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1st Year, BA LL.B.**RIGHT TO PRIVATE DEFENSE UNDER INDIAN PENAL CODE****Abstract**

The Indian Penal Code, 1860 is a code which covers all the aspects of criminal law in India and the Right of Private Defense is covered in Sections 96 to 106. Private Defense is nothing but self-defense. This right allows the citizens to protect oneself from the apprehension of dangers. This research paper deals with the different concepts related to Private Defense. The concept of Private Defense is multi-faceted and it is still gradually evolving. Our leaders, while making the IPC, made it understandable, interpretive and easily accessible so that it can serve justice to the citizens of India.

Keywords

External Force, Imminent Danger, Reasonableness, Self-defense, Apprehension

Introduction

Private defense in literal sense means defending oneself from any external force that may cause serious harm or injury. In other words, it implies the use of such actions that may hurt the other, in order to protect oneself, or their property, or to some extent to even prevent any other person from committing any crime. The Indian Penal Code, 1860 contains provisions about citizen's right to private defense. Section 96 to 106 of the Indian Penal Code, 1860 talks about all such provisions. This right has basically evolved with time the judgments and decisions made by the Supreme Court of India.

Private Defense

This right is available to each and every citizen of India to basically protect themselves if there is any external force which may cause them serious harm or injury. Private defense in other words, is self-defense. These types of rights can be only be applicable and exercised when aid or any kind of help is not given or available. The Article 51(a)(i) of the Indian Constitution states that, the state having authority has a fundamental duty to protect property and renounce violence, which means that the state is bound to protect its citizens and their property from any harm as a fundamental duty, and if the aid is not given or available at the moment when the life of the citizen is threatened, then the citizen is authorized to use his force to protect himself from such imminent dangers¹. Another important thing to know about private defense is that it is based on the principle of 'reasonableness'. It means that the range of the application of this right is purely dependent upon the reasonableness of the apprehension of the danger. It is important to note that this right was given to the citizens so that they may not hesitate in protecting themselves, due to the fear of prosecution and taking actions against such who try to cause harm.

Section 97 of Indian Penal Code, 1860², states that citizens have the right to defend their body and other's from serious injuries and the property, be it movable or immovable, of his and other's under certain restrictions mentioned in section 99³.

Section 98 of Indian Penal Code, 1860, states about the rights of private defense against the act of a person of unsound mind. It states that when act, which would otherwise be an offense, is not that

¹ Article 51(a)(i) of the Indian Constitution.

² Section 97, The Indian Penal Code, 1860.

³ Section 99, The Indian Penal Code, 1860.

offense, by reason of youth, the want of maturity of understanding, the unsoundness of mind or even the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defense against that act which he would have if the act were that offense⁴.

Section 106 of IPC, 1860, states that while using the right of private defense against a person who is an imminent threat to life, which may cause death, the defender be so situated that he cannot effectually exercise that right without any risk or harm to an innocent person, his right of private defense extends to the running of that risk⁵.

Nature and Scope

The concept of private defense is based on various general principles, the first being, self-help. Self-help lays its foundation on the fact that it is the person's duty to protect himself from the imminent dangers. This right is recognized and practiced in most of the legal systems that exist in the world. It is true that it is the state's primary duty to protect its citizens, but, regardless of how rich and well developed a particular country is, it would still not be able to provide or be able to afford to deploy a policeman for each and every citizen for their protection. So, in order to protect its citizens, the state has given us the right to protect ourselves when our lives are threatened. It should be noted, that even if it takes a person to hurt the another just to protect oneself, it will not be considered as an offense under the Indian Penal Code.

It has been observed, that the right to private defense has often been misused and it becomes an excuse to commit a serious crime. This right is basically granted for protecting the citizens so that they can defend themselves without any hesitation and it should not be seen as a measure to take revenge. There are situations where people provoke others to act aggressively and then use it as an excuse for the harm caused and even murder in some instances. Many people treat this right as a license to kill and it is sometimes treated as one of the major flaws we have in our Constitution. There were assertions by the court that this right is only applicable and available to those who act in good faith and do not treat it as an excuse that justifies their act which is unlawful. Another important point to keep in mind for the right of private defense is that, the necessity arising to

⁴ Section 98, Indian Penal Code, 1860.

⁵ Section 106, Indian Penal Code, 1860.

protect oneself from imminent danger should be real and evident. Furthermore, consideration of time is also important. If, for instance, an attack was made before the injury caused to the body or the property, it will not be considered as action with respect to private defense. In cases where both the parties have simultaneously entered into a fight, the right of private defense will not be accessible to either of the parties and instead, both of them will be considered as guilty for the acts they've committed.

Right of Private Defense against Body

According to Section 97, every citizen has the right to defend their body or the body of another against any offense which may directly or indirectly affect or cause harm.

Right of Private Defense against Property

A person can also use this right with respect to their property as well as the property of the others. This right can only be applicable in cases like, theft, mischief or criminal trespass, robbery, etc. It is the very right of a person to not let a trespasser enter their property without permission. But if the so-called trespasser is in the possession of the property and it is known to the owner, the right of private defense is not applicable for the owner.

A person who enters the property of another without the permission is considered as a trespasser. The self-defense against such a person is applicable only when the trespasser is inside the property of the owner. If a situation arises where the trespasser forcefully tries to dispossess the owner from his /her property, the owner can, in order to save his/her property, try to harm or cause some injuries to the trespasser to dispossess him from their property. The moment when the trespasser is dispossessed from their property, the owner loses his right to injure the trespasser. Which means, if the owner tries to hurt the trespasser even when he is no longer in the owner's property, the owner cannot claim it as right to private defense. In such cases the trespasser instead will have the right against the owner.

Limitations for the Right of Private Defense

- The acts which don't draw its origin as an offense under the Indian Penal Code, the right of private defense cannot be applicable for such acts.

- The right is applicable as soon as there is some apprehension of dangers that may cause harm to the body, and not before that.
- The person on whom the apprehension of harm is caused, in no case can he inflict more harm to the person who is causing it.
- There must be no mode of escape which is reasonable in nature, for the person whose life is threatened by an imminent danger which may cause serious injuries to the person's body.
- Lastly, when a citizen is already in the protection of public authorities, he/she cannot avail the right of private defense when a situation where their life is threatened arises.

Judicial Perspective of Private Defense

The 'private defense' has never been properly defined. Our leaders who framed the Indian Penal Code left the very concept of private defense in an imperfect condition. They did so, because they knew that its concept will vary with time as it is very vast in nature. They left it for it to evolve gradually with time, with different judgements and decisions made by the courts. It was created in such a manner, that it could easily be understandable and interpreted according to the different cases so as to serve justice to the citizens of India. In other words, the very concept of Private Defense is flexible in nature.

Landmark Cases

State of UP v. Ram Swarup⁶

Ganga Ram, early in the morning around 7 am went to buy melons from Sahib. Sahib declined to sell melons to Ganga Ram, and this led to a serious fight between the two. Later, he came with his sons, one of whom was Ram Swarup. Ganga Ram was seen holding a knife, Ram Swarup a gun, and the two other sons had 'lathis'. They were behaving aggressively with Sahib while he was trying to leave. And he was trying to leave, he was shot by Ram Swarup which led to his death on the spot. All of them were tried under Section 302 under IPC for murder. The High Court of Allahabad acquitted Ganga Ram as well as Ram Swarup in an appeal which was filed by them. They defended themselves stating that they had seen their father Ganga Ram being assaulted by

⁶ State of UP v. Ram Swarup, 1974 AIR 1570, 1975 SCR (1) 409.

the servants of Sahib and seeing this Ram Swarup had fired the gun as a private defense against Sahib.

The court held, *“Section 100 of IPC providing right of private defense of the body, extends to the voluntary causing of the death, if the offence which occasions the exercise of the right is of such nature as may, to the extent material, reasonably cause the apprehension that the death or grievous hurt will otherwise be the consequence of the assault”*.

Darshan Singh v. State of Punjab⁷

In this case, the Supreme Court laid down guidelines for Right to Private Defense for citizens. It held that a person should not act in a cowardly manner when faced with dangerous situations which might cause imminent threat to one's life and has the very right to kill the aggressor in order save oneself, which can be considered as an act of self-defense. But it also warned that one cannot use this right as a disguise of self-defense to hurt and pose a threat to another's life and property with the motive of taking revenge.

Conclusion

Right of Private Defense was made to serve justice to the people and also as a weapon for protecting themselves, but it often used by people to serve their evil purposes. Now, it is for the court to decide whether the act committed was done in good faith or with other evil motives. The best part of Private Defense is that it is still evolving and will always keep up with the new trends of the societal crimes. As mentioned earlier, its concept is vast and is therefore very flexible in nature. Every year, with new judgements and decisions made by the courts, makes its concept evolve even more.

⁷ Darshan Singh v. State of Punjab, 1953 AIR 83, 1953 SCR 319.