

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Study on Right to Private Defence

NANDHARAGH P.H¹

ABSTRACT

Section 96 to 106 of the Indian Penal Code, 1860 provides for various provisions relating to the right of private defence. Some of the aspects of the right to defence under the ipc are that no right of self-defence can exist against an unarmed and unoffending individual, the right is available against the aggressor only and it is only the person who is in imminent danger of person or property and when no state help is available. The law confers right on every individual to defend his life, liberty, and property, when he is confronted with an imminent danger or unlawful aggression. The imminence of danger is also an important prerequisite for the valid exercise of self-defence. Right of private defence means committing an offence in exercise of one's own right to defend or protect his life, liberty or property. "Necessity knows no law" is a common saying which means that an act done out of necessity cannot be subjected

to the rules of law. The law of Private Defence being the natural and inalienable right of every man, the law of society cannot abrogate it.

Keyword: *Right of private defence body and property section (96 to 106)*

I. INTRODUCTION

Section **96 to 106** provides the right to private defence. Self-help is the first rule of criminal law. L.B. Curzon defines Private Defence as: "Where a person commits a tort in defence of himself or his property, he is not necessarily liable if the act has been in the circumstances of a reasonable nature". It is the first duty of the state to protect the property and body of the peoples. According to Osborn's Concise Law Dictionary as: "An action taken in reasonable defence of one's person or property. It can be pleaded as a defence to an action in tort. The right of Private Defence of one's family and probably of any other person from unlawful force" But it is very difficult for the state to protect or treat all the people at a time. To recover this problem the state is made private defence of body and property in Indian penal code 1860. the law confers right to every person or individual to defend his life, liberty and property. The scope of Private Defence is carefully influenced by the nature of State-individual relations. Private Defence thus impacts the political, moral and social dimensions of organized societies.

¹ Author is a Student at Bharata Mata School of Legal Studies, India.

Arun attacks Varun to kill him. Varun in order to save himself kills Arun. Here Varun can plead the defence of the right of private defence to get exemption from criminal liability. The right to private defence is made for the social purpose and it should be based on certain limits.

1. Everyone has the right to defend one's own body and property and also to defend others body and property at the time of immediate necessity.
2. The right cannot use to cause harm to another as revenge

Reason for the defence:

1. The violence used must be in proportion to the injury to be averted and must not be employed for the gratification of vindictive
2. Where the aid of society can be obtained, it must be restored to
3. Where the aid of society cannot be obtained, an individual may do everything necessary to protect himself.
4. And able to protect private persons against unlawful attacks upon their person and property.

II. RIGHT TO PRIVATE DEFENCE: PRINCIPLES EVOLVED BY JUDICIARY

The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension. It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude. The accused need not prove the existence of the right of private defence beyond reasonable doubt. The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

However there are two important limits on the right of private defence. The right of private defence can under no circumstances justify anything, which strictly is no defence but an offence. Another one the right cannot be claimed when you have yourself courted the attack.

According to section 96 "Nothing is an offence, which is done in the exercise of the right of private defence" this right only goes against the person or persons from whom the danger to life or property is apprehended. In *Gurudatta mal vs. state of U.P.*, AIR1965 SC 257

In this case the accused and deceased consisted of a huge number of the members. The accused partly killed some members of the deceased party. The accused pleaded for the defence of the right of private defence. The right of private defence has been elaborately discussed in section 97 to 106 from two parts. The first one is defence of the body section 97, 98 and 99 are of general nature and deal with both aspects of right to defence of body and property. The second one is defence of property which deals with section 100, 101, 102, 103, 104, and 105 with

defence of property.

Section 97 provides that the right of private defence is available to defend a person and also to the property. But every person has a right, subject to the restrictions contained in section 99. that is 'his own body and the body of any other person, against any offence affecting the human body. The other is the property it is movable or immovable of himself or of any other person against any act which is any offence falling under the definition of theft, robbery, mischief, or criminal trespass or attempt to commit theft, robbery, mischief, criminal trespass.in ***Ishwar singh vs.state of rajasthan*** in this case the apex court held that in order to invoke the right of defence to person or property, the accused must prove that he was placed in such a dangerous situation that to protect himself he had to use reasonable force.

The section 98 provides the right to defend against the act of insane, intoxicate etc.it speaks about what may not be offences because of the age, physical, or mental incapacity of the aggressor is no bar to the exercise of private defence.

“Nandhu under the influence of madness, attempts to kill yadhu. Nandhu is guilty of no offence. But Yadhu has the same right of private defence which he would have if Nandhu were sane.”

Section 99 lays down the limitations of right to private defence. There is no right to defence done by or by the direction of a public servant. The public servant must have done the act in good faith and under the direction or colour of the office, the act not be justifiable by law.and there is no right of private defence in case which there is time to have recourse to the protection of the public authorities.in ***Dhara singh vs.Emperor*** case the police entered the accused house in the night to arrest him. The accused did not identify them as police and fired at them.It was held that the accused had a right of private defence.

The section 100 dealing with the right of private defence, when the death may be caused. In such times the right of defence extends to voluntarily causing the death of a person. But it is also under the limitation of section 99. The section 100 only applicable on the following circumstances

1. there is an assault may reasonable apprehension to cause death
2. such assault may reasonably cause apprehension that grievous hurt
3. an assault and the intention of committing rape
4. an assault and the intention of gratifying unnatural lust
5. an assault with the intention of kidnapping or abducting

The section 101 talks about the harm other than death may be caused. In such circumstances that laid down in section 100 the right of private defence is limited to causing any harm other than death.

The commencement or the continuance of the right of defence of the body is dealing with section 102. The defence is commenced as soon as the reasonable apprehension of danger to the body is started from the attempt or the threat to commit the offence. It will continue that the apprehension of danger continues. In ***Deo narain vs state of uttar pradesh*** in this case the court held that the right of private defence is either 'preventive and not a punitive right'

When the section 103 contains the right of private defence of property extending to cause death. the person can kill the aggressor in the following circumstances: robbery, house breaking by night, mischief or house trespass, theft and also the apprehension of causing the death or grievous hurt. ***Kamparsare vs Putappa***: Where a boy in a street was raising a cloud of dust and a passer-by therefore chased the boy and beat him, it was held that the passer-by committed no offence. His act was one in exercise of the right of private defence.

When the right to defence to property extends to cause any harm other than death is dealing under section 104. It is also under the restriction under section 99. According to section 104 if the theft, mischief or criminal trespass does not answer the description given in section 103 then the right under 104 does not extend to causing death but it extends subject again to section 99 to voluntarily causing any harm other than death. In the section 105 is dealing with the commencement of the right of private defence of property. It commence when the reasonable apprehension of danger of the property commences.

The right of private defence against a deadly assault when there is risk of harm to innocent persons is under section 106 of the Indian penal code. Here the exercise of the right which reasonably cause the apprehension of death,

III. CONCLUSION

The private defence under the Indian penal code section 96 to 106 is very helpful for the common people in the society. The use of private force by one individual against another, the limits of Private Defence would be influenced by the nature of societal relationships and expectations of how individuals are to behave vis-a-vis one another. In India, the Supreme Court held that Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries The defence under 96 to 106 is used to protect his own self and his property. right must exist at the relevant time. There is no right of self-defence if at the relevant time there was no threat either to the person or to the persons and

property of their companions. But the using force wants a reasonable force. Historically, the concept of right of private defence in the ancient age in western countries was the period of absolute liability and as such killing was considered to be a crime. The right of private defence is a good tool in the land of every citizen to defend himself. But there are some restrictions also included in this right to use the defences under the section 96 to 106. But it is not revenge but towards the threat and imminent danger of an attack. But people can also misuse the right. It is the main problem facing the state to identify whether the act was done by the person in good intention or bad intention. In America, in every state, the one is allowed to use reasonable force to defend himself when he is under the imminent threat of bodily harm. The force used must be proportional to the force being used against one's safety. In Australia, as a rule, an individual can take any defensive or evasive steps they believe to be reasonably necessary given the situation. Unlike much of the common law, self-defence is not a formulaic area of law, but concerns itself with the circumstances of each instance. It is very difficult for the court to find out whether the right had been exercised in good faith or not. But it is a valuable gift to the people in the public to protect his own body or property.
