant is out of the reach of the plaintiff. The offences for which the private defence for the property can be taken are:

- Robbery
- House breaking by night
- Theft
- House trespass

Right to private defence and scope and nature of private defence regarding Property.

In protecting the property of one's own or another person property, and if it leads to cause the death of another person i.e. the defendant then one will not be guilty of murder or any offence if it is done in private defence as mentioned in section 103 of IPC, These above offences are there in which the plaintiff can take the life of the defendant if the defendant commits any of the offences as mentioned above and can use private defence here so as to save his own property or another person property by taking the life of another person in the process of protection of the property from the defendant. According to Section 104 of IPC, it speaks about the attempt of committing and committing the offences which are different from the offences as mentioned in Section 103 of IPC the plaintiff can harm the defendant but cannot kill the defendant in the following situation or offence of the defendant with respect of restrictions in Section 99 of IPC.

Limitations of private defence of the body and property

The defence to body and property will only be applicable if there is reasonable apprehension of fear and harm is felt by the plaintiff that can cause him any harm within all suitable condition and can get harmed by the defendant. However, there are certain limitations to this right which are defined under **Section 99 of IPC** (Indian Penal Code) which limits the scope of using private defence to be used to protect oneself.

The limitations that Section 99 of IPC states are:

- *Any act done by public servant in good faith.*
- *Any act done when there is no reasonable apprehension of death of grievous hurt or death by defendant.*
- *When there is time to have recourse to the protection of the public authorities.*

Any act done by public servant in good faith

If any act done by public servant in good faith will not be considered as plea for private defence by the plaintiff as the public servant had taken such actions in good faith and have the necessary permission by the government for the betterment of the society and to stop any crime.

Any act done when there is no reasonable apprehension of death of grievous hurt or death by defendant

This limitation states that the private defence can be excise only if the defendant show reasonable apprehension of committing any injury to plaintiff by having all the necessary conditions to attack the plaintiff i.e. the defendant must be physically and mentally able to provide harm to the plaintiff.

When there is time to have recourse to the protection of the public authorities. When the act that can cause harm to the plaintiff had a suitable period of time between the commission of a particular offence and there is suitable time on the part of plaintiff to inform public authorities and if the plaintiff does not do so and tackle the problem by own its own by killing the defendant or grievous hurt the defendant in order to defend himself then it will not be considered as private defence like in the case of *Jai Dev v. state of Punjab[vi]*, it was stated that every citizen has the right of private defence but there measure should be taken to avoid causing harm to others and should tackle the situation if it is manageable.

Conclusion

The right of private defence is obtainable when there's a reasonable apprehension of danger. It's important to note that the right of private defence is obtainable as long as recourse to public authorities isn't possible. No case of reasonable apprehension could even be made if, within the given situation, the assistance of public authorities are often obtained.

The apex court has recognized the human element live and by extension, has asked for due consideration to incline to any or all actions of the accused on the thought of the circumstances, the emotional turmoil within the mind of the accused, the character of the assault etc. To justify the exercise of this right the next are to be examined:

- The whole accident
- Injuries received by the accused
- Imminence of threat to his safety
- Injuries caused by the accused.

References:

- [1]. Dhara Singh v. Crown, 48 CrLj 717: 231 I.C. 159
- [2]. James Martin v. State of Kerela, (2004) 2 SCC 203
- [3]. Pukot Kotu, (1896) 19 Mad. 349
- [4]. R.N. SAXENA, INDIAN PENAL CODE, 179-180 (2017, 20 Ed.) Central Law Publications
- [5]. RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, 202-204 (2015, 32 Ed.) Lexis Nexis.