

# Detailed Analysis of Defences under Private Defence of the Indian Penal Code

Tanuja Shashi

BA LL. B 3<sup>rd</sup> Semester, Amity Law School, Amity University Patna, Patna, Bihar, India

**Abstract:** *The Indian Penal Code outlines a number of defences, but understanding their limitations and applicability under certain circumstances is critical. Through extensive research, we will confidently and authoritatively uncover the true extent and boundaries of these defences. By this journey of discovery as we seek to shed light on this important aspect of the law.*

**Keywords:** Private Defence, Inflicting of Harm, Burden of Proof

## 1. Introduction

The Indian Penal Code (IPC), 1860, is the official criminal code of the Republic of India. It is a comprehensive code that covers all aspects of criminal law, with no exceptions. The drafting of the code was initiated on the suggestions of India's first law commission, established in 1834 under the Chairmanship of Lord Macaulay, making it a well - considered and carefully crafted framework. In conclusion, the IPC is the primary criminal code of India, providing a complete and assertive set of rules for all substantive aspects of criminal law. It is important to note that the Indian Penal Code (IPC) comprehensively covers all criminal offences, including those related to the human body, property, conspiracy, crimes against the state, and public tranquillity. It is crucial to understand that anyone found guilty of a crime will be punished under the IPC, and there will be no exceptions.

The Indian Penal Code is the cornerstone of Indian criminal law, defining a variety of crimes with justifications and exemptions for their inclusion. It is essential to understand that when someone goes beyond planning and takes action to carry out an illegal act, they are committing a crime and will be held liable. The code outlines numerous typical crimes such as murder, theft, and assault, prescribing specific punishments for each. Therefore, it is crucial to abide by the Indian Penal Code and ensure that no illegal actions are taken, as doing so will result in criminal liability.

### 1.1 Understanding the Private Defences under IPC

The Indian Penal Code of 1860 is a powerful resource for those looking to defend themselves and their property. Sections 96 to 106 give individuals the right to use necessary force against those who would threaten them or their belongings. This means that you can confidently protect yourself, your loved ones, and your property without fear of legal repercussions. These provisions are especially important when immediate assistance from law enforcement is not available. Remember, you have the right to defend yourself and your property, and the Indian Penal Code of 1860 is on your side.

The Indian Penal Code outlines the laws regarding the right of private defence of person and property in Sections 96 to 106. These provisions authorize individuals to use necessary

force to protect their own or another person's body and property against an attacker or wrongdoer when immediate help from the authorities is not available. In such cases, the person using force is not held accountable under the law. The right of private defence is an inherent right of every individual and is necessary for the protection of life, liberty, and property. However, the law strictly regulates the type and amount of force that can be used. The use of force to protect oneself or one's property is known as the right of private defence.

The right of private defence was introduced during the colonial era by Macaulay, with the aim of cultivating a "manly spirit" among the natives. The ideal Indian was expected to be courageous and defend their own or others' bodies and property, even if it meant using defensive force to prevent certain crimes, including causing death. This right allows individuals to use defensive force that would otherwise be considered illegal to safeguard their important interests. It is akin to the defence of necessity and empowers individuals to take the law into their own hands. The right of private defence is a necessary tool for self - protection, and it is essential to ensure that individuals have the right to protect themselves and their property from harm.

## 2. Research Methodology

The researcher's study was an extensive exploration and explanation of private defences under the Indian Penal Code (IPC). The study aimed to identify the situations in which private defence could be used effectively and to understand the limitations of such defences. By examining the infliction of harm in different circumstances, the researcher was able to provide valuable insight and guidance for individuals seeking to protect themselves from harm within the boundaries of the law.

### 2.1 Applicability and Limitations

Individuals have the right to defend themselves and their property when they cannot get immediate help from the state. This principle recognizes that people have the inherent right to protect themselves from danger. However, it is important to remember that the force used in self - defence should not exceed its legitimate purpose and should not be excessively disproportionate to the danger faced or the injury feared. The exercise of the right of private defence is

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not guided by any fixed rules but depends on various factors such as the prevailing circumstances, the nature of the attack, and the emotions of the person involved. In any case, the use of force must not be intended to inflict harm or revenge, as this goes against the very concept of self - defence. Therefore, it is essential to use the right of private defence carefully and responsibly, ensuring that it serves its intended purpose while upholding the principles of justice and fairness.

The right of private defence is an essential provision enshrined in sections 96 to 106 of the Indian Penal Code (IPC). These sections must be read in conjunction to fully comprehend the extent and limitations of this right. The Code's authors included these provisions to ensure that acts done in good faith to counter unlawful aggression are not punishable under its penal clauses. It is imperative that we study these sections thoroughly to understand the right of private defence and exercise it judiciously when necessary.

#### Limitations

- **Self - defence cannot be used against another person acting in self - defence**

It's crucial to remember that the right to defend oneself is only applicable when defending against an aggressor. Therefore, any actions carried out in self - defence cannot be used to justify a counter - attack by the original aggressor. Keep in mind that self - defence laws are in place to protect individuals, not to provide an opportunity for retaliation.

- **Cannot exceed the right of private Defence**

It is imperative to note that exceeding the right of private defence, even when the defender has the advantage over their aggressor, is considered an offence. So, it is crucial to exercise caution and restraint when defending oneself to ensure that the law is not violated

- **No self - defence if time for police.**

In situations where there is ample time to seek protection from the authorities, exercising the right of private defence is not permissible. The right of private defence is a crucial defensive right, which should only be employed when circumstances demand it and are clearly justified by the law.

## 2.2 Source of Data and Information

To achieve a comprehensive understanding of private defences, we found it imperative to consult a diverse range of secondary data sources, including books, newspapers, and legal articles. These sources offered valuable insights and perspectives that would have been otherwise unexplored. With the help of secondary data sources, we were able to gather a wealth of information, which further enriched our understanding of the topic at hand.

## 3. Understanding the Private Defences with their Respective Sections

### Section 96

In private defence, nothing is considered an offence. The right of private defence cannot be considered an offence in response. While the right of self - defence under Section 96

is not absolute, it is qualified by Section 99, which states that the right does not extend to causing more harm than necessary for the purpose of defence. It is important to note that in a free fight, neither party has the right to private defence, and each individual is responsible for their own actions. The right of private defence can fully absolve a person of guilt, even if another person dies, in the following situations:

- If the deceased was the actual assailant, and
- If the offence committed by the deceased, which led to the exercise of the right of private defence of body and property, falls within the six or four categories outlined in Sections 100 and 103 of the penal code.

### Section 97

Includes defending the body of any person against an offence and safeguarding any property against theft, robbery, mischief, criminal trespass, or attempted crimes of similar nature. However, this right of private defence comes with certain limitations that are outlined in section 99. Remember, it's important to know your rights and take appropriate action to protect yourself and those around It's a basic human right to protect oneself and others from harm.

- **First:** It is an undeniable truth that every person has the absolute right to defend not only their own body but also that of others against any form of harm. This right must be exercised with unwavering determination.
- **Second:** Every person has the right to protect their own or someone else's movable or immovable property against any offence that qualifies as theft, robbery, mischief, or criminal trespass. This also includes any attempt to commit theft, robbery, mischief, or criminal trespass.

### Section 98

Section 98 of the Indian Penal Code clearly states that if an individual commits an act that would ordinarily be an offence, but due to reasons such as youth, lack of understanding, unsound mind, intoxication, or misconception, it is not considered an offence, others still have the right of private defence against that act as if it were an offence. Therefore, individuals must exercise their right to private defence when necessary to protect themselves against such acts.

### Section 99

The law states that there is no right of private defence against an act that doesn't reasonably cause the fear of death or serious harm. This applies to situations where a public servant acts in good faith while carrying out their official duties, even if their actions aren't entirely legal. The law sets out limits and conditions under which the right of private defence can be exercised. The first two clauses make it clear that the right of private defence cannot be used against a public servant or someone who's acting in good faith while performing their legal duties, as long as their actions are legal.

### Section 100

The law specifies the circumstances under which a person is allowed to use deadly force for self - defence. The right of self - defence extends to causing the death of an attacker, as

well as any other harm, provided it is done voluntarily and within the limitations mentioned in the previous section.

- **First** - Any assault that may reasonably cause the fear of death
- **Secondly** - Any assault that causes the apprehension of potential grievous harm.
- **Thirdly** - 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** - Assault with intent to wrongfully confine someone in circumstances that may prevent them from seeking help from public authorities.
- **Seventhly** - An act of throwing acid or attempting to throw acid

### Section 101

The Indian Penal Code is concerned with a crucial aspect of the legal system which is the right of an individual to protect oneself or others from harm. However, this right is not absolute and has certain limitations. It applies only to situations where harm is caused but not resulting in death. To truly comprehend this section, it is imperative to delve into its fundamental components. As per Section 101 of the Indian Penal Code, if the offence does not fall under any of the previous descriptions, then the right of private defence of the body cannot be exercised to cause the assailant's death. Nevertheless, it still allows for the voluntary causing of harm to the assailant under the restrictions specified in Section 99, except for causing death. By following these guidelines, we can ensure that justice is served while still maintaining the sanctity of human life.

### Section 102

The right of private defence of the body starts when there is a reasonable fear of harm to the body from an attempted or threatened offence, even if the offence hasn't actually been committed yet. It continues as long as there is still a reasonable fear of harm. However, the fear of harm must be reasonable and not based on imagination. For instance, you cannot shoot someone who is armed with a dangerous weapon from a long distance, as there is no actual attack that has occurred, and therefore, there is no reasonable fear of attack. In other words, you can only use your right of private defence when an attack has happened or is likely to happen.

### Section 103

The right of private defence of property extends to causing death under certain circumstances, as mentioned in Section 99. This right can be exercised if the offence, that leads to the exercise of the right, falls under any of the following categories: Robbery, House - breaking by night, Mischief by fire committed on any building, tent or vessel that is used as a human dwelling or as a place for the custody of property, Theft, mischief, or house - trespass, under such circumstances that may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.

However, this right is subjected to certain restrictions. The harm caused must be voluntary, and it should be proportionate to the harm that is intended to be inflicted

upon the defender. In other words, the harm caused must be necessary and should not exceed what is needed to protect the property.

### Section 104

If someone is exercising their right to private defence, but the offence being committed is theft, mischief, or criminal trespass that is not one of the descriptions listed in the previous section, then the right to private defence does not extend to causing voluntary death. However, it does extend to causing harm other than death, subject to the restrictions mentioned in Section 99. It should be noted that this section does not give the accused permission to exceed their right of private defence in any way. If someone exceeds their right of private defence and causes the death of the trespasser, they would be guilty under Section 304, Part II. This section is a corollary to Section 103, as Section 101 is a corollary to Section 100.

### Section 105

- The right of private defence of property is a legal concept that allows a person to use reasonable force to protect their property from harm. This right begins when there is a reasonable fear that the property is in danger.
- If someone tries to steal the property, the right of private defence continues until they have left with the property, the authorities have been alerted or the property has been recovered.
- If someone tries to rob the property, the right of private defence continues as long as the offender poses a threat to life, causes harm, wrongful restraint or the fear of immediate harm or restraint. It is important to note that the use of force in private defence should always be reasonable and proportionate to the threat faced. The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.
- The right of private defence of property against house - breaking by night continues as long as the house trespass which has been begun by such house - breaking continues

### Section 106

The concept of the right of private defence against a deadly assault is crucial. If someone is reasonably afraid of being killed and needs to defend themselves, they are allowed to do so. However, if the defender is in a situation where they cannot defend themselves without putting an innocent person in harm's way, they still have the right to defend themselves at the risk of harming the innocent person.

## 4. Cases

### Mohinder Pal Jolly V. State of Punjab

When workers at a factory launched brickbats from outside the gates and the owner of the plant killed a worker with a pistol shot, it was decided that this provision did not protect him because there was no fear of death or serious injury.

### Mithu Pandey V. State

Two individuals holding "tangi" and "Danta," respectively, were supervising labourers as they collected fruit from trees

owned by the accused, who objected to the act. One of the accused was assaulted and had many injuries during the ensuing altercation. The accused killed someone by using force. The accused had the right to a private defence, even if it meant inflicting death, according to the Patna High Court.

### **Jassa Singh V. State of Haryana**

The Supreme Court ruled that if trespassing occurs on open territory, the right to private property defence does not extend to the point where the individual committing the offence is killed. Only trespassing into a residence under conditions that could possibly result in death or serious injury is listed as an offence under Section 103.

## **5. Conclusion**

In society, one's safety and protection are of utmost importance. Private defence serves as a means to protect oneself, one's property, and even a stranger. It can be used not only against a guilty but also an innocent attacker. However, using force in self - defence is only justified when there is an immediate need to prevent threatened violence. A person acting under a mistaken belief is protected, provided that the mistake is reasonable. While the law is not clear on this, ideally, using force that was necessary for defence should suffice, even if the actor did not know this. It's worth noting that there is no duty to retreat, but a defender should make it clear whenever possible that they desire to withdraw from the combat. The right of private defence is not lost by refusing to comply with unlawful commands. As members of society, it's our duty to protect ourselves and those around us. Private defence serves as a means to do so, but it's important to use it only when necessary and justifiable

## **References**

### **Books**

- [1] Section 96 - 106, Indian Penal Code
- [2] Indian Penal Code - S. N. Mishra
- [3] Textbook on INDIAN PENAL CODE - Prof. K D Gaur

### **Web Links**

- [4] <https://www.lawctopus.com/academike/right-private-defence/>
- [5] <https://thelawmatics.in/limitations-on-right-of-private-defence/>
- [6] <https://lawpage.in/ipc/article/private-defence>
- [7] <https://lawrato.com/indian-kanoon/ipc/section-98>