



Right of Private Defense in India.

- Advocate Nithia.

Jeremy Bentham, an English Legal Luminary, once opined, "This right of defense is absolutely necessary. The vigilance of the Magistrates can never make up for vigilance of each individual on his own behalf. The fear of the law can never restrain bad men so effectually as the fear of the sum total to individual resistance. Take away this right and you become, in so doing, the accomplice of all bad men."

The Right to Private Defense 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.

Section. 97 of the Indian Penal Code, 1860, states that every person has a right, subject to restrictions contained in the Code, to defend:

- His/her own body, and the body of any other person, against any offence affecting the human body;
- The property, whether moveable or immovable, of himself/herself 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 or criminal trespass.

ILLUSTRATION 1:

A robber breaks into your house at night and threatens you with a weapon. At this moment, you have the right of private defense, and you can and must use it. This is because you cannot be too sure if or if not the robber will use deadly force against you., nor can you wait and watch to ponder his next move. Therefore, you are well within your rights to use any and all force necessary to protect yourself.

Further, Section 98 of the IPC further defines Right of Private Defense even against the act of a person of an unsound mind :

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 soundness 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 defense against that act which he would have if the act were that offence.

SITUATION WHEN THERE IS NO RIGHT OF PRIVATE DEFENSE

Section 99 of the IPC describes when there is no right to private defense and states the following:

- There is no right of private defense 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/her directions under colour of his office, though that act may not be strictly justifiable by law.
- There is also no right of private defense in cases in which there is time to have recourse to the protection of the public authorities.

In other words, if you have an opportunity to seek help from the police, you must do so instead of resorting to the Right of Private Defense yourself.



ILLUSTRATION 2:

Now in the same situation as Illustration 1, a robber breaks into your house at night and threatens you with a weapon. You choose not to do anything but to stay put. The robber robs some valuables from your house and leaves your house.

At this very moment, your right of private defense has ceased, and you cannot and must not use it. Instead, you must report the matter to the nearest Police Station. You cannot pursue the robber and attack him, and you certainly cannot kill him. This is because the right of Private Defense commences and ends with the perceived threat to your life.

Since the right of Private Defense is such an extraordinarily powerful right placed in your hands you must know and understand the extent to which the right may be exercised. The right of Private Defense in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of defense. The following further explains the boundaries of this right:

- A person is not deprived of the right of private defense against an act done, or attempted to be done, by a public servant, as such unless he knows or has reason to believe, that the person doing the act is such public servant.
- A person is not deprived of the right of Private Defense against an act done, or attempted to be done, at the the direction of a public servant, unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

Section 100 of the IPC further defines when the right of Private Defense of the body extends even to cause death. It states that the right of Private Defense of the body extends, under the restrictions mentioned, 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 following:

1. Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
2. Such an assault as may reasonably case the apprehension that grievous hurt will otherwise be the consequence of such assault;
3. An assault with the intention of committing rape;
4. An assault with the intention of gratifying unnatural lust;
5. An assault with the intention of kidnapping or abducting;
6. An assault with the intention of wrongfully confining a person, under circumstances which may reasonable cause him/her to apprehend that he/she will be unable to have recourse to the public authorities for his/her release.

Section. 102 of the IPC also defines commencement and continuance of the right of Private Defense of the body :

The right of private defense 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.

Section. 103 of the IPC further defines when the right of Private Defense of property extends to causing death:

The right of private defense of property extends, under the restrictions mentioned in the code, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which or the attempting to commit which, occasions the



exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:

1. Robbery;
2. House-breaking by night;
3. Mischief by fire committed on any building, tent or vessel which is used as a human dwelling, or as a place for the custody of property;
4. Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of Private Defense is not exercised.

Section. 104 of the IPC defines when such right extends to causing any harm other than death :

If the offence the committing of which, or the attempting to commit which, occasions the exercise of the right of private defense, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned earlier, to the voluntary causing to the wrong-doer of any harm other than death.

Section. 105 of the Indian Penal Code, 1860, defines the time and place of the commencement and the continuance of the right of Private Defense of property. It states that the right of Private Defense of property:

1. commences when a reasonable apprehension of danger to the property commences;
2. against theft - continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered;
3. against robbery - continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues;
4. against criminal trespass or mischief - continues as long as the offender continues in the commission or criminal trespass or mischief;
5. against house-breaking by night - continues as long as the house-trespass which has been begun by such house-breaking continues.

Section. 106 of the Indian Penal Code, 1860, further defines the right of private defense against a deadly assault when there is a risk of harm to innocent persons :

If in the exercise of the right of private defense 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 defense extends to the running of that risk.

In a case *Darshan Singh Vs State of Punjab / Criminal Appeal 1057 of 2002 (Date of Judgment: 15.01.2010)* the Supreme Court laid down **Guidelines For Right Of Private Defense For Citizens**

In a landmark ruling, the Supreme Court 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 Dalbeer Bhandari and Asok Kumar Ganguly, while acquitting a person of the charges of murder, said on January 15 2010 that when enacting Section 96 to 106 of the IPC, accepting from its penal provisions, certain classes of acts done in good faith for the purpose of repelling unlawful aggressions, the Legislature clearly intended to



arouse and encourage the **spirit of self-defense 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. As repeatedly observed by this court, there is nothing more degrading to the human spirit than to run away in face of danger. Right of private defense is thus designed to serve a social purpose and deserves to be fostered within the prescribed limit.”

The court laid down ten guidelines where right of self-defense is available to a citizen, but also warned that in the disguise of self-defense, one cannot be allowed to endanger or threaten the lives and properties of others or for the purpose of taking personal revenge.

Setting aside the judgment of Punjab and Haryana High Court convicting Darshan Singh, the apex court restored the order of the trial court recording his acquittal. The apex court concluded by saying that a person who is under imminent threat is not expected to use force exactly required to repel the attack and his behaviour cannot be weighed on “golden scales.”

The Court declared their legal position under the following 10 guidelines:

1. Self-preservation is a basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defense within certain reasonable limits.
2. The right of private defense is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
3. A mere reasonable apprehension is enough to put the right of self defense into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defense. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defense is not exercised.
4. The right of private defense commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
5. It is unrealistic to expect a person under assault to modulate his defense step by step with any arithmetical exactitude.
6. In private defense the force used by the accused ought **not** to be wholly disproportionate or much greater than necessary for protection of the person or property.
7. It is well settled that even if the accused does not plead self-defense, it is open to consider such a plea if the same arises from the material on record.
8. The accused need not prove the existence of the right of private defense beyond reasonable doubt.
9. The Indian Penal Code confers the right of private defense only when the unlawful or wrongful act is an offence.
10. A person who is in imminent and reasonable danger of losing his life or limb may, in exercise of self defense, inflict any harm (even extending to death) on his assailant either when the assault is attempted or directly threatened.

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