

# **Review on the Right to Private Defense as a Preventive or Punitive Right in India**

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**Abstract:** *Nothing is an offense which is done in the exercise of the right of private defense. Whether a person has legitimately acted in a right of private defense is a question of fact. No test in abstract in determining such can be laid down. The court is duty bound to consider whether the accused has acted in self-defense, even if such plea is not put forward by the accused himself. The right to private defense is enshrined in legal frameworks worldwide, offering individuals the autonomy to respond to threats or attacks when law enforcement is unable to intervene promptly. However, the exercise of private defense is subject to certain limitations, including the principles of proportionality, necessity, and reasonableness. Understanding these limitations is essential to ensure that individuals do not exceed the bounds of lawful self-defense and inadvertently commit acts of vigilantism or retaliation.*

*The exercise of private defense often entails swift decision-making under duress, with individuals compelled to assess threats and respond accordingly. Training in self-defense techniques, conflict de-escalation strategies, and legal rights awareness can empower individuals to make informed decisions and navigate potentially dangerous situations with confidence and composure.*

*Furthermore, the right to private defense raises complex ethical and moral considerations, particularly concerning the use of force and the potential for escalation in confrontational situations. Balancing the inherent right to self-preservation with the need to uphold the rule of law requires careful deliberation and adherence to legal principles that prioritize the preservation of life and the minimization of harm.*

**Keywords:** Private Defense: Indian legal system: Criminal Law: Defense

## **I. INTRODUCTION**

It is the inherent nature of man to help himself in case of trouble or danger. The right of self-defense is fostered in the Citizens of every democratic country. This right is recognized in every system of law and its extent varies in the inverse ratio to the capacity of the state to protect life and property of the citizens.<sup>2</sup> It is the primary duty of the state to protect the life and property of the individuals, but no state, no matter how large its resources, can afford to depute a policeman to protect the steps of every citizen in the country. Hence, this right has been given by the state to every citizen of the country. To protect oneself a citizen can take law into his own hand for safety of life. One thing should be clear that, there is no right of private defense when there is time to have recourse to the protection of police authorities. The right is not dependent on the actual criminality of the person resisted. It depends solely on the wrongful or apparently wrongful character of the act attempted, 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 defense in return.

Indian Penal Code Section 96 to Section 106 states the law relating to the right of private defense of person and property.

The provisions contained in these sections give authority to a man to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available and in so doing he is not answerable in law for his deeds. Section 97 says that the right of private defense is of 2 types:

- Right of private defense of body,
- Right of private defense of property.

The use of force to protect one's property and person is called the right of private defense. The right of private defense is absolutely necessary for the protection of one's life, liberty and property. Body could be one's own body or the body of another person and likewise property may be movable or immovable and may be of oneself or of any other person. Self-help is the first rule of criminal law. It is a right inherent in a man. But the kind and amount of force is minutely regulated by law.

Right to private defense is a fundamental aspect of individual autonomy and the rule of law, empowering individuals to protect themselves and others from harm in the absence of immediate state intervention. However, its exercise must be guided by legal principles, ethical considerations, and practical judgment to prevent abuses and uphold justice in society. As societies grapple with evolving threats and challenges, a nuanced understanding of the right to private defense is indispensable in promoting public safety, preserving individual rights, and fostering a culture of responsibility and respect for the rule of law.

## **II. HISTORICAL BACKGROUND**

The historical background of the right to private defence reflects humanity's enduring recognition of the fundamental right of individuals to protect themselves and their interests from harm. Across cultures and civilizations, the concept of self-defence has evolved in response to changing social, political, and legal contexts, reflecting the ongoing quest to balance individual autonomy with the imperatives of justice and social order. In ancient India, legal codes such as the Manusmriti and the Arthashastra provided guidelines for the use of force in self-defence and protection of property, reflecting the importance placed on individual autonomy and security within the broader social framework<sup>3</sup>.

The right to private defense in colonial India was codified in various legal statutes, including the Indian Penal Code of 1860, which remains the cornerstone of criminal law in India to this day. Section 96 to 106 of the Indian Penal Code (IPC) specifically address the right to private defense, delineating the circumstances under which individuals are justified in using force to protect themselves, their property, or others from imminent harm or unlawful aggression.

Under the IPC, individuals are entitled to exercise the right to private defense when faced with a reasonable apprehension of danger to life, body, or property, provided that such defense is necessary and proportionate to the threat faced. The law recognizes that individuals may resort to force when law enforcement authorities are unable to provide immediate assistance, emphasizing the primacy of individual autonomy and self-protection in the face of danger.

## **III. METHODOLOGY**

The nature of this research paper is theoretical; hence the data has been collected through secondary sources, for example, reference books, internet, journals, etc. have been widely consulted to develop the plan of the research paper. The study employed a simple framework in identifying the contemporary definitional elements of "reasonable apprehension" and the role executed by the Supreme Court of India while exercising its criminal jurisdiction in the matters of concerning private defense of the body under the criminal laws of India.

### **Meaning of private defense under Indian legal system**

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.<sup>4</sup> 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." This right is based on two principles,

- It is available against the aggressor only, and
- The right is available only when the defender entertains reasonable apprehension.

There are three tests for ascertaining reasonable apprehension; they are the objective, subjective and expanded objective tests. While objective test emphasizes as to how in a similar circumstance an ordinary, reasonable, standard and average person will respond, the subjective test examines the mental state based on individual attitude. However, expanded objective test, being a combination of aforesaid two tests, bases its inquiry to determine whether or not the individual acted as a reasonable person

**Relevant Sections under Indian Penal Code**

**Section 96-** Right of private defense of person: This section states that every person has a right to defend their own body and the body of any other person against any offense affecting the human body.

Raghubir Singh Vs State of Haryana<sup>5</sup>

The case arose from an incident where the accused, Raghubir Singh, was charged with the murder of another individual. Raghubir Singh claimed that he had acted in self-defense, asserting that the deceased had attacked him with a lathi (a type of stick) and that he had retaliated to protect himself. During the trial, Raghubir Singh argued that he had acted in the exercise of his right to private defense under Sections 96 to 106 of the Indian Penal Code (IPC).<sup>6</sup> However, the trial court convicted him of murder, holding that the force used by Raghubir Singh was excessive and disproportionate to the threat posed. Raghubir Singh appealed against the conviction to the Supreme Court of India. The central issue before the Supreme Court was whether Raghubir Singh's actions amounted to a valid exercise of the right to private defense or constituted an offense. The Supreme Court, in its judgment, upheld the conviction of Raghubir Singh but modified the charge to culpable homicide not amounting to murder under Section 304 Part I of the IPC. The court held that while Raghubir Singh was entitled to defend himself against the attack, the force used by him exceeded the limits of reasonable self-defense.

**Section 97-** Right of private defense of property: Section 97 grants individuals the right to defend their movable or immovable property, as well as the property of any other person, from theft, robbery, mischief, or trespass

Bihari Rai Vs State of Bihar<sup>7</sup>

In this case, the accused, Bihari Rai, was charged with the murder of another individual. Bihari Rai claimed that he had acted in self-defense, asserting that the deceased had attacked him with a knife and that he had retaliated to protect himself. During the trial, Bihari Rai argued that he had acted in the exercise of his right to private defense under Sections 96 to 106 of the Indian Penal Code (IPC).<sup>8</sup> However, the trial court convicted him of murder, holding that the force used by Bihari Rai was excessive and disproportionate to the threat posed. The Supreme Court, in its judgment, upheld the conviction of Bihari Rai. The court held that while Bihari Rai was entitled to defend himself against the attack, the force used by him exceeded the limits of reasonable self-defense. The court emphasized that the right to private defense is not unlimited and must be exercised within the bounds of proportionality and necessity.

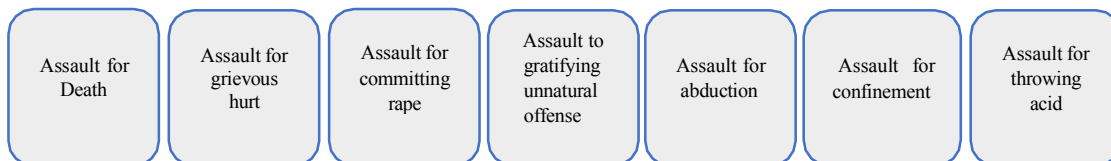
**Section 98-** Right of private defense against the act of a person of unsound mind, etc. This section deals with situations where a person who is of unsound mind, intoxicated, or under the influence of drugs, commits an act which would otherwise constitute an offense. It grants the right to private defense against such acts if they pose a threat to life, body, or property.

**Section 99-** Acts against which there is no right of private defense: Section 99 specifies certain acts against which the right to private defense is not available. These include acts which do not cause a reasonable apprehension of death or grievous hurt, or acts that are committed by a public servant acting in good faith.

In Kurrim Bux's case of 1865 a thief was trying to enter the house through a hole in the wall. The accused pinned his head down while half of his body was outside the house. The thief died due to suffocation. It was held that use of force by the accused was justified.

**Section 100-** When the right of private defense of the body extends to causing death.: This section provides that the right to private defense extends to causing death if the offense threatened or attempted to be committed is of such a nature that it reasonably causes apprehension of death or grievous hurt, and there is no other way to prevent it.

There are seven cases under IPC when the right to private defense extends of the body extends to causing death mentioned below.



**Section 102-** Commencement and continuance of the right of private defense of the body: This section lays down the conditions under which the right to private defense of the body begins and continues. It specifies that the right commences as soon as a reasonable apprehension of danger to the body arises and continues as long as the apprehension of danger continues.

**Section 103-**Section 103 provides that the right of private defence to the property: It justifies homicide in case of robbery, house breaking by night and the theft, mischief or house trespass which cause apprehension or a grievous harm. If a person does not have possession over the property, then he cannot claim any right of private defence regarding such property.

**Section 104-** It tells us 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 defence, be theft, mischief, or criminal trespass, is 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 in the section 99, to the voluntary causing to the wrongdoer of any harm other than the death.

**Section 106-** Right of private defense against deadly assault when there is risk of harm to innocent person: This section deals with situations where a person faces a deadly assault and cannot effectually exercise the right of private defense without risking harm to an innocent person. It provides guidance on the actions that can be taken in such circumstances.

#### **IV. CONCLUSION**

As societies grapple with evolving threats, technological advancements, and geopolitical tensions, the relevance and significance of the right to private defense remain undiminished. It is a fundamental aspect of human dignity and rights, empowering individuals to assert their autonomy and protect themselves and their interests in the face of danger.<sup>10</sup>

The right to private defense is enshrined in legal codes, statutes, and judicial precedents, providing individuals with the authority to respond to threats or attacks when law enforcement is unable to intervene promptly. However, the exercise of this right is not without its limitations and conditions. Principles of proportionality, necessity, and reasonableness guide the use of force in self-defense, ensuring that individuals do not exceed the bounds of lawful protection and inadvertently commit acts of aggression or retaliation.

In conclusion, the right to private defense stands as a fundamental pillar of individual autonomy and protection within the framework of criminal law. Through centuries of legal evolution, this right has been recognized across cultures and legal systems as essential for safeguarding individuals, their loved ones, and their property from imminent harm or unlawful aggression.

Moreover, the right to private defense intersects with broader ethical considerations, including the balance between individual autonomy and the imperatives of justice and social order. Clear legal frameworks, robust judicial oversight, and transparent mechanisms for adjudicating claims of self-defense are essential in preventing abuses of this right and promoting fairness and accountability in society.

The right to private defense is a vital component of a just and equitable legal system, serving as a bulwark against tyranny, injustice, and lawlessness. It embodies the inherent right of individuals to preserve their lives, liberties, and properties, ensuring that justice is not just a lofty ideal but a tangible reality accessible to all. As we navigate the complexities of modern society, let us uphold and cherish this right as a cornerstone of democracy, equality, and the rule of law.

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