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**A DETAILED STUDY OF RIGHT TO PRIVATE DEFENCE UNDER IPC**

~Utkarsh Saxena<sup>1</sup>

**Abstract**

*Indian citizens have the right to personal defence, which entitles them to defend against external forces that can cause damage or injury. The Indian Penal Code (IPC) outlines the right to private defence against the body and property, with Section 97 defining it for both. The Supreme Court in the case of “Munney Khan v. State of Madhya Pradesh” emphasized the need to study these provisions together to understand their extent and restrictions. Private defence is not defined in the criminal code but is defined and modified through court precedents. Initially introduced 150 years ago by Lord Macaulay, the right of personal defence evolved to ensure individuals would persevere and act without hesitation to protect their own body, property, or those of others in case of risk or danger.*

**Keywords**

*Private Defence, Indian Penal Code (IPC), State, Risk, Danger.*

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<sup>1</sup> You may contact the author at the following email address: 21010323142@student.slsh.edu.in.

## INTRODUCTION

Every Indian citizen has the right to personal defence, which entitles them to defend against any external force that can cause them damage or injury. “Section 96 to 106” deals with the right to private defence according to the Indian Penal; private defence against the body and property respectively. It is the right of self-defence. Section 97<sup>2</sup> of IPC defines the Right to Private defence of the body and of property, and Section 99<sup>3</sup> of IPC talks about acts for which there is no private defence. Section 97 of IPC says that “Every person has a right, subject to the restrictions contained in Section 99, to defend his own body, and the body of any other person, against any offence affecting the human body and the property, whether movable or immovable, of himself or 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”. That means “Right to Private defence is of two types – Right to Private defence of body and Right to Private defence of property.”

In the case of “*Munney Khan v. State of Madhya Pradesh*,”<sup>4</sup> the Hon’ble Supreme Court said that “the provisions of the IPC Sections 96 to 100 that establish the right to private defence must all be studied together to fully understand the extent and restrictions of this right. The goal of establishing these provisions was to exclude certain types of activities performed in good faith in order to ward against illegal violence from the application of the code’s criminal terms.” “Right to Private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger, not of self-creation. The necessity must be a present necessity whether real or only apparent.”<sup>5</sup>

Private defence is not defined in the criminal code whereas it is being defined and modified through the court’s precedents. The main reason for providing everyone with this freedom was to get rid of people’s unwillingness to take any action to protect themselves because they were worried about the legal ramifications. Initially, the private defence was introduced 150 years ago by Lord Macaulay in the form of a model with objective of fostering the manly spirits among the occupants or natives, the right of personal defence evolved during the modern day in India. “In the case of

<sup>2</sup> “The Indian Penal Code, 1860, § 97, No. 45, Acts of Parliament, 1860 (India).”

<sup>3</sup> “The Indian Penal Code, 1860, § 99, No. 45, Acts of Parliament, 1860 (India).”

<sup>4</sup> “*Munney Khan v. State of Madhya Pradesh*, 1971 AIR SC 1491.”

<sup>5</sup> Ratanlal and Dhirajlal, *The Indian Penal Code* 145 (LexisNexis 2012).

any risk or danger, the ideal Indian would persevere and act without hesitation to protect his own body, property, or those of others.”<sup>6</sup>

### **SCOPE OF LAW OF PRIVATE DEFENCE**

The right to private defence depends on the provisions as follows: –

- It is the state’s duty to protect the citizens from unauthorised intrusions on the body and the property.
- If the help is not available one can do whatever they need and is necessary to protect themselves.
- There should be no malice and violence should be proportionate to the damage as a preventive measure and not to take revenge.

According to Section 97 of the IPC, “Every citizen has the right to defend his or her own body or the body of another person against any crime that affects the human body, as well as the property, whether it be immovable or mobile, of himself or of another person against any act that is a crime that falls under the definition of robbery, theft, mischief, criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass”<sup>7</sup>. This indicates that taking care of ourselves comes before having a duty to look out for others. Human compassion is what drives the impulse to protect people and their possessions.

“Every person has the same right to a private defence against an act as he would have if the act constituted a crime, according to Section 98.”<sup>8</sup> This is because there are times when an act that would normally be illegal is not illegal because the person doing it is young, immature, mentally unstable, inebriated, or has some other misperception about what is legal or illegal.

So, in summary, the right to private defence does not extend itself against any act which is not an offence under the IPC. The right begins when a reasonable suspicion of bodily injury arises from an attempt or threat to commit a crime. Only genuine, urgent and imminent threat qualifies for the exercise of this right. “The counterattack could in no sense be an attack in the exercise of the right of private defensive. The right to private defence is preventive, not punitive, and harm cannot be

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<sup>6</sup> Aishwarya Sandeep, <https://aishwaryasandeep.com>, (last visited Oct. 10, 2022).

<sup>7</sup> The Indian Penal Code, 1860, § 97, No. 45, Acts of Parliament, 1860 (India).

<sup>8</sup> The Indian Penal Code, 1860, § 98, No. 45, Acts of Parliament, 1860 (India).

prevented or retaliated against.”<sup>9</sup> Although a genuinely legitimate defender should be given a fair amount of freedom, the right never extends to causing “more injury than is required for the sake of defence” and last, the right, “essentially a defensive one, does not accumulate and become applicable in situations” when a person has the opportunity to seek the protection of public authorities.

Common law countries’ courts have taken the additional attitude that an attacked party should not wait until the attacker has finished the attack before striking first or taking preventive action; rather, the situation must call for such behaviour.<sup>10</sup> In this landmark case of England Supreme Court, “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 landlady. So, it was opined in the end that any tenant has a right of private defence for protecting the forceful eviction by any landlord.”<sup>11</sup>

### **RIGHT TO PRIVATE DEFENCE IN THE INDIAN LEGAL SYSTEM**

Section 97 of IPC talks about two different subjects, first, defence for the body and second defence regarding the property. In the case of “*Katta Surendra v. State of U.P.*”<sup>12</sup> the Hon’ble Supreme Court said, “Whether the fear is genuine or not is irrelevant since if someone shoots someone else when they are angry or unstable, the other person may claim self-defence or private defence.” But in the other one, the SC said “In the case of a free fight, if it is determined that this chapter does not apply because both parties have mutually agreed to engage in combat, the right to private defence will not be applicable.”<sup>13</sup> They have also pointed out some guidelines for better understanding of this Section –

- The right cannot be granted unless the offence for which the defence is being sought is also a violation of the law.

<sup>9</sup> “State of Gujarat v. Bai Fatima & Anr., AIR 1975 SC 1478.”

<sup>10</sup> Backwford v. Queen, (1988) 1 AC 130 PC.

<sup>11</sup> R. v. Duffy, (1967) 1 QB 63.

<sup>12</sup> “Katta Surendra v. State of U.P., 2008 CrLj 3196 (SC).”

<sup>13</sup> “Dwarka Prasad v. State of U.P., 1993 Suppl (3) SCC 141.”

- Because it is ongoing in nature, when someone has injured someone or is about to hurt them, retribution should be carried out. This right only applies for defence purposes; it is not the same as entering a street fight.
- “The acts under this chapter should be bona-fide in nature.”
- When the apprehension is of a kind that, if not avoided, would end in death and consequences of such severe nature, it may also be permitted to kill someone as stipulated in Section 100 of the law.

Section 98 of the IPC states regarding the private defence for the intoxicated and unsound man and its implementation. “This Section applies to actions taken by those who are intoxicated, mentally unsound, or lack the maturity to appreciate the consequences of their actions.” As stated above an individual is threatened with any kind of danger or injury to anyone or someone’s body or property by any means if the person is mentally ill or has any kind of intoxication; he or she will be entitled to use private defence against such individual.

In a case, the Allahabad High Court said, “If the writers of this Section had not included exclusions for the mentally ill, insane, and inebriated, the right under this Section would have been null and void. Since the opposing party may very possibly do damage to people and property, this Section will be rendered useless if the opposing side is not given a private defence.”<sup>14</sup>

“It is also to be kept that a false notion or misconception to property cannot raise the point of right of prevent defence.”<sup>15</sup>

Conditions and restrictions regarding the right of private defence can be outlined under Section 99 of the Indian Penal Code. It grants a defensive right to an individual, not an offensive one. Right is only used against any threat to the body or property. Example, if public servant conducts any valid conduct for protection against the harm of property and body, he is basically conducting his duty. In a case, the Madras High Court said, “The property owner could not utilize the illegality of the proceedings as a defence against the police officers in a case where public servants, including police officers, were abdicating their duties and forcing their way into the residence

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<sup>14</sup> Munir vs King-Emperor, AIR 1926 All 189.

<sup>15</sup> Ratanlal and Dhirajlal, The Indian Penal Code 470-473 (LexisNexis 2012).

despite the lack of a warrant. This was because there was no evidence of the public servants' malicious intent.”<sup>16</sup>

The supreme court repeatedly underlined the point that exercising one's right under this clause is a good option or an alternative when there are adequate opportunities to seek redress from the authorities who serve as public servants.

Also, “the right to Private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.”

Under Section 100 “the right of private defence of the body extends, subject to the limitations specified in the previous preceding Section, to the deliberate cause of death or other damage upon the aggressor are” as follows –

“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.”<sup>17</sup>

To act under this clause, all that is required is a mere suspicion of anything heinous. We may analyse the case next to understand the circumstances when it is limited in order to prevent the exploitation of this part. In case of a group of people gathered in anyone's home to injure his body and inflict him then he can exercise his right to private defence because he was attacked and

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<sup>16</sup> Queen-Emress vs Pukot Kotu and Ors., (1896) ILR 19 Mad 349.

<sup>17</sup> “The Indian Penal Code, 1860, § 100, No. 45, Acts of Parliament, 1860 (India).”



assaulted as stated under Section 300 of the Indian Penal Code but was cleared by the court since the father suffered grave hardship as a result.<sup>18</sup>

Section 103 addresses the right to private defence to protect property, which can be extended to death. To invoke the act, the wrongdoer has to carry out the following offences –

- Housebreaking at night.
- Attempt or commission of robbery in the house or property.
- Setting a building or a property on fire which is used as a residence or any other purpose.
- Posing a threat to a person of grievous hurt or even death.

In one case the Supreme Court, “the accused individual, who operates a flour mill in the state of Kerala, did not shut his business on the day of the nationwide strike, or “Bharat Bandh.” The demonstrators forced their way into the mill and demanded its shutdown while carrying weapons that were sharp. They made threats to hurt the individual and made an effort to do so; in response, the accused fired bullets, killing two people and wounding a number of innocent bystanders in the process. Fire destroyed the flour mill that he owned. The trial court’s conviction was overturned because the court believes that the accused’s conduct of firing the bullet was appropriate and well within acceptable bounds.”<sup>19</sup>

The Section also explains settled possession. “The settled position is a right for the trespasser who is in actual possession of the property”.<sup>20</sup>

“Section 106, deals with the circumstances where situation, there is the harm of an innocent person is chance, 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.”<sup>21</sup>

### **THE RIGHT OF PRIVATE DEFENCE IN OTHER LEGAL SYSTEMS**

According to the legal system in America, the right to private defence is similar to the Indian System.

<sup>18</sup> Shive Chand v. State of U.P., 1995 CrLj 3869

<sup>19</sup> “James Martin v. State of Kerela, (2004) 2 SCC 203.”

<sup>20</sup> “RATANLAL AND DHIRAJLAL, THE INDIAN PENAL CODE 430 (LexisNexis 2012).”

<sup>21</sup> “Manan Mondal, *A Detailed Study of Right to Private Defence under IPC*, 1 LexForti Legal J. 1, 1 (2020).”

English Legal System – In English law, under the Criminal Law Act 1976 private defence is provided. According to Section 3 (1) “in order to prevent crime, or to effect or help in the legal arrest of criminals, suspected offenders, or those who are illegally at large, a person may use whatever force is appropriate under the circumstances.

Privilege helps the defendant’s total discharge or acquittal in the English court system since the defendant did not employ unlawful force. However, the court determined whether he is exonerated. The court considers "injuries caused by the accused." The accused was injured, and a threat to his safety emerged.

## CONCLUSION

Fundamentally, the right to a private defence covers the use of several defences against offences that are themselves criminal under the IPC. Under the Indian Penal Code which consists of the provisions stating the right of private defence against harm to the body or property. Later, the idea of a right to private defence was prevalent in Western nations during an era of absolute responsibility, when killing was seen as a crime. Every citizen has a self-defence tool for protecting himself and his property. Self-defence is a response to the threat and imminence of an assault, not as an act of retaliation. However, individuals may abuse this right. Finding out whether this right has been utilised in good faith or not is exceedingly difficult for the court to do.

Only, if necessary against imminent violence then only the defence is permitted. A person who acts because they are mistakenly convinced that they need to defend themselves is protected, but the error must be justified. Although the actor may not have known it, in theory, it should be enough that the force employed was required for defence. It is stated by the Supreme Court of India that self-preservation is a necessary fundamental desire which has to be acknowledged by the Indian legal system under the Criminal Law of every nation.

Self-defence law is not formulaic, in contrast to most of the common law, and instead takes into account the particulars of each case. Determining if the exercised right is being in good faith or not is exceedingly difficult for the court to do. But the ability to defend one’s own body or property is a priceless gift to the general populace.