

## Right to Private Defence of Body

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### ABSTRACT

It is the primary duty of man to assist himself. The right of self-protection should be fostered within the voters of each free country. The right is recognized in each system of law and its extent varies within the inverse magnitude relation to the capability of the state to shield life and property of the subject (citizens). It is the first duty of the state to shield the life and property of the people, however no state, in spite of however giant its resources, will afford to depute a police officer to dog the steps of each rouge within the country. Consequently, this right has been given by the state to each subject of the country to require law into his own hand for his or her safety. One factor ought to be clear that, there's no right of personal defense once there's time to possess recourse to the protection of police authorities. The right isn't hooked in to the particular criminalism of the person resisted. It depends exclusively on the wrongful or apparently wrongful character of the act tried, if the apprehension is real and affordable, it makes no distinction that it's mistaken. An act drained exercise of this right isn't associate degree offence and doesn't, therefore, bring about to any right of personal defense reciprocally.

**KEYWORDS:** Defence, Private body, India, Law

### INTRODUCTION

In early times, it was considered that one could defend himself by the method of running to the safe place, instead of killing or injuring the assailant. It was popularly known as rule of retreat. This remained in fashion or vogue for a long time in western countries, which reflects the universal justice in the domain of self defence. But as the time changed, such trend has been eliminated from the society and the victim is not bound to run away from there and he is entitled to stand there and repel the force and exercise his Right of Private Defence. The law doesn't need a law-abiding national to behave sort of a coward once confronted with AN close at hand unlawful aggression. There is more degrading to the human spirit to run away at the time of danger than to fight with that danger. This right is designed to serve a social purpose which deserves to be fostered within the prescribed limits. The Right of Private Defence has been given to a person just to defend himself and not to retaliate. This right has not given to take revenge. This right has been used as a shield not as a sword to take revenge. The Russel defines the rule as to the Right of Private Defence "a man is justified in resisting by force anyone who manifestly intends and endeavors by violence or surprise to commit a notable crime against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended, and if in a very conflict between them he happens to kill his offender, such killing is excusable."

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Hari Singh Gaur<sup>1</sup> aptly observed that self-help is the first rule of criminal law. It still remains a rule, though in process of time much attenuated by considerations of necessity, humanity, and social order. Bentham has observed "the right of defence is absolutely necessary". It is supported the cardinal principle that it's the duty of man to assist himself. The Right to Private Defence is a right inherent in every person and it is based on the premise that the foremost duty of man is to protect himself. Although it is the primarily duty of every state to protect the person and his property but no state can provide such protection at all times, that's why state has given such Right to every person to take the law into his own hand but only for his own safety that's we have known as Right of Private Defence.<sup>2</sup>

### NATURE OF THE RIGHT OF PRIVATE DEFENCE

To justify the exercise of the Right of Private Defence the following things are to be examined: -

- The entire accident.
- Injuries received by the accused.
- Imminence of threat to his safety.
- Injuries caused by the accused.
- Circumstances whether the accused had time to recourse to public authorities.

Right of personal defence could be a sensible weapon within the hand of each subject to defend himself. This right isn't of revenge however toward the threat And close at hand

<sup>1</sup>Gaur H S, Penal Law of India (11th Edition 1998-99)

<sup>2</sup>Bentham J, Principles of Penal Laws

danger of an attack. But people can also like misuse this right. It's terribly tough for court to search out whether or not this right had been exercised in honesty or not. The provisions relating to Right of Private Defence of a person have been under Section 96 to 106, in which Section 96 provides that – "Nothing is an offence which is done within the exercise of the correct of personal defence." It means when a person does any act in the Right of Private Defence then such act is not an offence and he is not liable for it. The Hon'ble Supreme Court within the case of *Laxman V. State of Orissa*<sup>3</sup> has explained that when such right is available to a person. The Supreme Court has held that the Right of Private Defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his own creation. Such necessity must be present, real or apparent. In *Munney Khan V. State*<sup>4</sup> case, the Hon'ble Supreme Court observed: "The right of private defence is codified in Section 96 to 106 of Indian Penal Code, with have all to be read together in order to have a proper grasp of the scope and limitations of this right. By enacting the sections, the authors of the Code wanted to except from the operation of its penal clause's acts done in good faith for the purpose of repelling unlawful aggression. Now, the question arises that whether there is a Right of Private Defence against the act of self defence. To resolve this controversy, the Hon'ble Supreme Court in the case of *Pammi V. State*<sup>5</sup> of M.P has held that the aggressor can't avail this Right of Private Defence as entry in the house of deceased with the weapons, was an act of aggressions, and the Right of Private Defence can't be claimed against an act of Self Defence.

#### ➤ **No Private Defence in a Free Fight:** -

Where 2 parties return armed unflatteringly to live their strength and to settle a dispute by force and within the succeeding fight either side receive injuries, absolute confidence of right of private defence arises. In *Onkar Nath Singh v/s. State of U. P*<sup>6</sup> case of free fight both parties are aggressors and none of them can claim right of private defence.

#### **RIGHT OF PRIVATE DEFENCE OF THE BODY**

The provision about Right of personal Defence of the Body has been given below Section ninety-seven, of the Indian legal code 1860, that provides that-

"Every person has a right to defend-

- A. His own body, and the body of any other person, against any offence affecting the human body;
- B. The property, whether moveable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of Theft, Robbery, Mischief or Criminal Trespass, or that is an effort to commit stealing, Robbery, Mischief or Criminal Trespass.

It means that one and all incorporates a Right to defend his body against the offences mentioned as higher than during this section. But this Right is subject to the restrictions contained in Section ninety-nine. But the aggressor himself can't plea the Right of Private Defence against the defender.

<sup>3</sup>1988cri.L.S.188(SC)

<sup>4</sup>AIR1971 SC 1491

<sup>5</sup>AIR 1998 SC 1185

<sup>6</sup>AIR1974 SC1550

In alternative words, it means, there's no Right of personal Defence against the one who is sweat his Right of personal Defence. Such Right of personal Defence has additionally on the market against the act of an individual of unsound mind, Infant etc. Section 98 provides that -

"When associate act, which might preferably be an exact offence isn't 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 that he would have if the act were that offence."

It means that such right is accessible not solely against the person capable by law of committing associate offence however additionally against incapable person. It means that one will exercise of Right of personal Defence against associate kid, insane, an intoxicated person or one suffering under misconception of facts. For Example: - 'A' below the influence of madness makes an attempt to Kill 'B'. 'A' is guilty of no offence. But at the same time 'B' has the same Right of Private Defence as he would have if 'A' were sane.

#### **PARTS OF RIGHT OF PRIVATE DEFENCE**

From the analysis of the **Section 97** of the code, it is clear that there are two types of Right of Private Defence, which are as follows -

**Right of Private Defence of the Body:** As per **Section 97**, "Every person has a right to defend his own body and the body of any other person against the offence affecting the human body". But this right is subject to the restrictions provided Under **Section 99**. The Right of Private Defence of the Body, have been explained under the following heads:

#### **A. When death may be caused:**

The law authorizes a person, who is under a reasonable apprehension that his life is in danger, to cause the death of the assailant either when the assault is committed or directly threatened, but such apprehension must be reasonable and not an imaginary only **Section 100** provides the circumstances or cases in which a defender may cause the death of the assailant. **Section 100** provides that - "The Right of Private Defence of the Body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely -

- Firstly** - Such an assault as may reasonably cause the apprehension that Death will otherwise be the consequence of such assault.
- Secondly** - Such an assault as may reasonably cause the apprehension that Grievous Hurt will otherwise be the consequence of such assault.
- Thirdly** - An assault with the intention of committing Rape.
- Fourthly** - An assault with the intention of Gratifying Unnatural Lust.
- Fifthly** - An assault with the intention of Kidnapping or Abducting.
- Sixthly** - An assault with the intention of Wrongfully Confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

But this right is not an absolute right, it is subject to restriction provided under **Section 99**. It means the defender can't cause the death of the assailant in the circumstances provided under **Section 99**. In case of *Vishwanath V/s State of U.P.*<sup>7</sup>, the deceased went to his father-in-law's house and without their consent dragged his wife with a view to take her. The accused on seeing his sister being dragged gave a blow with a knife to the deceased who died immediately. It was held that when sister is being abducted, the brother in the exercise of the right of private defence can kill the abductor and such killing will be within the meaning of the Right of Private Defence.

#### **B. When any harm other than death may be caused:**

**Section 101** provides the circumstances in which a defender may inflict any harm to the assailant in the exercise of Right of Private Defence but he can't cause the death of assailant. **Section 101** provides that – "If the offence be not of any of the descriptions enumerated in the last preceding section i.e. **Section 100**, the Right of Private Defence of the body doesn't extend to the voluntary causing of death to the assailant, but does extend to the voluntary causing to the assailant of any harm other than death". But this right is also not an absolute right and it is subject to the restriction provided under **Section 99**.

It means the defender may cause any harm short of death in the exercise of the Right of Private Defence in any case which doesn't fall within the provision of Section 100, but he is required to prove that he didn't violate the restriction laid down in the **Section 99** of the Code.

#### **C. Harm to Innocent Person:**

**Section 106** provides the circumstances in which the defender may exercise the Right of Private Defence against the deadly assault although there is a risk of causing harm to some innocent person. **Section 106** provides that – "If in the exercise of the Right of Private Defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his Right of Private Defence extends to the running of that risk."

A risk of harm to an innocent person in the exercise of the right of private defence. The court examined whether the right could be available to a person who caused the death of a man who had no role to play in the dispute. This Section should be read in the light of Section 100. Injury to Innocent Persons in the exercise of the Right of Private Defence is Excusable under it.<sup>8</sup> For Example :- 'Z' is attacked by a mob who attempt to murder him, he can't effectually exercise his Right of Private Defence without firing on mob but there is a risk of harming some young children who are also mingled with them. 'Z' commits an offence if he harms any of the children while firing on the mob.

#### **D. Commencement and Continuance of Right of Private Defence of Body:**

Now, the question arises that when the Right of Private Defence of Body commences and till what time it continues? The answer of this question has been provided under Section 102 of the Code, which provides that – "The right of Private

Defence of the Body commences as soon as a reasonable apprehension or danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues." It means the Right of Private Defence of the Body of the defender commences only when the reasonable apprehension of danger to the body arises and it continues till such apprehension lasts. For Example:- 'A' threatens 'B' to leave the house in consequences of which 'B' left the house but after some time he come back and caused the death of 'A'. In such case, he can't get the benefit of the Right of Private Defence as he hasn't exercised it at the appropriate time and as he left the house all danger to his body was over.

#### **LIMITATIONS ON THE RIGHT OF PRIVATE DEFENCE**

As it is well known that the law doesn't give an absolute right to any person. It means every right has some limitations or restrictions to put a check on it. As such these Right of Private Defence are also not absolute, they are subject to the restrictions or limitations contained in **Section 99**. It means a person can't exercise the Right of Private Defence in the following situations which are provided under **Section 99** of the Code, which are as –

##### ➤ **Public Servant:-**

There is no Right of Private Defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith or under his or her directions under colour of his office, though that act may not be strictly justifiable by law.

##### ➤ **Person acting under direction of Public Servant:**

There is no Right of Private Defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith or under his directions under colour of his office, though that act may not be strictly justifiable by law.

##### ➤ **Recourse to the Protection of the Public Authorities:**

There is also no Right of Private Defence in cases in which there is time to have recourse to the protection of the public authorities. It means in any of the above situation a person can't exercise the Right of Private Defence whether in case of body or of property. For Example:- The accused received information one evening that the complainants intended to go on his land on the following day, and uproot the corn sown in it. At about three o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the corn. Thereupon he at once proceeded to the spot, followed by the remaining accused, and remonstrated with the complainants, who commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. It was held that the complainants being the aggressors, the accused had the right of private defence and that they were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night attack on their property.

#### **Extent to which right may be exercised**

The Section 99 further provides that how much right such of Private Defence can be exercised by the person or defender

<sup>7</sup> AIR 1960 SC 67

<sup>8</sup> AIR 2007 SC291

to defend himself or herself. It means how much harm may be inflicted by the defender for the purpose of his defence. The Section 99 provides that –“The Right of Private Defence in no case extends to the inflicting more harm than it is necessary to inflict for the purpose of defence.”It means a defender can't take the undue advantage of the Right of Private Defence, it should be exercised up to some limits or extends. In other words, it means a defender may inflict such harm in the exercise of Right of Private Defence which is necessary to inflict for the purpose of his defence. The object behind it is that such right has been exercised as a shield not as sword or weapon. Such right has been given to a person just to protect himself or the property not to take a revenge. If any person exceeds his Right of Private Defence, he shall liable for that act and shall be punished for their consequences as per law.

### CONCLUSION

Self-preservation is a principle of Criminal law and therefore the state provides individuals the right to protect themselves. The right of Private Defence of body comes under the justifiable defence where the focus is more on the act of the individual. The benefit out of the conduct outweighs the evil of the offence. However, the Courts while providing the defence under **SECTION 100** have been very careful. The burden is on the accused to prove that he had exercised his right of private defence. He need not prove it beyond reasonable doubt but on the preponderance of probability. The circumstances that force the individuals to commit the offence are seen. State has given us some rights to protect ourselves from impending danger when the state is not available to do the same. It extends to causing of death of the assailant in certain circumstances. However, there has to be reasonable apprehension of real or imminent threat to avail this right. Thus, this right of Private defence is a wonderful weapon in the hands of the people that permits them to protect themselves and others against any threat under a legal justification. But a cautious attitude must be there so that no person misuses this right for his own

purpose. It is only to be seen as a self-protecting right and not a right to retaliate.

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