



Right to Private Defence: A Preventive Right or A Punitive Right

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ABSTRACT

Private defence is an excuse for any crime against the person or property. It also applies to the defence of a stranger, and may be used not only against culpable but against innocent aggressors. The defence is allowed only when it is immediately necessary-against threatened violence. A person who acts under a mistaken belief in the need for defence is protected, except that the mistake must be reasonable. In principle, it should be enough that the force used was in fact necessary for defence, even though the actor did not know this; but the law is not clear. There is no duty to retreat, as such, but even a defender must wherever possible make plain his desire to withdraw from the combat. The right of private defence is not lost by reason of the defender's having refused to comply with unlawful commands.

KEYWORDS :

Introduction

The state as a policy of law identifies some circumstances which are some externally 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. Law takes not of such external compulsion and considers the act to be excusable. The state has the duty to protect its citizens and their property from harm. However, circumstances may arise when the aid of state machinery is not available and there is imminent danger to a person or his property. In such situations, a person is allowed to use force to ward-off the immediate threat to his or someone else's person or property. This is the right of private defence. But such a right is subject to some restrictions and not available in all circumstances. The right of private defence is not available against public servants acting in exercise of their lawful powers. A person is allowed to use only reasonable force; force that is proportionate to the impending danger.

Private Defence: Meaning and Types

The expression private defence that has been used in the Indian Penal Code, 1860, has not been defined therein. Thus, it has been the prerogative of the judiciary to evolve a workable framework for the exercise of the right. Thus in India, the right of private defence is the right to defend the person or property of himself or of any other person against an act of another, which if the private defence is not pleaded would have amounted to a crime.

Policy behind the Right to Private Defence

The policy behind the right is to make/enable a person to prevent another from committing an offence. The purpose is preventive not punitive. It is a situation of urgency where right to private defence applies when the danger is too imminent and effective recourse to the public authorities is not possible. No person has the legal duty to run from the imminent danger rather it is expected and is permitted to him that he can take recourse to use of force to avert the danger. Law does not expect a duty to retreat from the individuals. However, since the purpose is to prevent the acts of aggression, the use of force should be done only as far as it is essential for that purpose and one cannot use force to punish the aggressor. Therefore, the right to private defence has to be given a restricted application.

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 recognized in every system of law and its extent varies in inverse ratio to the capacity of the state to protect life and property of the citizens. 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. It depends solely on the wrongful or apparently wrongful character of the act attempted and 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.

Private Defence in the Indian Legal System

The Right to private defence of a citizen, where one can practically take law in his own hands to defend his own person and property or that of others, is clearly defined in Section 96 to Section 106 of the Indian Penal Code. Nothing is an offence, which is done in the exercise of the right of private defence. Section 96 is a declaratory provision wherein it is expressly provided that if anything i.e. any harm is caused in the exercise of one's right to private defence then it will not be an offence. Therefore the accused, in order to take the benefit of section 96, shall prove that he was acting with the domain of his right to private defence. Thus the issue arises as to what will be the domain of one's right to private defence and it is here that the various provision from section 97 till 106 will be applicable. Every person has a right, subject to the restrictions contained in Section 99, to defend first- his own body, and the body of any other person, against any offence affecting the human body and secondly-the property, whether movable 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 which is an attempt to commit theft, robbery, mischief for criminal trespass. In the cases of body the right is available with respect to any offence against human body whereas in the matters of property it is available only in case of theft, robbery, mischief, criminal trespass. These are those offences of property in which there is a sense of physical urgency and these are considered to be fit cases for private defence.

Judicial View on Private Defence

The right of private defence legally accords to the individuals the right to take reasonably necessary measures to protect themselves under special circumstances. The inconsistency between the judicial interpretation and the intention of the Code framers is exemplified in the interpretation of "reasonable apprehension" under Sections 100 and 102. Evidently, the local courts have adopted a strict objective approach in determining reasonable apprehension, ignoring its inherent ambiguity.

Darshan Singh v. State of Punjab

The Supreme Court laid down Guidelines for Right Of Private Defence for Citizens. It observed that a person cannot be expected to act in a cowardly manner when confronted with an imminent threat to life and has got every right to kill the aggressor in self defense. A bench comprising Justices Dalveer Bhandari and Asok Kumar Ganguly, while acquitting a person of murder, said that when enacting Section 96 to 106 of the IPC, the Legislature clearly intended to arouse and encourage the spirit of self-defence amongst the citizens, when faced with grave danger. The law does not require a law-abiding citizen to behave like a coward when confronted with an imminent unlawful aggression.

Yogendra Moraji v. State

The Supreme Court discussed in detail the extent and the limita-

tions of the right of private defence of body. One of the aspects emphasized by the court was that there must be no safe or reasonable mode of escape by retreat for the person confronted with an impending peril to life or of grave bodily harm except by inflicting death on the assailant. This aspect has create quite a confusion as it indirectly suggests that once should first try to see the possibility of a retreat than to defend by using force, which is contrary to the principle that the law does not encourage cowardice on the part of one who is attacked.

Nand Kishore Lal v. Emperor

Accused who were Sikhs, abducted a Muslim married woman and converted her to Sikhism. Nearly a year after the abduction, the relatives of the woman's husband came and demanded that she return. The accused refused to comply and the woman herself expressly stated her unwillingness to rejoin her Muslim husband. Thereupon the husband's relatives attempted to take her away by force. The accused resisted the attempt and in so doing one of them inflicted a blow on the head of the woman's assailants, which resulted in the latter's death. It was held that the right of the accused to defend the woman against her assailants extended under this section to the causing of death and they had, therefore, committed no offence.

Mohinder Pal Jolly v. State of Punjab

Workers of a factory threw brickbats from outside the gates, and the factory owner by a shot from his revolver caused the death of a worker, it was held that this section did not protect him, as there was no apprehension of death or grievous hurt.

Mithu Pandey v. State

Two persons armed with 'tangi' and 'danta' respectively were supervising collection of fruit by labourers from the trees that were in the possession of the accused persons who protested against the act. In the altercation that followed one of the accused suffered multiple injuries

because of the assault. The accused used force resulting in death. The Patna High Court held that the accused were entitled to the right of private defence even to the extent of causing death.

Jassa Singh v. State of Haryana

The Supreme Court held that the right of private defence of property would not extend to the causing of the death of the person who committed such acts if the act of trespass is in respect of an open land. Only a house trespass committed under such circumstances as may reasonably caused death or grievous hurt is enumerated as one of the offences under Section 103.

Conclusion

The force used in defence must be not only necessary for the purpose of avoiding the attack but also reasonable, i.e. proportionate to the harm threatened; the rule is best stated in the negative form that the force must not be such that a reasonable man would have regarded it as being out of all proportion to the danger. The traditional rule is that even death may be inflicted in defence of the possession of a dwelling. The occupier of premises may use necessary and reasonable force to defend them against a trespasser, or one reasonably thought to be a trespasser; and it seems that even a licensee (such as a lodger) can eject trespassing strangers. It is a statutory offence to set spring guns or mantraps, except in a dwelling house between sunset and sunrise. It has not been decided whether the exception operates to confer an exemption from the ordinary law of offences against the person. Such defences as spikes and dogs are lawful if reasonable. Thus, we can see the right of private defence is very helpful in giving citizens a weapon which in a case that it's not misused is subject to certain restrictions, helps them protect their and others' lives and property.

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