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Revisiting the concept of Reasonable Apprehension of Death or Grievous Hurt in Private Defence Cases: Perspective from Indian Jurisprudence

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ABSTRACT

The concept of the right to private defence is based on the notion that every person has an inalienable right to defend themselves against an unauthorised aggressor by using efficient self-defence and that no one is expected to flee when their life, limb, or property is in danger but to take revenge instead. It is based on the broad idea that when someone tries to commit a crime using force, it is acceptable to resist them in self-defence. The ability to legally inflict harm on another person when necessary—that is, when a man finds himself in a situation where he faces immediate danger—is known as the right to private defence. When it comes to defending his life, the life of another, or his property against serious harm, he thinks that striking is appropriate. The private right to defend oneself or one's property only arises in cases of justified fear of injury. A real concern that something will happen to one's body or belongings results from an attempt or threat to commit the crime. Anxiety levels should be in line with what a normal person would feel at the crucial point. Superstitious worries, however, would remain unabated. Therefore, even though the right to self-defence is acknowledged, using it depends on whether or not one believes that there is an immediate threat.

Keywords: Private defence, reasonable apprehension, right to private defence.

I. INTRODUCTION

India's legal system acknowledges people's innate right to defend themselves against illegal violence, which is contained under the purview of private defence. The concept that "prevention is always better than the cure" serves as the foundation for the right of private defence. But in order to exercise this privilege, one must reasonably fear that they will suffer severe bodily harm or death in the near future. The right is subject to limitations and is not unrestricted. The next sections, 97 to 105, specify the boundaries, the level of harm that can be caused, and the

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parties against whom the right can be used. The right to private defence has been recognised as a result of the state's incapacity to provide assistance in all situations and at all times. If this privilege is not acknowledged, a man may be harmed by an aggressor and his harm may never be made right by the law. When it comes to non-offending acts, there is no private defence right. It can be used against any attacker, regardless of their mental state or level of competence, mistake or not. Overt attacks are defeated by the right, regardless of their meaning or intention.

II. NATURE OF RIGHT OF PRIVATE DEFENCE

The private right to defence is primarily preventive in character. Jurisprudence has limited the use of the right of private defence to shielding people and property from damage. No legal system allows it to be used to satisfy spiteful or malevolent sentiments. Essentially, the situation proves that it is a natural right. It is granted to all people, not only members of specific groups or individuals. Everyone in a given scenario has the right in certain instances, where the right flows. It is a natural human right that has been reorganised by legislation rather than a special gift from the law; as such, it is a right in its purest form rather than a privilege that is supposed to be enjoyed by a specific group of people. The right to private defence of one's person and property is recognised in every free, civilised, democratic society, as long as it is exercised within reasonable limitations, According to the Supreme Court's decision on the nature and extent of the right to private defence. Two criteria set these boundaries: (1) that all other members of society assert the same rights; and (2) that the State has historically assumed responsibility for upholding law and order. As this court has frequently stated, fleeing from danger is one of the most dehumanising acts on human nature, and the right to private defence has social benefits. An act carried out in the exercise of one's right to private defence cannot, as this right is limited to offences, give rise to another right to private defence in the aggressor's behalf.

In *Munshi Ram v. Delhi Administration*, the Supreme Court defined the nature of the right to private defence and held that, subject to certain established limitations, this right is recognised by all contemporary, evolved communities. These limitations are based on two principles: (1) That each and every individual in society claims the same rights. Generally speaking, the state is responsible for maintaining good relations with police enforcement. Members of society are not required to flee when they face danger to themselves or their property, nor are they expected to hold the attacker responsible for his violation. In essence, the right to private defence serves a social aim, and it is extremely humiliating for the victim of an attack to run away from the scene.

III. PARAMETERS AND CONCEPT OF REASONABLE APPREHENSION

One of the fundamental prerequisites for the right to private defence is a reasonable fear of harm. A man in a normal state of mind should be able to rationally relate to the fear. It shouldn't be a timid or cowardly man's. As soon as an assault properly raises fears of serious injury or death, the right to private defence is invoked. However, determining what is a reasonable fear of death or serious bodily harm is always a factual matter that depends on the specific facts and circumstances of each case. The weapon, how it is used, or another factor could be the source of anxiety. the person making the threat, both physically and mentally, as well as his ability to carry it out. There are situations where the combatants' relative strength matters. Superstitious fear is not encompassed within the realm of reasonable fear. However, the degree of threat should be sufficient that the specific defence strategy used is warranted. This privilege shall not be conferred upon fear of danger resulting from the mere planning to commit an infraction. The intent to commit an infraction and the threat to do so need to constitute criminal penalties. Therefore, the right to private defence cannot arise from a threat that would not constitute an offence. Not every empty threat gives a guy the right to arm himself. He needs to take a moment to consider whether the threat is meant to come true. Threats that are never meant to be taken seriously are something that individuals encounter frequently. Certain threats, such those made by women or weak people to powerful males, cannot be carried out immediately by the one making them. The circumstances of each individual situation must be taken into consideration when determining whether the concern was reasonable. A plausible fear of severe and impending physical damage or death must exist. Killing is only acceptable in situations where there is no other reasonable safe option left and it cannot be safely avoided. Killing the enemy is permitted in private defence when there is an imminent threat and a chance that it may grow due to inaction or delay. Another crucial factor that falls under the category of reasonable apprehension is the actor's sincere belief that he is in danger. This belief is reasonable and supported by the victim's actions as well as the surrounding circumstances. In fact, in a number of cases, the use of deadly force is permitted as long as the defendant has a reasonable belief that he is in imminent danger of dying or suffering severe bodily harm. In these situations, it became essential to murder the attacker in order to protect a person or piece of property. Stated differently, the employment of lethal force could only be justified in circumstances where the aggressor reasonably believes that there is a serious risk to life or property. Although the type of weapon used or intended by the attacker determines whether or not there is reasonable fear, it cannot be rigidly established that, in the event that the attacker only used a lathi, the accused was either prohibited from using a spear or could not have used one, particularly if the attack

targeted a vulnerable part of the body, such as the head, as determined in the Lakshmi Singh v. State case³.

(A) When private defence commences

The right to defend oneself or one's property privately only begins when there is a legitimate fear of harm. A legitimate fear of harm to one's body or possessions stems from an attempt or threat to conduct the crime. The level of anxiety should be comparable to what a reasonable person would experience at the critical moment. But it would not cover superstitious fears. Put another way, the law guarantees the right to defend oneself against perceived or actual dangers. It is not necessarily necessary for an offence to be committed in order for the right to self-defence to exist. If the right to private defence is not used, it suffices if the defender has a reasonable suspicion that an offence against the human body is being considered and is likely to be committed. A person shouldn't be expected to wait for his defence until after he has been struck. As decided in the Raja Ram case, it is not necessary for the person or party asserting the right to private defence to have been injured by the attackers in order to exercise or initiate the right.

IV. JUDICIAL OBSERVATION ESTABLISHED FEW INSTANCES WHERE THERE IS A REASONABLE APPREHENSION OF DANGER OR GREIVIOUS HURT

A communal conflict between local Muslims and Sindhi refugees in Katni resulted in the case of Amjad Khan v. The State⁴. The accused lived close to his brother, who ran a shop next door. The accused, informed by his mother, witnessed the throng attempting to break into his brother's store when it was stormed and looted by a mob. He retaliated by firing at the crowd from a gap in his house's wall next to the shop. This incident resulted in one Sindhi's death and three injuries. The Supreme Court found that the accused had a right to fear that he or his family would be gravely harmed or perhaps killed based on these facts. The circumstances surrounding his placement were more than sufficient to allow him the right to covertly defend his body, even to the point of causing death.

The same was upheld in the case of Deo Narain v. State of U.P.⁵. The Supreme Court ruled that an individual is justified in causing death even in situations where there is a reasonable fear of serious injury or death and even when the invader's injuries are not lethal. A reasonable level of fear relies on his mental state at the moment, as well as the circumstances surrounding him;

³ AIR1976 SC 2263

⁴ AIR 1952 SC 165

⁵ 1973 CrLJ 677

nobody can know what was going through his head at the time.

In *Dharamvir Singh v. State*,⁶ the Punjab and Haryana High Court made the observation that a person asserting the right to private defence of their body depends on their mental state at the relevant time and the circumstances surrounding them; nobody can determine what was going through their mind at that precise moment.

In the case of *Jai Dev v. State of Punjab*⁷, the court noted that under section 100, an individual asserting the right to private defence may choose to defend himself by killing an attacker who is reasonably likely to inflict him great harm. When a person is under danger and finds it difficult to get emergency help from the government apparatus, they have the right to defend themselves and their property. Therefore, using violence that is authorised cannot be done for reasons other than those covered by the doctrine of private defence, nor can it be used in a way that is too disproportionate to the harm that is intended to be prevented or that is reasonably apprehended. Private defence rights must never be exercised deliberately or vindictively.

*State of U.P. v. Ram Swarup*⁸ was decided by the Supreme Court. That the right of private defence is available to those who act in good faith or in the face of impending danger; it cannot ever be granted to someone who arranges an incident in which the right can be used as a pretext to support an aggressive act."the right of private defence is a right of defence, not of retribution." The right to private defence has been protected by the Penal Code, but it hasn't figured out a way to provoke an attack in order to carry out a murderous scheme.

In *Darshan Singh v. State of Punjab*, the court developed its legal position in line with the following principles:

The criminal justice systems of all civilised nations have duly recognised the inherent human instinct of self-preservation. All free, democratic, and civilised nations recognise the right to private defence as long as it stays within acceptable bounds.

- The right to private defence is only applicable when someone is unintentionally forced to stop an impending threat rather than using private defence. The right to private defence does not need the commission of an actual offence; rather, the right to private defence is activated only when there is a legitimate fear. It suffices that the accused be proven to have committed the crime and that it is likely to be done again if the right to a private defence is not invoked.

⁶ 1975 CrLJ 132

⁷ AIR 1963 SC 612

⁸ AIR 1974 SC 1570.

- The right to private defence lasts for the duration of a valid fear and starts the minute that fear manifests.
- The accused need not establish the existence of their right to a private defence beyond a reasonable doubt.
- A person who reasonably fears losing a limb or their life may defend themselves by inflicting any injury, including death, upon an adversary who seeks to hurt them or threatens them directly.

In the case of *Neelambaran v.State of Kerala*⁹, The deceased Reveendra was the head of the family and was responsible for managing the joint property that their father had left to them all. He was addicted to the rink as well. They got into a quarrel one day after the accused Neelambaran, his younger brother, stole four or five cocoanuts from the common area. The deceased struck the accused two or three times after violently grabbing his cocoanuts. Neelambaran then threw a coconut stem at the deceased individual. Then the latter attacked the defendant with a coconut stem. When the accused ran away, Raveendra followed him while holding the coconut stem, but he was not able to capture him. The accused was hit in the face by the stem that he threw at him. Then the accused turned and stabbed once with the knife he was holding. Raveendra's wounds ultimately resulted in his death. Based on these circumstances, the Kerala High Court upheld the accused's right to a private defence and cleared him. Even though he was obviously drunk, the Court held that it was only reasonable for him to fear serious harm as a result of his brother's previous actions. The circumstances surrounding his placement were more than sufficient to grant the accused the right to a private defence of his body, even if it meant inflicting death.

In judgements like *Vidhya Singh and Mohammad Khan*, the Supreme Court of India has repeatedly stated that the right to self-defense is an incredibly valuable institution. It fulfils a social purpose. It is not to be taken too literally. The law does not make a law-abiding citizen fearful when an assault is imminent. One of the most dehumanising things a person can do is flee from danger. Because the right to self-defense is meant to serve a communal purpose, it makes sense to support it within the given boundaries.

V. REAL TEST FOR DETERMINING THE SUBSISTENCE OF REASONABLE FEAR

The primary examination, which is taken into account for determining the subsistence for reasonable fear would be to ascertain whether the individual asserting the right to private

⁹ AIR1960

defence was still acting in private defence or whether other emotions, such as annoyance, malevolence, and vengeance, had intervened, as determined in the *Umakaran v. State* case. As ruled in the *Satna Majhi*¹⁰ decision, whether or not the claimant has a reasonable fear must be ascertained objectively by taking into account all relevant circumstances and events. In certain cases, as determined in the *Khatak Singh v. State* decision, reasonable fear does not need to be proven independently when the dead began striking the claimant of the right of private defence. The Supreme Court ruled in *Nabia Bai v. State of Madhya Pradesh*¹¹ that a person's right to private defence does not continue to exist following or under the following circumstances:

(I) As long as the logical anxiety passes or

(II) The threat has been eliminated or destroyed, which means that if the threat or reasonable fear persists, the right to private defence will too, and if they stop, the right to private defence of the body will also end. The existence of the danger need not be actual; a reasonable or logical fear of it is sufficient, as in the case of the initiation of the right to private defence of the person. To judge or determine the reasonable fear, some liberty must be made for the accused's mental state in which he would be trying to defend himself against a threat to his life or serious injury. However, striking someone who is already unconscious is not regarded as an act of private defence, as held in the case

In *George Dominic Varkey v. State of Kerala*¹², the Supreme Court noted that the fear that an individual exercising the right to private defence has should be determined objectively by taking into account all relevant circumstances, including events and actions during the critical moment. The right to private defence is activated in the event that it is determined that there was a fear of serious injury or loss of property. The individual utilising their private defensive right has the right to remain and neutralise the threat. The type of conditions under which the accused is placed should be taken into consideration while determining the reasonableness of the apprehension. The accused's opinion that danger is imminent is one of the factors that determines whether there is a reasonable fear of harm. He must have valid reasons to believe, and his mind must respond to those reasons in such a way as to convince him that there is an impending threat and that force is required to stave it off. It doesn't matter if these initially apparent grounds turn out to be completely without merit after this criterion is met. The accused's belief regarding the existence of a credible fear of death or serious injury determines the extent to which the right of private defence can be exercised. Rather than being based on

¹⁰ 1983 Cri LJ 287

¹¹ AIR 1992 SC 602

¹² AIR 1971 SC 1208

the victim's integrity or good intentions, the right to selfdefense is based on the existence of reasonable grounds for the victim of an attack to fear death or bodily harm—that is, the fear that a reasonable man would have under certain circumstances. However, there isn't a standard for a reasonable man like that. It is not a test of a man's beliefs to determine whether or not an assault on a reasonable man has criminal intent. His genuine beliefs are only known to himself. It's possible that others will only evaluate him based on what was "apparent" to an average guy at the time. To a man who is generally circumspect or wise, or to a man who is angry, scared, or wounded, what does "apparent" or "imminent" mean? What does it signify when an older, more seasoned guy faces off against a young, inexperienced man? anything that is "imminent" is anything that is near at hand, "impending," or that threatens to occur shortly or under specific conditions. If the deceased had made threats to use a deadlyweapon, who wouldn't be terrified that he planned to do so? Was he genuinely pursuing it, or was he merely showcasing it while he used words, gestures, or physical acts to threaten? To decide whether an accused person who is accused of causing death or grievous harm was in danger of dying or suffering great bodily harm and therefore his act was justified on the grounds of private defence, the court must take into account the circumstances as they reasonably appeared to the accused person at the time of the incident. In some American courts, the jury is instructed to "put yourself in the defendant's shoes. Would you have done what he did? Would you as wise men believe what he believed and act on it as he did?"

VI. CONCLUSION

Every person has the inherent, unalienable right to private defence, which is protected by social norms. One of the most dehumanising experiences one can have is fleeing from danger, and society is not supposed to produce cowards from its people. While the state's main duty is to protect its citizens' interests, this cannot be done for everyone, everywhere, or in every circumstance. Therefore, in situations where the state fails to act quickly, a person has the inalienable, instinctual right to defend himself and his property against unlawful violence. The private defence law found in the Indian Penal Code is based on English law, but it has been slightly altered to better suit Indian society's requirements. It is not sufficient to claim the right to private defence simply because someone has broken the law or done something improper. That act should be prohibited by law as well as by Section 97 of the code. The right to private defence may be invoked not only in situations where any of the above offences are being committed, but also in situations where there is a plausible suspicion that a crime is being committed or when an attempt is being made to conduct one of the listed offences. No society can afford to allow the right to private defence to exist without limitations. The right to private

defence has been established as a permanent right via legal and legislative processes. Rejecting the unrestricted right to private defence does not, however, automatically mean giving up that right when there is a real threat to one's life or property and getting help from the government might not be easy. In addition to the parties involved, third parties are also covered by this privilege. In addition to the legitimate owner, trespassers who are in real possession of the property are also covered by the right of private defence of property.
