

A Detailed Study of Right to Private Defence under IPC

Manan Mondal

TABLE OF CONTENTS

1. LIST OF CASES	5
2. INTRODUCTION	6
3. RESEARCH QUESTIONS	7
4. RESEARCH OBJECTIVES	7
5. RESEARCH METHODOLOGY	8
6. LITERATURE REVIEW	8
7. SCOPE AND APPLICABILITY OF RIGHT TO PRIVATE DEFENCE	9
8. GENESIS AND APPLICABILITY OF THE RIGHT TO PRIVATE DEFENCE	10
I. Different Aspects of Private Defence	11
II. Right to Private Defence under the Light of Article 21, Of the Constitution	12
9. ELUCIDATION OF THE EXTENT IN INVOKING THE RIGHT TO PRIVATE DEFENCE	13
I. Section, 97: Defence of an Individual Body and of Property	13
II. Section, 98: Application of Right to Private Defence as against Intoxicated and Unsound Persons	14
III. Sections, 99: Acts done when no opportunity of Right to Private Defences Occur	15
IV. Section, 100: Where the offence is of such serious Nature that of Causing Death ...	16
V. Section, 103: The offence of Private Defence extending to Death in Order to Protect Property	17
A. What is Settled Possession?.....	18
VI. Section, 102 and 105: Where right to private defence continues when there is reasonable apprehension of danger to person and property	18
VII. Section, 106: Private Defence Application when in Risk of Innocent Person.	19
10. CONCLUSION.....	20
12. References.....	21

1. LIST OF CASES

1. *Munney Khan v. State*, AIR 1971 SC 1491
2. *Dharam & Ors. v. State of Punjab*, (2010) 2 SCC 333 : (2010 1 SCR) 642
3. *Kuduvakuzinyil Sudhakaran v. State*, (1995) 1 Cr LJ 721 (Ker)
4. *Laxman v. State of Orissa*, (1988)Cr LJ 188 SC
5. *State of Gujarat v. Bai Fatima & Anr.*, AIR 1975 SC 1478
6. *Kashi Ram v. State of Rajasthan*, 2008 3 SCC 55
7. *Jagdish Chandra v. State of Rajasthan* , 1987 CrLj 649
8. *R. v. Duffy*, (1967) 1 QB 63
9. *Backwford v. Queen*, (1988) 1 AC 130 PC per LORD GRIFFITHS at p. 144
10. *Evans v. Wright*, (1964) CrLj 466; *Evan v. Hughes*, (1972) 3 All ER 412
11. *Verayya Vandayar v. Emperor*, 1935 Mad. WD 1342
12. *State Of Assam v. Upendra Das*, 1991 CrLj 2930 (Gau
13. *Maneka Gandhi v. Union Of India*, AIR 1978 SC 597
14. *Katta Surendra v. State of U.P.*,2008 CrLj 3196 (SC): 2008 (2) UJ 819 (SC)
15. *Dwarka Prasad v. State of U.P.*, 1993 Suppl (3) SCC 141: 1993 SCC (Cri) 882
16. *Manikirki v. Emperor*, 28 CrLj 445
17. *Pukot Kotu*, (1896) 19 Mad. 349
18. *Dhara Singh v. Crown*, 48 CrLj 717: 231 I.C. 159
19. *Shive Chand v. State of U.P.*, 1995 CrLj 3869 (All.)
20. *James Martin v. State of Kerela*, (2004) 2 SCC 203
21. *Puran Singh and others v. State of Punjab*, AIR 1975 SC 1674
22. *Naveen Chandra v. State of Uttaranchal*, 2007 CrLj 874 (SC)

2. INTRODUCTION

In the civilized society the defence of a person and property of every member thereof is the responsibility of the state.

Giving a general view of all the provisions on this right in *Munney Khan v. State*¹, the Supreme Court observed: The right of private defence is codified in Sections 96 to 106, I.P.C, which 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 authors of the code wanted to except from the operation of its penal clauses acts done in good faith for the purpose of repealing unlawful aggression. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and apprehension that any harm will cause, under such a scenario the accused is not under any obligation to wait for the help from the government and state authorities but is very much permitted to retaliate but in prudent proportion.²

In this code the term self-preservation finds outmost importance and is held in highest pedestal. According to the words of the revered Parke, J. “*The nature has bestowed with the action of reflex, prompting a person to revert back, and one is justified by the law to do so. The force so to be applied for reflex must and should be in proportion to the force so faced.*”³

Hence what is to be construed by the words of justice is that, one must revert to protect ones’ life and other’s life and property, with the force equivalent to so applied upon; and the this right should be instilled in every citizen to protection of self when immediate help or safety from state and the public servant is not present or possible to access.

¹ *Munney Khan v. State*, AIR 1971 SC 1491

² *Dharam & Ors. v. State of Punjab*, (2010) 2 SCC 333 : (2010 1 SCR) 642

³ R.N. SAXENA, INDIAN PENAL CODE, 156-157 (2017, 20 Ed.) Central Law Publications

3. RESEARCH QUESTIONS

The ongoing project on the detailed study of right to private defence is a non-exhaustive study of the application and outcome of such application on the individuals applying.

While proceeding with the research projecting following questions need to be answered to elicit the information and understanding the utility of the sections under chapter IV of the IPC.

- I. Whether the rights of private defence is an innovation of Indian law makers or an already practised norm?
- II. What is the extent and circumstances for invoking right of private defence (sections 96-106) as a remedy?
- III. What are the outcomes of application with respect to the Indian legal system (in regards to the judgements passed)? Are all offences are *prima-facie* excusable under the shadow of these sections?

4. RESEARCH OBJECTIVES

The objective and the core concept of this project task on the right to private defence will be comprising of definitions of various kinds of Private defence and alternatives available to persons in Indian Legal System precisely in the Indian Penal Code (hereinafter referred as IPC). It will be consisting of definitions and explanations of various kinds of defences available from sections 96 to section 106, such definitions and explanations will be supported by statements by different jurists and judges in the form of abstracts from cases where such sections, Private defence, under chapter IV of this act, IPC.

The focus will be to establish the need for codification of such and the extent of its applicability; by enacting the sections the authors of the code wanted to except from the operations of its penal clauses acts done in good faith for the purpose of repelling unlawful aggression⁴.

⁴ *Kuduvakuzinyil Sudhakaran v. State*, (1995) 1 Cr LJ 721 (Ker): Plea for self-defence was rejected where the evidence showed that the deceased was unarmed and was not the aggressor.

5. RESEARCH METHODOLOGY

In order to find out whether right of private defence is available or not, the entire incident must be examined with care and viewed in its proper setting.

The methodology followed is doctrinal in nature with principles of various form of defence rights and to justify the correct applications, by of case analysis whether in a particular set of circumstances a person legitimately acted in the exercise by knowing the fact and circumstances of each of the rights.

6. LITERATURE REVIEW

The basic principles that have been dealt with in this project are majorly from textual data from various textbooks and such statements are being supported by well-established precedents from the judiciary.

Also while embarking this project various ideas of different philosophers have been seen which has most respectfully be inducted in the creation of this project.

Following textbooks were the primary sources of this project work:

- Ratanlal & Dhirajlal, The Indian Penal Code, thirty second edition(2016), Lexis Nexis
- K.D. Gaur, The Indian Penal Code, Sixth Edition(2018), Universal Law Publishing
- SCC Online, <https://www.sconline.in/default.aspx>
- R.K Saxena, Indian Penal Code, twentieth edition, (2017), Central Law Publishing

7. SCOPE AND APPLICABILITY OF RIGHT TO PRIVATE DEFENCE

In order to find whether the right of private is available to an accused, the entire incident must be examined with care and to be viewed in its totality and proper setting. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to recourse to public authorities all these factors to be aware of while making a plea for private defence.

It is to be specifically noted that the right of private defence is available only to one who is suddenly confronted with averting danger not of his own creation, Supreme Court further opined in *Laxman v. State of Orissa*⁵, that necessity must be present, real and apparent.

Basis of Right of Private Defence rests on the following propositions:

- State has the duty to protect individuals against the unlawful attacks on their person and property;
- If in case aid cannot be obtained, it must always be resorted to, that one who is threatened and can do everything that is necessary to protect oneself.
- Violence should be strictly in proportion to the injury to be averted and must not be used to gratify revenge and malice against the aggressor.

The counter attack could in no sense be an attack in exercise of the right of private defensive.⁶ The right of private defence is preventive and not punitive, an injury can be averted not and not avenged. A free fight is one when both sides mean to fight from the start hence it is also exempted from the provision of sections 96-106.

⁵ *Laxman v. State of Orissa*, (1988)Cr LJ 188 SC

⁶ *State of Gujarat v. Bai Fatima & Anr.*, AIR 1975 SC 1478

8. GENESIS AND APPLICABILITY OF THE RIGHT TO PRIVATE DEFENCE

The chapter IV, of the Indian Penal Code, dealing with the right to private defence; According to the creator of the code Lord Macaulay, “It is an attempt to define, the limits of the right to private defence”. The right to private defence as exist from sections 96 to 106 of I.P.C is based on the theory of protection of oneself from the harm inflicted by the other person. When there do exist a danger to body and, or property, a citizen of prudence has a right to revert back in protection of the same by holding the ground, from harm that may be caused.

The sections would have to be read together to ascertain whether in the facts and circumstances of the case the accused were entitled to the defence or they exceeded it. Only then one can get a Comprehensive view of the scope and limitations of the right.⁷

The crux of these sections when is being read together, gives us real essence that it stores; which is if there is an apprehension of danger to life body or property (real and well founded) the harm so inflicted should not be more and major than necessary for a particular danger. It is to be always noted while applying the exception and rather the act of self-defence itself- the urgency of the situation which matters the most while it is applied in the real world situations.

In the case of *Jagdish Chandra v. State of Rajasthan*⁸, the scope for understanding any case of private defence has been very well described and explained by the hon’ble justices in their judgement: “When the circumstances are evaluated and background is analysed, it’s recommended while deciding the fate of a situation one should place himself in the seat of the accused and to assess, how one would have reacted in that given situation in that very particular moment when the individual is facing the danger. Therefore it is advised to observe the situation with the standpoint of the accused and not with the viewpoint of a calm by-stander.” According to common law, there has been many circumstances, where one person may inflict violence upon another in good faith and mind under a pre-determined where he believes to be exercising the right to private defence.

⁷ *Kashi Ram v. State of Rajasthan*, 2008 3 SCC 55

⁸ *Jagdish Chandra v. State of Rajasthan*, 1987 CrLj 649

I. Different Aspects of Private Defence:

Such a phenomenon can be explained in the land mark case of England “*The owner of a property who is having a tenant as rent payer, without giving proper notice tried to expel (forcefully) a tenant from her house along with the assistance with her companions. The tenant in an attempt to protect the property so occupied by him and in his possession, fired at the friend of the land lady. In this case it was opined that, tenant has the right to private defence to protect from the forceful eviction by the landlady*”⁹[PROTECTION OF PROPERTY]

The courts in common law countries had further opinions that, the person who is about to be attacked, should not wait for the full commission by the assailant to strike first or give the blow first, the circumstances so taking place must justify a pre-emptive strike.¹⁰

In the similar lines as above discussed regarding the event of pre-emptive strike by the victim of the force; where a young lady who was lynched by a young man and as reactionary force lynched at him with a broken piece of glass, while the act being under self-defence, but the critical part is she did not realised that she had glass piece in her hand, because according to the principles previously mentioned she reverted back with her reflex. She was convicted in the trial court but later on going to the appellate court; It was stated that, “*she was entitled to the right of self-defence.*”¹¹ [PROTECTION OF PERSON, BODY OR LIMB]

The instances of right to private defence can be further added for clarification, the charges which attracted under the Arms Act of the Indian Legal System, would not be applied under this chapter IV of I.P.C., same was clarified by the judiciary in the year 1935, by pronouncing the judgement Verayya Vandayar v. Emperor¹². It is to be further stated that no such specific form of restriction has been put in on the weapons or mode of using it, because under a prudence mind when under such a heated up situation it is not possible to be calm hence, any action in protection of saving person or property can be exercised at the time of danger where such threat has occurred, but the force must match to the force so applied unto the accused.

ILLUSTRATION: Suppose in a situation where a congregation of 5 persons are gathered, and few anti socials pelt stones at them, and two are stoned to death. Under such a scenario the other three can utilise the rights and be exempted, as it says protection of one’s own body or the body of other person. Here the other persons can exercise the right of private defence.¹³

⁹ R. v. Duffy, (1967) 1 QB 63

¹⁰ Backford v. Queen, (1988) 1 AC 130 PC per LORD GRIFFITHS at p. 144

¹¹ Evans v. Wright, (1964) CrLj 466; Evan v. Hughes, (1972) 3 All ER 412

¹² Verayya Vandayar v. Emperor, 1935 Mad. WD 1342

¹³ State Of Assam v. Upendra Das, 1991 CrLj 2930 (Gau.): “*The accused in this case killed the deceases person as, he was trying to rape his wife; and such act of killing was under necessity therefore justified and acquitted*”

II. Right to Private Defence under the Light of Article 21, Of the Constitution

The man recognises his/her first right as the “*right to life and personal liberty*”, and this is what the article 21 of the constitution of India, speaks of. In any civilized society the personal life and liberty is given the highest pedestal, but such deprivation of life and liberty is to be done under the procedure established by law; the seven-judge bench of the apex court stated the principles of reasonableness, which legally and philosophically an essential element of equality, and also non-arbitrary in nature.¹⁴

The so provided exception, under Right to private defence should not be used in any retributive nature or purpose because the statute is available only when it is justified to use, which is under the apprehension of danger and imminent danger to life, limb property or property. And, as it vests strangers to protect the same if an apprehension to the person or property occurs. Therefore courts must be careful while deciding cases of the private defences, they have to be aware of the situation so taken place, because many times it may happen that, in the name of private defence people should not take part in anti-social activity, where any individual to take part in the street-fights and of such sort where there is no immediate danger or apprehension to body or life and property.

¹⁴ Maneka Gandhi v. Union Of India, AIR 1978 SC 597

9. ELUCIDATION OF THE EXTENT IN INVOKING THE RIGHT TO PRIVATE DEFENCE

The following sections explain the aspects of each of every sections, and clubbing the sections where necessary; the discussion and explanation deals mainly with the notion to fructify the applicability of these part of the code, under I.P.C-

I. Section, 97: Defence of an Individual Body and of Property

This section can be separated into two different clauses, firstly defence to body and the secondly, the defence toward the property. The apex court has pointed out few guidelines to understand the nature and scope of the applications of the statute under this section:

- a. The right to private defence cannot be provided unless until, the offence for which one, is taking up the defence is in itself an offence under this code.
- b. The defence under this section will continue as soon as there is an apprehension to danger to body or property, it will remain until the danger continues; such has been discussed under the sections 102 and 105, of the I.P.C. This retributive in nature as the danger must be real and imminent.
- c. This is a defence purpose only right and not inflict someone with injury or harm, as joining a street fight, because it is continuous in nature when some has caused some injury or is going to cause then on continuation the retaliation should be carried out.
- d. The acts under this chapter should be *bona-fide* in nature.
- e. It may also permit to kill someone as provided in the section 100 of the code, where the apprehension is of such nature that if not averted might cause death and results of such grave nature.

“The incidents so happening must be based on surmises and speculation.” Understanding the statement, entire set of events should be examined by understand the consequence of each act and necessarily in continuance.

Whether the apprehension do exist in real or not is immaterial, because if in furious and unstable mind a shot is fired by one person towards another then the later can take the defence of private defence/ self-defence.¹⁵

Under the instance of free fight- If it is noticed that the application of right to private defence, under this chapter will not be applicable where, both the parties under mutual consent agrees to take up the fight with each other. ¹⁶

Concluding, it can be stated that the sections from 96 to 100 should be read together, because the essence of the cases says that that it is enforced in the real world when there is an unlawful aggression, but the justification and defence under section 97, has a much thin line to differentiate from committing an offence and exercising actions under this chapter, the moment one exceeds his limit of defensive force it becomes an offence under this code, I.P.C.

II. Section, 98: Application of Right to Private Defence as against Intoxicated and Unsound Persons

The application of this section extends to the acts of persons who are, of unsound- mind, in a state of intoxication, and lacks the maturity of understanding the outcome of one's act. It says that one person who is in imminent threat to danger or harm to life, limb and property of one' own or of others, from a person of unsound mind suffering from lunacy, intoxicated state, will be able to exercise his rights against them as well, regard less of their such conditions.

The right under this section if not provided by the makers, then the purpose of this section would have failed miserably, if exceptions to the unsound, lunatic and intoxicated is not provided. Since the opposite party can very well inflict harm to the person and property and if no private defence is provided to him/her than it will lead to the downfall of the entire existence of this section.¹⁷

“It is also to be kept that a false notion or misconception to property cannot raise the point of right of prevent defence.”¹⁸

¹⁵ Katta Surendra v. State of U.P., 2008 CrLj 3196 (SC): 2008 (2) UJ 819 (SC)

¹⁶ Dwarka Prasad v. State of U.P., 1993 Suppl (3) SCC 141: 1993 SCC (Cri) 882

¹⁷ Manikirki v. Emperor, 28 CrLj 445

¹⁸ RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, 470-473 (2015, 32 Ed.)

III. Sections, 99: Acts done when no opportunity of Right to Private Defences Occur

The right of private defence should be applied when there is an apprehension of danger or harm to body and property, but has certain limiting factors, such as if a public servant does a *bona-fide* act and resulting an harm or intimidation of harm causing to body and property, then the public servant under the colour of his office will be justified.

In a situation where public servants that police officers excising their duty, in scene where they do not have a warrant to search a house but does so forcefully enters the house, the owner of the house so resisting the forceful entry against the police officers, could not set-up the illegality of the proceedings as a justification on his part, because there was an absence of malice on the part of the public servant.¹⁹

The following situation analysis shows the importance of this section how the same can be interpreted as per the varying scenes of situation.

A search of policemen went to search the house of an individual with an information that the possess an unlicensed gun, the search party on arriving the place of the accused, he heard some noises outside the house, taking out the gun and started firing shots in a belief of private defence against the intruders to the property who are policemen in reality, killed one of them by reason of mistake of fact and belief. The person under this belief where the policemen has not disclosed their identity the right to private defence is provide to the person so fired the shot at the public servant, not amounting to offence.²⁰

The supreme court time and again pressed upon the point that the right under this section, when there do exist ample opportunity to have any sort of recourse to the public servant authorities then in such situation taking up the law in the own hand is good choice or alternative.

¹⁹ *Pukot Kotu*, (1896) 19 Mad. 349

²⁰ *Dhara Singh v. Crown*, 48 CrLj 717: 231 I.C. 159

IV. Section, 100: Where the offence is of such serious Nature that of Causing Death

The section deals with the death caused when applying the defence under this section are as follows:

- a) Where apprehension is so severe that death is sure or such intimidation is present.
- b) Where the apprehension that grievous hurt might occur and consequence of which might cause death.
- c) When the offender the tries to commit the offence of rape to an individual.
- d) In cases of gratification of unnatural lust, specifically with an intention of doing so.
- e) An attempt of kidnapping or abduction might also give rise to the defence under this section.
- f) When there is a wrongful confinement and that the recourse under the help of public authorities will not be provided then one may be capable of taking the aid of this section.
- g) An act or attempt of causing deformation by spilling acid on the individual then under such severe circumstances the person can cause death in order to protect himself.

A mere apprehension of grievous nature is enough to proceed under this section. To curb the misuse of this section we can observe the following case study understanding the situation where it is restricted.

In the situation where; a party assembled before the house of the accused and scolded them and caused grievous injuries can be justified, by exercising the practice of right to private defence as he(accused) attacked one of the party and charged under section 300 of this code. But was acquitted by the court as the harm was caused of grievous nature to the father.²¹

“The new category of offence which is brought in by the Criminal Law Amendment Act, 2013 that brings about the private defence of the body extends to causing death by an act of throwing or administering acid to any individual, which will cause grievous hurt because

²¹ Shive Chand v. State of U.P., 1995 CrLj 3869 (All.)

of its consequence. This is according to the directions and recommendations of Justice Verma Committee.”²²

V. Section, 103: The offence of Private Defence extending to Death in Order to Protect Property

The properties of this act extends to causing the death of a person where the wrong- doer is carrying out of the following offences:

- a) In cases of house breaking in the night;
- b) An attempt or actual commission of robbery in the house or property.
- c) The mischief of setting a property/tent, or building on fire, which is used as a residence and dwelling purpose.
- d) Causing of theft, and such mischief which pose a threat to the individual of grievous death and to an extent death.

The essence of this section can be better explained in the following case analysis of the facts, happened in the state of Kerala.

In the state of Kerala, the person who is accused, did not close his shop on the day of all India strike, “*Bharat Bandh*”, he owns a flour mill. The activists entered the mill forcefully and demanded closure, they were armed with sharp objects as weapons. They threatened to assault the person and was attempted to attack to which the accused fired shots and killing two persons and injuring some innocent persons as well in such a shoot. His property that is, the flour mill was set on fire. The court is of the opinion that the act of the accused firing the bullet was justified and very much within the reasonable limits, the conviction of trial court was therefore set aside.²³

²² RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, 202-204 (2015, 32 Ed.) Lexis Nexis.

²³ *James Martin v. State of Kerela*, (2004) 2 SCC 203

The section further explains about the term settled possession.

A. What is Settled Possession?²⁴

It is a right for the trespasser who is in actual possession of the property.

- a) One must have the physical possession of the property, over a sufficiently long period.
- b) The knowing of the fact that the property is in possession should be known to the actual owner of the property, without confiding any of the facts.
- c) The procedure if the dispossession should be done without any dubiousness, by the owner.²⁵

VI. Section, 102 and 105: Where right to private defence continues when there is reasonable apprehension of danger to person and property.

The right under these sections continues when there is a relevant chance of danger or harm. If such a nature of imminent threat continues then the right will be carried on as well.

The following explains the various methods of the apprehension:

- a) When there exist a possible and reasonable apprehension of danger to property or body. The right commences when the real danger to the life, limb and property begins as being apprehensive and not on the face danger.
- b) The apprehension of the threat under 102 and 105, and when the crime so stated begins and starts devouring, it's very much permitted by law to resist against the force for the "*self-preservation*", it is basically protection from unlawful aggression.
- c) No right of private defence is provided where the apprehension is dead and moribund in nature.²⁶

²⁴R.N. SAXENA, INDIAN PENAL CODE, 179-180 (2017, 20 Ed.) Central Law Publications

²⁵Puran Singh and others v. State of Punjab, AIR 1975 SC 1674

²⁶Naveen Chandra v. State of Uttaranchal, 2007 CrLj 874 (SC)

VII. Section, 106: Private Defence Application when in Risk of Innocent Person.

The section much briefly deals with the circumstances where situation, there is a harm of innocent person is chancey, because not directly attributed to him, due the sole presence. Since this part of the code does not limit to person to body but to property as well, therefore it is a reasonable flow to grasp that while the exercising of right to private defence is performed where the action can cause harm to any other person who does not have right to private defence, is no offence under the light of this section.

ILLUSTRATION: Suppose, a person who is attacked by the mob, to save himself from causing grievous injury, and where innocent persons are mingled with the mob, he fires a bullet in order to save himself despite the presence of innocent citizens. Here one is justified to do the act as it is right to protection of person or property.

10. CONCLUSION

The topic on right to private defence basically provides the application and of different remedies from, offences which are in itself punishable under the Indian Penal Code, of India. As we conclude the project we come to know about various aspects of the application and evolution of this code in the Chapter IV.

The origins has been started dating back to the evolution by the very creator of the code Lord Macaulay, who on understanding that if such a remedy to different offences are not provided under this code, then it would be unjust to the people residing in this country. The majority of the project is a doctrinal detailed for of research where we elucidated various factors of the right to private defence ranging from sections 96 -106; with detailed breakthrough accompanying with definite number of case laws and case studies for a candid outlook.

12. References

1. Basu, D. D. (2015). *Introduction to the Constitution of India*. Lexis Nexis .
2. Dhirajlal, R. &. (2015). *The Indian Penal Code*. Lexis Nexis.
3. Gaur, K. (2016). *Textbook on India Penal Code*. Haryana: Universal Law Publishing.
4. Saxena, R. (2017). *Indian Penal Code*. Allahabad: Central Law Publishers.
5. www.scconline.com/members. (2018, September). Retrieved from SCC ONLINE :
<https://www.scconline.com/members>