

AN ANALYSIS OF RIGHT OF PRIVATE DEFENCE OF PERSON IN CRIMINAL LAW: WHEN CAUSING DEATH UNDER SELF DEFENCE IS JUSTIFIED?

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ABSTRACT

The underlying object of this research work is to analysis and study the concept of right of private defence of person under Indian criminal law and the circumstance under which right of private defence of body extends to causing death of an aggressor. This right of private defence is provided under Indian Penal Code, 1860 Chapter IV General Exception from section 96-106. However, under this research work author only tried to explain the concept of private defence of body and the circumstances under which this right of protecting one's body or body of other person extends to causing death of an aggressor.

INTRODUCTION

“Without the right to defend yourself –and the right to possess the means to do it –all other supposed rights are so much hot air.”

-James Carlos Blake

Self-help is the first rule of criminal law and it still remains a rule, though with the passage of time and to meet the need of the changing society, this law is much affected by the consideration of necessity, humanity and social order.¹ Bentham states that “right of private defence is absolutely necessary. The vigilance of magistrate can never make up for the vigilance of each individual on his own behalf. The fear of the law can never restrain bad man as the fear of the sum total individual resistance. Take away this right and you become in so doing the accomplice of all bad men.”²

Right of self-defence is based upon the law of nature. It is a natural instinct in man to defend himself and maintain the possession of that, which belongs to him against unlawful aggression of others. Nature has equipped man with all those means which are essential to achieve this object. Law does not stand in way of the natural right of self-defence which therefore exists in full force.³

Right of private defence is basic natural right of an individual. Every individual is entitled to protect his body and body of another person in case if there is reasonable apprehension of threat or danger to life. Section 96 to 102 and 106 of the Indian Penal Code, 1860 specifically provides for the right of private defence of person. It provides that an offence committed while exercising the right of private defence is fully justified act and person committing that offence will not be held liable for commission of any offence under the criminal law.

Right of self-defence is the preventive right and can only be exercised to protect oneself or other person from any apprehending danger. This right cannot be exercised in retaliation or to take revenge. Generally, in every civilised society it is duty of the state to provide protection to its citizens, because it is not possible for the state to provide protection to every person.

¹ Gaur H.S., Penal Law of India, 11th Ed. (Vol. 1), Law Publisher Pvt. Ltd., p. 797

² Bentham’s Principle of Penal Laws, Quoted by H.S. Gaur, Penal Law of India, 11th Ed. at p. 797

³ Warren on Homicide, Vol. 1, Art. 148, p.639, Quoted in Anand & Aiyer: Law of Private defence, p.2

Consequently, this right is specifically provided by the state to every citizen of the country to take law in his own hand for their safety. An act done by person while exercising right of private defence would be fully justified and there will be no criminal liability of the individual who commits an offence under self-defence, it does not give right to any right of private defence in return.

RIGHT OF PRIVATE DEFENCE AND CRIMINAL LAW IN INDIA

The right of private defence of body is a justifiable defence under Indian Penal Code, 1860. It is provided in the criminal law that an act which otherwise is considered as an offence under the Indian Penal Code can be deemed to be justifiable if done for the purpose of repelling criminal assault.

The rule as to the right of private defence has been declared by Russel⁴, as follows:

“...a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and is in conflict between them he happens to kill his attacker, such killing is justifiable.”

Section 96 of Indian Penal Code, 1860

Things done in private defence: Nothing is an offence done in exercise of the right of private defence.

Section 96 justifies any illegal act which is done in the private defence. This section does not define the right of private defence rather it only declares that an offence committed by a person while exercising private defence will not be considered as an offence and will be justified in eyes of law. Thus, the section is only declaratory of right and lays down that any act done while

⁴ Russel, On Crimes, 11th edition, Vol. 1, p. 491

exercising right of private defence is not an offence. There is no right of self-defence against an act which itself is not an offence under the Code.⁵

In *Kashmiri Lal vs. State of Punjab*⁶ the court declared that nothing is an offence which is done in exercise of private defence for the purpose of repelling an unlawful aggression within certain limits.

Stressing on the necessity of this right *H.S. Gaur*⁷ stated that the law of self-defence is, “*based on the cardinal principle that it is the first duty of man to help himself. It is next based on the principle that the police of the state are not ubiquitous and a person may then strike out himself or for another. But such a rule, if unqualified, might encourage vendetta which would lead to social disorder. It, therefore, lays down the limits within which the rule applies, and conditions to which it is subject.*”

*Darshan Singh vs. State of Punjab*⁸ Hon’ble Supreme Court in this case provided following guidelines regarding private defence:

- (1) The self-preservation or protection is the basic human instinct and is recognised by criminal law of all the countries. All democratic and civilised countries recognise the right to private defence within in certain reasonable limits.
- (2) The right to private defence is available only to one who is suddenly confronted with the necessity of averting an imminent danger and not of self-creation.
- (3) A mere reasonable apprehension is enough to put the right of self-defence into operation i.e. is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the right to private defence is not exercised.
- (4) The right to private defence commences immediately 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/ attack to regulate his defence step by step with any precision
- (6) In private defence the force used by the accused ought not to be disproportionate or greater than necessary for protection of the person or property.

⁵ Chandar Bhan vs. State AIR 1954 All 39

⁶ A.I.R 1997 SC 393.

⁷ Gaur H.S. Penal Law of India, Vol 1 (11th Ed.), p. 797

⁸ AIR (2010) SC 1212: 2010 CrLJ 1393

- (7) It is well settled that it is open to consider a plea of self-defence if the same arises from the material on record even if the accused does not plead the defence.
- (8) The accused need not to prove the existence of the right of private defence beyond reasonable doubt.
- (9) The Indian Penal Code confers the right to private defence only when the wrongful act is an offence.
- (10) A person who is in an impending danger of losing his life or limb may in exercise of self defence cause any injury or harm even extending to death on his attacker either when the assault is attempted or directly threatened.

Right of Private Defence of Body

Section 97- Every person has a right, subject to the restrictions contained in section 99, to defend- Firstly, his own body and the body of any other person, against any offence affecting the human body;

Section 97 of Indian penal code, 1860 provides the rules whereas section 99 lays down the exception to which the rules are subject to. This section lays down as what an individual may do in order to protect his own body and the body of other persons. It provides for the right of private defence which is wider than the right of self-defence and also right of self-defence is included within private defence.

According to section 97(1) every person has right to defend:

- (a) His own body, and
- (b) The body of another person.

Here, “Every person has right to defend”: means that the right to private defence exists to defend not only of his own body but also of the body of another person by use of force. But what force if reasonable? That totally depends upon the position of each case.⁹ For example: the amount of violence necessary to repel the attack of an armed gang of twenty person will not be same as is required to repel the attack of one person. “Against an offence”: here the word an offence means any act which is made punishable under the Indian penal code and not merely under special or local laws and lastly “body of any other person” means that a person can not

⁹ *Supra* Note 8, p.827

only entitled to protect himself but can protect any other person from an unlawful aggression, that other person may be a perfect stranger.¹⁰

Thus, it can be said that a person has to resort to the right to private defence of his body and body another person, to protect himself and the society in which he lives. Therefore, for this the Indian penal code provides this right of private defence to its subjects. The right to private defence of body extends to causing death of the attacker, if the offence committed by the attacker may reasonably cause the apprehension that death or grievous hurt will be the consequence of such attack.

PRIVATE DEFENCE AGAINST PRIVATE DEFENCE

Right of private defence can be exercised by person only when some offence is committed or when an individual apprehends harm and if there is no reasonable apprehension of danger the person is not entitled to claim private defence. Right of private defence is not available where the accused is himself responsible for the attack. Thus, where the accused himself attacks the victim and the victim in self-defence re-attacks, the accused by killing him cannot plead for right of private defence. Hon'ble court held that the right of private defence provided under Indian penal code is very narrow right and can be taken advantage of only when the circumstances fully justifies the exercise of such right.¹¹

Therefore, it can be said that every person has right of private defence of his own body and also being the responsible citizen right to protect the body of another person against any assault affecting the human body. But where a person (aggressor) is himself responsible for the commission of crime, he cannot take the plea of right of private defence against the person who is exercising his right of private defence against the aggressor.

On the other hand, when once it is held that the incident relating to death of two persons is an integrated one, and cannot be divided into parts it follows, that the same right of private defence that is available to the accused in causing the death of one person can also be available to him

¹⁰ Nga Khan vs. Emperor, AIR 1933

¹¹ State of U.P. vs. Ram Swaroop, AIR 1974 SC 1570: 1974 CrLJ 1035

in respect of the death of another person. The Court held that it would be wrong to hold the right of private defence in respect of one and not in respect of the other.¹²

NO RIGHT OF PRIVATE DEFENCE TO AGGRESSOR

An aggressor is not entitled to take the plea of right of private defence because the right cannot be used to protect or justify an unlawful act. And also the right of private defence is available against an offence and the Indian penal code does not provide this right to the person who himself is responsible for the commission of an offence as it is a defensive right and is available only when it is essential to exercise this right in order to protect one's own body or of the another person.

Who is Aggressor?

An aggressor is a person who is responsible for commission of an offence punishable under the code and against whom the other party exercised their right of private defence. To determine who is aggressor, nature and number of injuries caused to member of each fighting parties is suggestive as to which party was aggressor. There is no rule of law that the party which sustained smaller number of injuries is aggressor, the rational on which this principle is based on that a party which goes armed with deadly weapon will cause more injuries than it receives from other side.¹³

In case of *Subramani vs. State of Tamil Nadu*¹⁴, hon'ble Supreme Court held that: number of injuries caused is not the safe criteria for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused person had caused injuries in exercise of private defence. Thus, it can be concluded that there is no hard and fast rule to determine who the aggressor is, it can be determine only on the basis of the facts and circumstances of each case.

¹² State of U.P. vs. Ram Niranjan Singh AIR 1971 S.C. 1432 at p. 1439

¹³ Machindra Babu Salve vs. State of Maharashtra, 1997 CrLJ. 486 (Bom)

¹⁴ AIR 2005 SC 1983: 2005 (1) KJ 25: 2005 CrLJ 1727: 2005 (1) KJ 25 (SC): JT 2005 (3) SC 82

WHEN RIGHT OF PRIVATE DEFENCE OF BODY EXTENDS TO CAUSING DEATH

There are certain circumstances provided under section 100 of the Indian Penal Code under which any person while exercising his private defence of person can cause death of the aggressor and that act will be justified under the code. It is thus, important to note here that this right is subject to certain limitations given under section 99 of the code, therefore while exercising this right no one is entitled to violate these conditions. Therefore, subject to those restrictions imposed by section 99, the right of private defence extends to causing death of the attacker or the aggressor.

According to section 100 of the Indian Penal Code, right to self-defence of body extends to causing death when any one of the six situations, specified therein arises during commission of the offence by aggressor.

Section 100: When right of private defence of body extends to causing death- The right of private defence of body extends to causing death, under the restrictions mentioned in the last preceding section, the voluntary causing death or of any harm to the assailant, if the offence which occasions the exercise of right be any of the description hereinafter enumerated, namely:

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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.

Seventhly: an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence.

Let's first understand the meaning of the words used in the above section. These words are properly explained by the *Dr. H.S. Gaur*¹⁵ as follows:

“Voluntary causing of Death”, which may moreover be intentional, “or any other harm to assailant”: here the word “assailant” would include also his confederates. In case if a person is surrounded by two brigands, one of whom deals with a deadly blow then runs away, leaving the others to finish him. It could be said that his right exists not only against that person who had hit him and runs away but also against the other.

Voluntarily

Section 39 of the Indian Penal Code provides definition of the word ‘voluntarily’ as follows:

A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it or by means which, at the time of employing those means, he knew or has reason to believe to be likely to cause it.

Illustration: A set fire, by night, to an inhabited house in a large town for the purpose of facilitating robbery and thus causes the death of the person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

Therefore, after reading the above definition it can be concluded that an act done voluntarily not only includes the things intentionally done by the person but also includes the effects which may be the consequence of the act done by the person, even if he did not intend to cause those effect. The section specifically lays down that a man is presumed to intend the probable consequences of his act.¹⁶

Assault

‘Assault’ is defined under section 351 of Indian Penal Code, 1860, as follows-

¹⁵ Gaur H.S., Penal Law of India, 11th Ed. (Vol.1), Law Publisher Pvt. Ltd., p. 911

¹⁶ Meeru Bhatia Prasad (Dr.) vs. State, 2002 CrLJ 1674 (Del.)

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gestures or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation: mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustration: A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

Therefore, any gesture or preparation by a person, which cause an apprehension that that person is about to use criminal force amounts to assault, mere threat that criminal force might be used against him is assault, actual use of criminal force is not essential.

Reasonable Apprehension of Death or Grievous Hurt

It is specifically mentioned under section 100 (1) & (2) that whenever any person apprehends any threat or danger to his life, in order to protect himself he may cause death or grievous hurt to the aggressor under private defence.

Therefore, in order to take the plea of this section, it is enough if a person has reasonable apprehension of the threat. Actual commission of the offence is not the prior condition to avail the benefit of this section, mere apprehension of danger is sufficient.

Reasonable Apprehension

The word reasonable apprehension is not as such defined in criminal law. It differs from case to case; generally, court determines if there is reasonable apprehension or not after looking at the facts and circumstances of the case, kind of weapon used by the aggressor to threaten the victim and also that the harm caused by the victim was necessary or he exceeded his right of private defence.

In *Deo Ishwar Shinde vs. State of Maharashtra*¹⁷, it was held that accused would be justified in eyes of law if in self-defence or to protect himself, accused takes the knife out of the possession of the deceased and in that state of mind inflicts multiple injuries on the deceased to avoid further attack by the deceased. Thus, the accused was entitled to right of private defence of body so as to cause death.

In *Dalip Singh vs. State*¹⁸, the facts of the case are, Amar Singh deceased first abused the accused and gave a dang blow on his forehead. Here the moment deceased gave dang blow to the accused, the right of private defence started and continued till there was no danger to the life of Dalip Singh (accused). So, the right of private defence was available to the accused against the unlawful aggression. Also in *Deo Narain vs. State of U.P.*¹⁹, it was observed that: “in moments of excitement or disturbed mental equilibrium it is somewhat difficult to expect parties facing grave aggression to coolly weigh, as if in golden scale and calmly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting the unlawful aggression.”

In another case of *Nabia bai vs. State of M.P.*²⁰, the facts are: one day while accused, her mother and sisters were busy in weeding crop, deceased attacked upon them with knife, accused and her sisters were unarmed, therefore to protect herself and her mother and sisters, accused snatched the knife from the hand of deceased and caused serious injuries on deceased. Court held that the accused is not guilty of any offence as she acted in right of private defence of body and body of another person.

Supreme Court stated that following are the circumstance in which right of private defence extends to causing death of the aggressor:

- (1) Number of injuries sustained by the accused supports the plea of private defence taken by accused that there was reasonable apprehension that assault would result in death.
- (2) If the deceased is unarmed and accused causes serious injuries to him, here the act of the accused will not be justified as he does not have right to private defence to cause serious injuries to an unarmed aggressor.

¹⁷ 2002, CrLJ 1026 at p. 1031 (Bom.)

¹⁸ (1976) 76 Punj. LR 336 at p. 338

¹⁹ 1973 Ch. R. 412: Criminal Appeal no. 192 of 1969, reported in AIR 1973 SC 473

²⁰ 1992 CrLJ 526 SC: AIR 1992 SC 602: (1992) 1 SCC 280: AIR 1992 SC 602

- (3) Two constables, who were part of an anti-dacoity squad, started arguing with each other and raised their rifles. The other members of the group intervene and deceased lowered his gun but accused fired three shots. The plea of private defence of body was rejected by the court.²¹
- (4) Supreme court held that blows given by lathi also apprehends danger to life if aimed at the vulnerable part of the body and accused would be justified to exercise private defence.²²

Death

This word death is defined under section 46 of Indian penal Code, 1860 as-

The word 'death' denotes death of human being unless the contrary appears from context.

In *Aruna Ramchandra Shanbaug vs. Union of India*,²³ it was observed that a present day understanding of death as the irreversible end of life must imply total brain failure, such that neither breathing, nor circulation is possible any more.

Grievous Hurt

Grievous hurt is defined under section 320 of the Indian Penal Code, as follows-

Following kind of hurt only are designed as "grievous hurt":

Firstly: Emasculation

Secondly: permanent privation of the sight of eye.

Thirdly: permanent privation of hearing of the either ear.

Fourthly: privation of any member or joint.

Fifthly: destruction or the permanent impairing of the power of any member of joint.

²¹ Mohd. Yusuf vs. State of U.P. AIR 1994 SC 1542

²² Supra note 55

²³ (2011) 4 SCC 454: AIR 2011 SC 1290

Sixthly: permanent disfiguration of head or face.

Seventhly: Fracture or dislocation of bone or tooth.

Eighthly: Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuit.

The authors of the code stated: “we have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely, than that offence some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, would be classed together.”²⁴ All the injuries which affects body seriously, i.e. all the serious kind of harm or hurt is grievous hurt.

In *Somnath Das vs. State*²⁵, the fact of the case are, accused and deceased were not in good terms with each other and one day a free fight arose between them consequently accused was charged for murder of deceased. Court held that there was no reasonable apprehension of danger to the life of the accused as the deceased was carrying lathi which was thrown to him by his son, whereupon accused attacked him and caused him serious injuries which resulted in death of the deceased. Accused exceeded his right of private defence; hence, he is not entitled to the benefit of private defence and was held liable for charges framed against him.

Emasculation

Emasculation comes under the definition of grievous hurt, it means depriving a male of masculine vigour. In a case accused caused death of a person and also cut the left fore-arm of his son, thus accused was held liable for causing grievous hurt under section 326 of Indian penal code.²⁶

²⁴ Note M, p. 151, quoted in Ratanlal Dheerajlal, The Indian Penal Code, 34th Ed., LexiNexis, Ch. 26, p.751

²⁵ AIR 1969 Ori. 138

²⁶ Basappa Balappa Bhangi vs. State of Karnataka, 1999 CrLJ 2689

Disfiguration of head or face

It means causing a man external injury which detract from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Therefore, where nose of a girl is cut by the accused with the razor, according to doctor permanently disfigured her face, this act of the accused clearly falls under section 320 (6) of the Indian penal code and accused is liable for causing grievous hurt.²⁷

Fracture or Dislocation of Bone

Fractures or dislocation of tooth causes severe pain and hence is included in the definition of grievous hurt. Fracture is not as such defined in the penal law, but according to its dictionary meaning, the breaking or cracking of a bone or the tearing of cartilage amounts to fracture. Actual cutting of bone is not necessary for the application of this clause, if there is a break of cutting or splintering of any fragment of bone or there is rupture or fissure in it, it would amount to a fracture within the meaning of this clause.²⁸ There is a case, where accused throws his wife out of the window, six feet high, which resulted in fracture of knee-pan and in several small wounds; here the accused is guilty of causing grievous hurt.

Severe Body pain for twenty days or endangering life etc

According to eight clauses of section 320 of penal code, any hurt which causes severe body pain to the sufferer for twenty days and makes him incapable to follow his ordinary pursuit or endangers his life. Therefore, the line between grievous hurt and culpable homicide not amounting to murder is very thin, as in culpable homicide the harm caused should be as is likely to cause death on the other hand in grievous hurt injuries should be sufficient to endanger life. An injury can be said to endanger life if it is in itself may put life of the person injured in danger.²⁹ In case of *Formina Sebastio Azardeo vs. State of Goa*,³⁰ the accused was held liable under this section for grievous hurt, the facts of the case are two accused tied the victims with the electric pole and assaulted him in order to teach him a lesson for spreading the information

²⁷ State of Punjab vs. Naib Singh (1978) Pb.L.R 326

²⁸ Hari Lal AIR 1970 SC 1669; 1970 CrLJ 1665

²⁹ Abdul Wahab, (1945) 47 Bom LR 998, FB, see also Ramla, (1963) 1 CrLJ 387

³⁰ AIR 1992 SC 133; (1992) CrLJ 107

about the love affair of accused, victim died because of that. Court held accused liable for causing grievous hurt and also held that the offence falls within the section 320 because they endangered the life of victim.

Rape

It is defined under section 375 of Indian Penal code, 1860, it is provided that; *A man is said to commit "rape" if he:*

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a women or makes her to do so with him or any other person; or*
- (b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a women or makes her to do so with him or any other person; or*
- (c) Manipulates any part of the body of a woman so as to cause penetration in to the vagina, urethra, anus or any part of body of such women or makes her to do so with him or any other person; or*
- (d) Applies his mouth to the vagina, anus, urethra of a women or makes her to do so with him or any other person;*

Under circumstances falling under any of the following seven descriptions:

Firstly: against her will.

Secondly: without her consent.

Thirdly: with her consent, when her consent was obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly: with her consent, when the man knows that he is not her husband and that her consent was given because she believes that he is another man to whom she or believes herself to be lawfully married.

Fifthly: with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is

unable to understand the nature or the consequence of that she gives consent.

Sixthly: with or without consent, when she is under eighteen years of age.

Seventhly: when she is unable to communicate consent.

In *Deepak Gulati vs. State of Haryana*³¹, Hon'ble Supreme Court observed that; rape is the crime against the entire society and violates the human right of victim and is also violative of victim's fundamental right provided under Art.21 of the Constitution of India. Being the most hated crime, rape tantamount to serious blow to the Supreme Honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her permanent marks. As mentioned above case, rape is most heinous crime, it completely destroys the victim both physically and mentally, hence under section 100 (3) victim is entitled to cause death while exercising the right of private defence if there is reasonable apprehension that the aggressor is going to assault for committing rape.

In *Badan Nath vs. State of Rajasthan*,³² hon'ble court set aside the conviction of the accused for exercising the right of private defence of person of his daughter. The fact of the case is, accused and deceased were in good terms with each other, one day while the wife of the accused was not there in her house, deceased came to see accused and allured him to take alcohol and by taking the advantage of the situation tried to commit rape upon the daughter of the accused. To protect his daughter accused stabbed deceased with the sword. Court acquitted the accused as the offence was committed under right of private defence of person under section 100(3) of the code.

In a case, deceased assaulted the accused and caused injuries, when accused saw deceased and his wife in compromising position. Apprehending another assault from deceased accused used chopper to cause death of deceased. Court held that the act of the accused is justified and accused is entitled to acquittal.³³ In another case, where deceased was engaged in committing rape by sexual intercourse with the minor daughter of the accused, accused assaulted the

³¹ AIR 2013 SC 2071; 2013 7 SCC 675

³² 1999 CrLJ 2268 (Raj)

³³ Raghavan Achari vs. State of Kerala, AIR 1993 SC 203; 1992 CrLJ 3857

deceased which resulted in death of the deceased. Conviction of the accused was set aside as the offence was committed under right of private defence.³⁴

Unnatural lust

According to section 377 of Indian penal code, 1860:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punishable for imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

According to section 100 clause four, an individual who is assaulted by an aggressor with intention of gratifying unnatural lust can also exercise the right of private defence of body. While exercising the right of self-defence can cause death of the aggressor in order to avoid further harm on his own body. This right is subject to certain limitation provided under section 99 of the code and any act done in violation of those limitations will not be protected by this section.

Abduction

It is defined under section 362 of Indian penal Code, 1860 as follows:

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

According to the definition of the word abduction, it can be concluded when a person is forced to go to certain place or by deceitful means induced to go to a certain place amounts to abduction of the person. Therefore, there should be use of force to threaten or harm the person so that he leaves his place and go at the place where aggressor asks him to go.

In a *Nagpur case*³⁵, a husband had assaulted his wife, to abduct her from her father's house. To protect herself from her husband, wife inflicted some injuries on her husband which consequently resulted in his death. Court held that accused is not guilty of any offence as

³⁴ Yeshwant Rao vs. State of M.P. AIR 1992 SC 1683: 1993 SCC (Cr.) 283: 1992 CrLJ 2779

³⁵ Mst. Sakhu vs. Crown, AIR 1951 Nag. 349 at p. 349

whatever she did; it was under right of private defence. She did not exceed in exercising her right and amount of force used by accused was necessary to protect her from deceased.

Wrongful Confinement

It is defined under section 340 of Indian penal code, 1860.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustration: A causes Z to go within a walled space and locks Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confine Z.

Therefore, wrongful confinement means confining or restrains a person within certain area and not letting him go beyond that space provided. Thus clause (6) of section 100 provides that when a person apprehends an assault for wrongful confinement from aggressor so that he cannot go to public authorities for help, the person is entitled to exercise the right of private defence and that act would be justified act.

In the instance case, the injured was unarmed. He was going to arrest the appellant, his intentions were only arrest appellant and not cause any kind of injury, it was held that there was in right of private defence of person in this case.³⁶ In a case, appellant was wrongfully confined but was not attacked by anyone. He fired a gun and killed a person. Protection of under this section for private defence was denied by the court.³⁷

Acid Attack

Clause (7) was included in section 100 after Criminal Law (Amendment) Act, 2013 on the recommendation of Justice Verma Committee.³⁸

This clause specifically provides that a person can cause death while exercising right of private defence of person against an act of throwing or attempt to throw or administer acid which

³⁶ Abdul Habib vs. State, 1974 CrLJ 248 at p. 253 (All)

³⁷ Hill vs Baxter, (1958) 1 QB 277 at 284

³⁸ Criminal Law (Amendment) Act, 2013 (13 of 2013), s.2 (w.e.f. 3-2-2013)

causes reasonable apprehension of grievous hurt. But this right is subject to certain restrictions provided under section 99 of the penal code.

In *Radhe vs. State of Chhatisgarh*,³⁹ the Apex Court observed that merely because an altercation took place between the accused and the aggressor and the accused person sustained injuries it does not give rise to the right of private defence to extent of causing death of the aggressor. Court also stated that, though it cannot be weighed in golden scales, it has to be shown that the accused person was under reasonable apprehension that it is important on his part to exercise the right in order to protect his body and also that the harm in return caused to the aggressor by the accused was absolute necessary.

Thus, to plea right of private defence extending to voluntary causing death, the accused must show that the circumstances were giving rise to reasonable apprehension that death or grievous hurt will be the consequence.

Right of private defence cannot be based on mere speculation. While considering whether accused is entitled to right of private defence it is not relevant whether accused had chance to cause serious injuries on the assailant. In order to find whether the plea of private defence should be granted to the accused entire incident must be seen and examined with care and viewed in its proper settings.

CAUSING DEATH IN SELF DEFENCE AND DOCTRINE OF NECESSITY

To a layman, there is a slight difference between self-defence and necessity. The right of private defence is an action taken by an individual to protect life from unlawful aggression on the other hand necessity is taken up when accused pleads that an act done was due to 'necessity' to take measure to save life. Therefore, self-defence there is existence of some reasonable apprehension of danger or threat from aggressor. It is an action taken by the accused to counteract the unlawful aggression of the aggressor, thus it is always controlled by some human agency. Whereas necessity is something which can never be seen or realised in advance. It is a situation which comes into existence suddenly on the spot and needs a quick and sudden

³⁹ (2008) 11 SCC 785 : AIR 2008 SC 2878

solution. In necessity, it is not always important that the human agency should be present, an act of necessity can arise in natural calamity also.

Penal law of India specifically provides that every person is entitled to right of private defence in order to protect one's body or body of another person. According to section 100 of the code this right of private defence extends to causing death of the assailant if there is reasonable apprehension that assailant will commit any offence mentioned under this section. Therefore, when an individual apprehends danger to his life or body of any other person and there is no recourse to public authorities, the individual can exercise the right of private defence, the exercise of this right should not be malicious.

Doctrine of Necessity is explained by *John Frederick Archbold*⁴⁰, as "that an act which would otherwise be a crime may in some cases be excused if the defendant can show that (i) it was done only in order to avoid consequences which could not otherwise be avoided and which, if they had followed, would have inflicted upon him, or upon whom he was bound to protect, inevitable and irreparable evil; (ii) that no more was done than was reasonably for that purpose, and (iii) that evil inflicted by it was not disproportionate to the evil avoided."

As there are some similarities between right of private defence and doctrine of necessity, but they are not identical and do differ from each other. The difference of right of private defence and doctrine of necessity is pointed out by Glanville William. *Glanville William*⁴¹ stated that "private defence overlaps necessity, but the two are not the same. Unlike necessity, private defence involves no balancing of values. Not only can a person kill by way of defence, but he can kill any number of aggressors to protect himself alone. On the other hand, private defence operates only against aggressor (voluntary or involuntary). With rare exception the aggressors are wrongdoers, while the persons against whom action is taken by necessity may not be aggressors or wrong-doers. For example: A shipwrecked man is clinging in the sea to a plank that is only big enough to support one. Another tries to join him on the plank, but the man in possession beats the assailant off, and later is drowned. This may look like a situation of necessity, but the act can be adequately justified as one of private defence the assailant's attack being technically wrong."

⁴⁰ Archbold on *Pleading, Evidence and Practice in Criminal Cases*, 41st Ed., p.1040

⁴¹ Glanville William on *Text book of Criminal Law*, 2nd Ed., p. 603 & p. 607

In a case of *Thangvel vs. State of Kerala*⁴², defence took the plea of private defence, he stated that he was compelled to inflict the stab injury on the deceased as the testicles of the accused were squeezed by deceased his wife. Hon'ble court denied the plea of self-defence, there was no circumstantial evidence to prove the statement of the accused. Distinguishing the Doctrine of necessity from right of self-defence, Madras high court held that, although the right of private defence is always exercised to protect oneself from any danger, still this right is much wider, therefore, there cannot be right of self-defence in all cases of necessity. "Necessity has no law" does not applies to modern jurisprudence, motive of self-preservation is inherent in every man but in order to achieve that end when in militates against the right of another person it is considered as criminal unless such an act is declared to be justified by law. Society places check on the struggle for existence where the motive of self-preservation.

CONCLUSION AND SUGGESTION

To conclude the discussion, it can be said that the right of private defence is based on the principle "necessity knows no law" and it is the primary duty of an individual to protect himself from any apprehending threat to his body or body of another person and sometimes this right extends to causing death of aggressor in self-defence. It can also be said that right of private defence is not merely a legal right but also a moral right because everyone having come into existence by natural process has a moral right to survive. Therefore, law provides for right of private defence of person.

However, it is realised that with the changing needs of the society it is important that the laws should also get modified to meet the demand of people. Law of private defence is the most complicated part of Indian Penal Code. The concern about the complexity of the law of private defence is also shown by the law framers, who said that:

"No portion of our work has cost us more anxious thought or has been more frequently rewritten. Yet we are compelled to own that we leave it still in very imperfect state; and though we do not doubt it may be far better executed than it has been by us. We are inclined to think that it must always be one of the least exact parts of every system of criminal law⁴³."

⁴² 1981 CrLJ (NOC) 201 (Mad.)

⁴³ T.B. Macaulay, J.M. MacLeod, G.W. Anderson, F. Millet, A Penal Code prepared by the Indian Law Commissioners 82 (1838)

Therefore, it can be said that the judges dealing with the cases of the right of private defence have to deal with these imperfect provisions to the best of their abilities ever since the Indian Penal Code was introduced in the jurisdiction in order to provide justice to people. Thus, it is necessary that the law should be amended accordingly so that miscarriage of justice can be avoided.

Hence, author is proposing following suggestions:

- ❖ Firstly, Clause 5 of section 100 should be limited to cases where abduction is punishable under the penal code: Abduction is an auxiliary offence not punishable by itself. It is punishable only when it is committed with any of the intent specified in sec. 364- 369 of the penal code. Therefore, it is improper to make an assault with the intent of committing an act which is not an offence to justify killing i.e. in such assault it is improper to allow a defender to kill the aggressor. Hence it is recommended that clause 5 of sec. 100 should be limited to cases where the abduction is punishable under code.
- ❖ Secondly, Legal provisions should be made to provide protection to bystanders; who wants to help the people in need but are afraid that by doing so they might incur more problem for themselves as the procedure of the legal system is complex and no one wants to get involve in legal matters. But if specific legal provision is provided in the code regarding the protection of these people there are chances that there will be more public participation in maintaining law and order and people would be willing to help those in need.
- ❖ Lastly, General Awareness: People should be made aware about legal provisions so that they can defend themselves in case of sudden and imminent danger to their body and also body of another person as state help is cannot always be obtained at the spot and also to curb the misuse of the benefits provided under right of private defence.

Thus, in the end, it is submitted that this is a wonderful right given to person who not only possess the right to protect the body of its own but also of the other persons who are in danger.

“Right of self-defence is nothing but expansion/extension of right of survival”

--Anonymous