

“Boundaries of Right to Private Defence”

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CHAPTER I: INTRODUCTION

Present research project paper is fundamentally centered around the right to self-defence (as provided under “ss. 96-106 of the Indian Penal Code, 1860”) and quite generally around the restriction and boundaries that rotates around on the axis for exercise of private defence.

“Section 99 of the Penal Code” per se stipulates three restrictions regarding the underpinning substantive part of self-defence. First such bar is that this right regarding private defence does not apply to acts where no reasonable fear of employment of power and that was engaged by a public servant beneath the garb regarding his official duty. Second limitation is that if the exercise of self-defense is more than the assault by the aggressor, the accused is considered to have lost his right to self-defense. Third restriction on the right of self-defense is the instance in which the accused had adequate possibility to approach the relevant legal authorities for help.

This project in essence aims at describing the result of expressions and the doubts they bring forth as to some of the parts of this provision.

RESEARCH QUESTIONS

Q1. Does self-defence as a right survive in situations in which the indicted person is the attacker or when he retaliates for injuries suffered in the past?

Q2. Does the right of self-defense furnishes greater latitude to the masses and are the limitations provided adequate enough to reduce the abuse of this right?

TENTATIVE CHAPTERISATION

Chapter 1 of the present research paper provides an outline which imply a concise boundary of the whole research paper. Chapter 2 inquires as to people who could really assert this right and on the hand Chapter 3 relates with the problem of abuse of the provisions regarding these rights and defenses.

RESEARCH METHODOLOGY

This paper is doctrinal in nature, referring primarily to books, articles and case law. The researcher has referred to primary sources in the form of statutes, legislations and has also referred to judicial interpretation provided in case laws. The researcher has also referred commentaries on laws. The references for this project have been acquired from the online databases which contain law reviews and journalist articles namely- Digital Library of India, SCC Online and Manupatra.

CHAPTER-II

“S. 99 of the Indian Penal Code, 1860” provides for circumstances wherein self-defense as a right won’ apply. It provides the following:

99. “Acts against which there's no right of personal defence. —There is not any right of personal defence against an act which doesn't reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a employee acting in straightness under colour of his office, though that act, might not be strictly justifiable by law”.

“There is not any right of personal defence against an act which doesn't reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a employee acting in straightness under colour of his office, though that direction might not be strictly justifiable by law”.

“There is not any right of personal defence in cases during which there's time to possess recourse to the protection of the general public authorities”.

“Extent to which the right may be exercised. —The right of personal defence in no case extends to the inflicting of more harm than it's necessary to inflict for the aim of defence”.

The right of self-defense orbits about the fundamental rule that “necessity knows no law” and “the first duty of man is to help himself”. The right of self-defense is implicitly rendered to each and all individuals and no-thing for the practice pertaining present right will negatively affect the right provided to other individual. The Apex Court of India repeatedly mentions that self-defense as a right “is a right of self-preservation” & “not of reprisal” and like any other right, this right also is contingent on different limitations as stipulated under S. 99 of Indian Penal Code that are as fundamental as the right itself is. To mention first of many limitation is the damage caused in private defense must not go past the quantum which was reasonably essential for the goal of defense. Furthermore, the exercise of the defence has to go hand-in-hand with the initiation and being present of a reasonable apprehension of endangerment to the person from an effort or a risk to perpetrate the crime as

provided in S 102 of Indian Penal Code. Act of revenge or getting even cannot be shielded by the overall exclusion of culpability.

Therefore, where the person who died as a result of an attack while he was working for producing grains on a piece of property for the complete day in the knowledge of the person under investigation and such person having adequate period of time and opportunity for the recourse to legal enforcement body but chose to ignore that notion and instead he planned to attack the deceased party while the dead-person was getting over with his work for the day, this attack cannot be interpreted as an act in “exercise of right of personal defence” and rather it will be considered as an “action by way of retaliation” and therefore accused person will be penalized for his act.¹

Self-defense as a right subsists in those miniscule circumstances in which there is an “actual need for self defence” & cannot be used wherein the indicted person is the attacker. In “*Hamsa v. State of Kerela*”², person who died was the attacker struck on the forehead of the relative of the person under charge forcefully by a stick. The relative shouted for aid and the accused for the purpose of discouraging the victim inflicted on him a wound by stabbing with a standard knife. Until this point, the person charged with offence was fully covered under the scope of private defence. However, when the individual charged with offence stabbed the deceased repeatedly, he surpassed the proper boundaries and threshold of private defense and his will to defend changed to will to harm.

It is pertinent to note that right of self-defense neither subsist in instances in which the attacker attacks and takes revenge for harm done previously. It subsists only for circumstances where the attacker is grappled with conditions of “immediate necessity” and when such situations are not the result of his own wrongdoing.

“It is also significant that the necessity must be real and not apparent, before the aggressor can justifiably be deprived of his life”³. To determine whether the aforementioned right is applicable, not just it is important to evaluate the manner of defence; the temporal circumstances are also of important consideration. If the person who has been assaulted did not strike the attacker till the affray ended, or when he was found dead, that is considered as a form of vengeance & not as defense.

S. 97 also invests in strangers “the right to defend the person and the property of others”. However, the courts are also required to take care of persons who, by using the sheer pretence of self-defense, gets into dispute between person(s) and such person results in inflicting injuries due to involvement. So the person getting into the dispute to which he was not a party initially, on discovering that such person

¹ State of M.P. v. Ramraj Shukla, C.A. 1061 of 1985

² 1989 CrLJ N.O.C. !58(Kerala)

³ State of Punjab v. Balbir Singh, 1959 CrLJ 1905

embroiled in a fight is his foe, stays away from inflicting injuries by using the excuse of self-defence.

Hence, one clear observation of the above text is that the right of self-defense as provided under Indian Penal Code cannot be pleaded by the aforementioned people and in aforementioned scenarios.

CHAPTER - III

The sculptors of the “Indian Penal Code,1860” have reiterated and clarified their position on the provisions concerning the self-defense as a right written and guaranteed from S. 96 all the way extending to S. 106 of IPC, 1860 by stating that it was an established principle that the rights given to the masses under these provisions have a broad leeway and are very susceptible to misuse. However, it is of importance to remember that they have not created such laws for mischievous people those having the habit of taking the legal system and moulding it according to themselves and those who are more probable to reach on the far side of what is reasonable in inflicting injury. But the creators of these laws have also kept in mind to not make the use of these defences unreasonable otherwise there will have been higher and additional limitations to the already mentioned limitations under section 99.

But we have to remember that in our country the threat also lies on the directly opposite side. The masses are totally powerless in defending themselves and the tolerance with which they tend to submit to the regular attacks of the gangs, dacoits and robbers and the trespassers and mischief committed in the most gruesome and offensive modus by bands of gangsters is one of the most stunning as well as discouraging evidence of social truth in India at present.

In such context the architects of this code were leaned more towards encouraging a manly soul and disposition in the hearts of the common citizens and augment the boundaries on the proper application of private-defense as a right. The code if read coherently and in right context enumerates that the collective misuse which might have arisen out of putting these rights to mischievous and anti-society and anarchist purposes is not even close to grave dangers that arises out of citizens not having the liberty to use such rights against thugs, robbers and gangsters. The scenarios and situations in which it was thought that such liberties will be used are true even today's developed society.

During the ancient time, person had the obligation and the onus of guarding the body and the property of himself as well as that of his family. At present, the government oversees all the functions of criminal aspect in today's welfare state. The practice of private defense as a right as defined and demarcated by law must be observed and fostered by the society as a whole and by each individual of every democratic country and it is desirable and ideal that in a case a man's person or his property is under

attack, he is not pressured to just run and flee rather he would be within his rights and will be fully justified in the eyes of law to stand his ground & deliver an equal counter-attack to the attacker only subject to and keeping in mind the reasonable restrictions and limitations that framers of IPC have envisioned.

Self-defense as a right has a cultural notion to itself as specified “by the Apex Court” in the case of “*Munshi Ram v. Delhi Administration*”⁴ that “*such a right not only would be a restraint on persons of bad character but would also encourage the right spirit of every citizen*”. “*While on the one hand the existence of such right of every individual is recognised as of necessity, unless, restrictions are imposed, law and order in society are bound to be affected*”.

The “Hon’ble High Court of Calcutta had laid down”: - “*The right of self-help, when it causes or is likely to cause damage to the person or property of another person, must be restricted and recourse to public authorities must be insisted on. If a person prefers to use force in order to protect his property when he could, for the protection of such property, easily have recourse to the public authorities, his use of force is made punishable by the Indian Penal Code. To hold otherwise would be to encourage and put a premium on offences of rioting which are so frequent in this part of India.*”⁵

A number of such restrictions and limitations are provided in this Code of 1860. While identifying the right to self-defense, the scheme under the Penal Code intuitively provides for limitations on exercising such rights keeping in mind the welfare of society at large. The Right to self-defense is so used that a citizen of country feels safe on one hand and also society is improved on other. An endeavor had been made throughout these provisions of this Penal Code to strike such balance and harmonization.

CONCLUSION

This research paper judiciously focuses on the circumstances and situations wherein the aforementioned right cannot be claimed as a safeguard. Also can some of the abovementioned situations and persons can claim protection of the code. Such situations and persons are attackers, and offender who are primarily concerned about misusing and moulding the law and legal system to their use. Persons attacking initially cannot be safeguarded by this right if they are in turn overpowered by the person they used force against.

Such scenarios also engulfs in itself those people who hold the grudges and wants to take revenge of the some previously done act. The purpose and goal of these rights is not to protect people those who plead self-defense by disguising revenge but only the true cases.

⁴ (1968) 2 SCR 455

⁵ Emperor v Kabiruddin., 7 C.L.J. 359

Considering the question of defence being very broad and hence providing leeway, the Courts in their wisdom tried to laid down that the advantage and benefits derived from these safeguarding provision far outweighs the possibilities of misuse and moreover, it is fundamental principle of law that the mere possibility of misuse is not a ground for curtailment.Hence, it clearly shows that the safeguarding these rights is ultimate goal and are framed to harmonize and balance the conflicting interests of an individual and that of the society as a whole.

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