
AN EXAMINATION OF THE RIGHT TO PRIVATE DEFENCE IN THE INDIAN PENAL CODE

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ABSTRACT

Every person in India has the right to self-defend against any external force that may cause harm or injury to them. It is using otherwise illegal means to protect oneself or another person, safeguard property or prevent any other crime. The provisions of Sections 96 to 106 of the Indian Penal Code 1860 govern every person in India's right to self-defence. Citizens of any free society should have the right to self-defence to protect themselves from any impending harm when governmental assistance is unavailable or unworkable. This right should be understood in conjunction with the state's obligation to safeguard its citizens and their property. It was granted to every citizen of India as a right to self-defence, but many people abuse it by using it as an excuse to commit any crime or offence. As a result, this right to private defence is subject to some limitations and restrictions. Though the right to private defence was granted to Indian individuals as a weapon for self-defence, it is frequently utilised for ill or unlawful reasons by many people. The court has the duty and obligation to evaluate whether the right was exercised in good conscience or not.

Keywords- self-defence, safeguard, unlawful, sections

INTRODUCTION

A "private defence" is described as an action taken to protect one's body and property from another person when there is a reasonable fear of receiving injury or damage to one's property. In general, "private defence" is a particular point at which an individual refers to the defence that one can use to save his own life or the life and property of another person only when there is a requirement or procedure that must be performed at a specific moment and circumstance. The fundamental goal of an accused's private defence should be to defend himself, not to cause unnecessary harm to others. If the defendant is unable to cause any injury to the plaintiff, it should be justified to take any action that harms the defendant in a private defence plea. The burden of proof is entirely on the accused to demonstrate why he did such activities and what circumstances caused the plaintiff to take the required precautions to defend himself.¹

THE AMBIT OF PRIVATE DEFENCE

There is no right to private defence against an act that is not an offence in and of itself under this Code. This excludes the possibility of exceptions. The right begins when there is a realistic fear of bodily harm as a result of an effort or threat to conduct an offence. The right to sue is only invoked in the face of an urgent, present, and actual danger. It is a protective right, not a punishing or retributive one. In no situation does the right extend to causing greater injury than is required for defence, although fair provision must be made for a truly sincere defender. When there is a reasonable and imminent danger of the horrific crimes specified in Section 100's six clauses, the right extends to killing the actual aggressor. There must be no safe or reasonable way for a person confronted with an impending threat to life or serious bodily harm to flee by retreat unless the aggressor is killed. The right, which is essentially a defensive right, does not accrue and apply where there is time to seek the protection of public authorities. According to Section 97 of the Indian Penal Code, every citizen has the right to defend his own body or the body of another person against any offence affecting the human body; the property of himself or another person, whether immovable or movable, against any act that is a criminal offence falling under the interpretation of robbery, theft, mischief and trespassing.

PROTECTION OF AN INDIVIDUAL BODY AND PROPERTY

This part is divided into two clauses: first, the defence of the person, and second, the defence of the property. The Supreme Court has issued a few suggestions to help comprehend the nature

¹ Mondal, M., 2019. A Detailed Study of Right to Private Defence under IPC. LexForti Legal J., 1, p.1.

and extent of the statute's applicability under this section:

The right to personal defence can only be granted if the offence for which one is seeking a defence is also a crime under this code. The defence under this provision will persist 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; this has been examined under sections 102 and 105 of the I.P.C.² This is retaliatory, as the threat has to be real and immediate. This is strictly for defensive purposes, not to inflict hurt or harm on someone, such as joining a physical fight, even though it is ongoing, and if someone has caused or is about to cause injury, retaliation must be carried out. The acts covered by this section should be genuine. It may also allow the killing of someone as specified in section 100 of the law, where the conviction is of such a kind that if not prevented, could end in death and grave consequences. It makes no difference whether the apprehension is true or not. If one individual fires a shot at another in an enraged and unstable state of mind, the latter can claim private defence/self-defence as a defence. If it is recognised that the applicability of the right to private defence is not applicable in the case of a free fight, this chapter will not apply unless both parties mutually agree.³ Finally, sections 96 to 100 should be read together because the essence of the cases states that it is imposed in the real world when there is wrongful violence, but the justification and defence under section 97 have a much narrower line to distinguish between committing an offence and getting exercise actions under this chapter, because the moment one exceeds his limit of defensive force, it becomes an offence under this code, I.P.C.

USE OF THE RIGHT TO PRIVATE DEFENCE IN THE CASE OF INTOXICATED AND UNSOUND INDIVIDUALS

This clause applies to activities committed by those who are of unsound mind, inebriated, and lack the maturity to appreciate the consequences of their actions. It states that a person who is threatened with urgent danger or harm to one's or others' life, limb, or property by a person of unsound mind suffering from madness or intoxication will be entitled to enforce his rights against them as well, regardless of background. If the makers did not create exclusions for the unsound, crazy, and drunk, the goal of this section would have failed miserably. Because the opposing party has the potential to cause injury to the person and property, if no private defence is supplied to him or her, the section's survival will be jeopardised. It is also important to

² Indian Penal Code, 1860, Bare Act.

³ <http://lawcommissionofindia.nic.in/reports/report226.pdf>

remember that a misunderstanding or mistaken belief about the property may raise the issue of a right of preventive defence.

ACT COMMITTED WHEN THERE IS NO OPPORTUNITY TO EXERCISE THE RIGHT TO PRIVATE DEFENCE

The right to private defence must be used when there is a reasonable fear of danger or harm to one's body or property, but there are some limitations. For example, if a public servant performs a bona fide act that results in harm or threats of violence or harm to one's body or property, the public servant will be justified in acting under the colour of his office. In a circumstance where public servants, such as police officers, are abdicating their duties, such as when they do not have a search warrant for a house but forcefully enter it anyway, the owner of the house, who is trying to resist the aggressive entry against with the police officers, cannot use the unlawfulness of the prosecution as a justification on his part because the public servant is not acting maliciously. The preceding situation analysis demonstrates the significance of this section and how it can be interpreted in different scenarios.⁴ A search party of police officers went to search the home of a person with information that the individual possessed an unlicensed gun. When the search party arrived at the home of the accused, they got to hear some strange sounds outside the house, took out the gun, and began firing shots in the belief that they were defending themselves against trespassers to the property who were police officers, but in reality, they killed one of them due to a factual and belief error. Where the police officers have not revealed their identities, the individual who fired a bullet at the public worker has the right to private defence, which does not constitute an offence. When there is an adequate opportunity to have any form of remedy to the public servant authorities, the supreme court has often stressed that taking up the law into one's own hands is a good choice or alternative.

WHERE THE CRIME SEEMS TO BE SO HEINOUS THAT IT RESULTS IN DEATH

The following are the sections that deal with the fatalities caused by using the defence under this section:

- I. An act or intention to inflict deformity by splashing acid on an individual, in which case the person may cause death to defend himself in extreme circumstances.

⁴ Ashworth, A.J., 1975. Self-defence and the Right to Life. *The Cambridge Law Journal*, 34(2), pp.282-307.

- II. Where there is a fear of serious injury and the resulting consequences may result in death
- III. When the criminal attempts to commit rape on a specific person.
- IV. In circumstances of abnormal lust fulfilment, deliberately do so.
- V. A kidnapping or abduction attempt may also be grounds for a defence under this clause.

The mere suspicion of something heinous would be enough to proceed under this provision. We may learn more about the situation where this part is restricted by looking at the following case study. In a situation where a group of people gathered outside the accused's house, scolded them, and caused serious injuries, the use of the right to private defence can be allowed because he (accused) attacked one of the people and was prosecuted under section 300 of this code.⁵ However, the court found him not guilty because the harm he inflicted on his father was a serious character. "The new type of offence introduced by the Criminal Law Amendment Act, 2013, which brings about the private defence of the body, extends to causing death by throwing or administering acid to any human, which will cause serious harm as a result of its consequences." This is by the Justice Verma Committee's directives and recommendations."

WHEN AN INNOCENT PERSON IS IN DANGER, USE PRIVATE DEFENCE

The section deals briefly with situations in which the harm to an innocent person is uncertain since it cannot be properly attributed to him due to his lone presence. Because this section of the code does not limit the person to the body but also property, it is a reasonable flow to understand that exercising the right to private defence where the action can cause harm to any other person who does not have the right to private defence is not an offence under the light of this section.

SIGNIFICANT CASES AND JUDICIAL VIEWS

STATE OF UP VS RAM SWARUP AND ANR⁶

Quite apart from the consideration as to who was initially at fault, the extent of the harm which may lawfully be inflicted in self-defence is limited. It is a necessary incident of the right of private defence that the force used must bear a reasonable proportion to the injury to be averted, that is, the injury inflicted on the assailant must not be greater than is necessary for the

⁵ Slater, J., 1996. Making sense of self-defence. Nottingham LJ, 5, p.140.

⁶ 1974 AIR 1570

protection of the person assaulted. Undoubtedly, a person in fear of his life is not expected to modulate his defence step by step or tier by tier for as Justice Holmes said in *Brown vs. the United States* (2) "detached reflection cannot be demanded in the presence of an uplifted knife". But section 99 provides terms clear and categorical "The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for defence".

It would be possible to analyse the shooting incident more minutely but it is sufficient to point out that under section 105 of the Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code is upon him and the court shall presume the absence of such circumstances. The High Court must, of course, have been cognizant of this provision but the Judgment does not reflect its awareness of the provision and this we say not merely because section 105 as such has not been referred to in its Judgment. The importance of the matter under consideration is that sections 96 to 106 of the Penal Code which confer and define the limits of the right of private defence constitute a general exception to the offences defined in the Code; in fact, these sections are a part of Chapter IV headed "General Exceptions". Therefore, the burden of proving the existence of circumstances which would bring the case within the general exception of the right of private defence is upon the respondents and the court must presume the absence of such circumstances. The burden rests on the accused to prove that any of the- general exceptions are attracted does not absolve the prosecution from discharging its initial burden and truly, the primary burden never shifts save when a statute displaces the presumption of innocence; "indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence(1)". That is to say, an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by (1) *K.M. Nanavati vs. the State of Maharashtra*⁷

him while discharging the burden under section 105 of the Evidence Act may be enough to cast reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal. (1) The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favour of his plea. (2) The judgment of one of us, Beg J., in *Rishikesh Singh v. State*(3) explains

⁷ 1962 AIR 605

the true nature and effect of the different types of presumption sing under section 105 of the Evidence Act. As stated in that judgment, while the initial presumption regarding the absence of circumstances bringing the case within an exception may be met by showing the existence of appropriate facts, the burden to establish a plea of private defence by a balance of probabilities is a more difficult burden to discharge. The judgment points out that despite this position there may be cases where, though the plea of private defence is not established by an accused on a balance of probabilities, the totality of facts and circumstances may still throw reasonable doubt on the existence of "men's rea", which normally is an essential ingredient of an offence. The present is not a case of this latter kind. Indeed, realising that a simple plea of private defence may be insufficient to explain the nature of injuries caused to the deceased, Ram Swarup suggested that the shot fired by him at the assailants of his father Ganga Ram accidentally killed the deceased. We do not doubt that the act of Ram Swarup was deliberate and not accidental. The respondents led no evidence to prove their defence but that is not necessary because such proof can be offered by relying on the evidence led by the prosecution, the material elicited by cross-examining the prosecution witnesses and the totality of facts and circumstances emerging out of the evidence in the case. Given the considerations mentioned earlier, we find it impossible to hold that Ram Swarup fired the shot in defence of his father Ganga Ram. The circumstances of the case negative the existence of such a right.

KASHI RAM AND OTHERS VS STATE OF RAJASTHAN⁸

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The extent to which the right may be exercised. - The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for defence. The main question that arises for adjudication in this case, is whether the accused-appellants had the right of private defence and this is the case of exceeding the right.

of private defence meaning thereby, inflicting more harm than was necessary for defence. In Mahabir Choudhary v. the State of Bihar (1996), this court held that the High Court erred in holding that the appellants had no right of private defence at any stage. However, this court upheld the judgment of the Sessions Court holding that since the appellants had the right of private defence to protect their property, but in the circumstances of the case, the appellants had exceeded their right of private defence and were, therefore, rightly convicted by the trial

⁸ 5 SCC 107

court under section 304 Part-I The court observed that the right of private defence cannot be used to kill the wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have the full measure of the right of private defence including killing. We have examined the cases of exceeding the right of private defence. In the instant case, both the Sessions Court and the High Court came to the conclusion that the accused appellants were guilty of exceeding the right of private defence and instead of convicting them under section 302 convicted them under section 304 Part-II along with 149 IPC.

CONCLUSION

When there is a legitimate fear of harm, the right to private defence is available. It should be noted that the right to private defence is available as long as access to a public authority is not conceivable. There is no need to be concerned if, in the present scenario, the support of public authorities is frequently gained. Though the right to private defence was offered to Indian individuals as a weapon for self-defence, many people utilise it for ill or unlawful purposes. It is now the court's job and responsibility to determine whether or not the right was exerted in good faith. The court will consider several crucial factors while rendering its decision: damage incurred by the accused; injuries suffered by the accused; whether or not state aid was accessible; and the addition of a risk to his safety. The extent to which this privilege may be exercised is determined by the reasonable fear of the hazard. The right to private defence is accessible when one is abruptly confronted with the imminent necessity of averting an impending threat; it begins when reasonable apprehension occurs and continues as long as apprehension exists. The right can be expanded by an accused in specific instances, but only to a limited extent, which does not negate the right to private defence, i.e., just the amount of force required to disperse the threat or oppose the attack should be utilised.