

# LEGISLATIVE FRAMEWORK REGARDING RIGHT TO PRIVATE DEFENSE: A CRITICAL STUDY IN INDIA

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**Abstract:** Prior to the advent of human civilization, the rule of thumb in society was “might makes right,” but as society advanced, the State was established with the mandate to protect each individual’s life, freedom, and property. At the same time, it must be noted that despite the State’s strength and intelligence, it is absurd to expect police to be deputized to oversee, monitor, and provide security for every person everywhere they go and at every point in their lives where they need the right to private protection or self preservation. To defend oneself, one uses the Latin phrase “se defendendo.” Self-improvement is the main tenet of criminal law, as Hari Singh Gour rightly observes in his well-regarded book on Indian Penal Law. The justification for any violation against a person or piece of property is private protection. It can be used both against guilty and against blameless aggressors, and it also applies to protecting an outsider. Only when it is immediately necessary against compromised viciousness is the protection allowed. The error should be obvious for someone who acts in accordance with a confused belief in the necessity of protection. Even when the entertainer was unaware of this, it should suffice that the power used was actually necessary for protection on a fundamental level; yet, the law is murky in this regard. There is therefore no requirement to leave, but there is even a safety net should he ever express a desire to leave the conflict. The fact that the guard would not obey unlawful commands does not result in the loss of the private guard’s right. Thoughts about need, humanity, and social request have significantly undermined it over time, despite the fact that it nevertheless remains a standard. The right to protection is completely essential, according to Bentham, who wrote about it in his work Standards of Penal Laws. Depending on the guiding principle that helping is just a man’s duty. The current paper manages the rules relating to the private protection right available under Indian criminal law.

**Keywords:** Private Defense, IPC, Legal Right, India, Cases, Crime, Judgement

## **1.0 Introduction:**

The right to private defense is a significant one, and it is primarily preventive rather than punitive in character. If the state assistance is not available, it is nonetheless accessible despite hostility. Section 96 of the IPC does not define the phrase “right to private defense.” It just demonstrates that nothing was committed in violation of one’s right to private defense. Private defense, which includes the right to protect the person exercising a right or another person’s body or property, is the subject matter of Section 97. The privilege may be used to prosecute anyone who commits an offence that affects a person’s physical well-being, attempts to commit an offence that poses a real risk of being committed, or commits an offence like a burglary, theft, mischief, or criminal trespass, or attempts to commit an offence like a criminal trespass in relation to property. This privilege is available for the protection of one’s own body, the collection of another person’s body, one’s property, or the property of another person against certain offences when there is hostility towards body or property. Indian law on the right to private defense does not mandate that the defense be associated with the person whose person or property is the target of hostility. It grants everyone the right to defend their body or property from crimes for which they have the right to private defense; however, there is no opportunity to plan a course of action for the protection of the public experts, and the power used is limited to that which is necessary to defend a person’s body or property.

## **2.0 Private Defense Rights**

Self-preservation is a human trait that, in all practical terms, he shares with every other creature. “Nature compels a stuck man to oppose, and he is justified in using such an extent of authority as will prevent a redundancy,” B. Parke once said. Obviously, the ability and resources of the state to protect its citizens determine how much this privilege

of private defense is acknowledged. The privilege of private defense is a highly valued and important right granted to residents to protect themselves and their property by successfully thwarting hostile acts. The core principle underpinning the right to private defense is that when a person or his property is in danger and prompt assistance from the State apparatus is not immediately available, the person has the right to defend himself and his property. Each resident must stand their ground firmly in the face of hostility, according to the legislation.

In the face of criminal assault, no guy is normal. The people of every free nation must support the right to private defense, to be sure. Never engage in harmful or malicious action while exercising your right to private defense. A generous interpretation of the right of private defense is appropriate since it serves a social purpose. Such a privilege will empower the good soul in a free citizen in addition to having a deterrent effect on bad characteristics. Running from danger is the most degrading thing a person can do to their soul. By all means necessary, the accused cannot guarantee the right to Private Defense when they are not the ones who are assaulting the victim. The principle behind private defense is that it is acceptable for an individual to use a reasonable amount of power to protect himself or another against any unlawful use of power that is directed against him.

It is necessary to understand the privilege of private defense from the standpoint of necessity. Law disregards such external impulses and regards the demonstration as rational. The State is responsible for preventing harm to its citizens and their property. However, situations could arise where an individual or his property is inherently in danger and the State machinery's guidance isn't available. When this happens, it is acceptable for a person to use their power to prevent a direct risk to their own or another person's person or property. This is a private defense privilege. Whatever the case, such a privilege or right is subject to restrictions and is not always available. Community workers operating in the execution of their legal powers are not eligible for the privilege of Private Defense.

### **3.0 The Right of Private Defense in India: Legislative Framework**

The renowned words of English legal giant Jeremy Bentham were, "This privilege of defence is completely necessary. Magistrates' caution will never be able to compensate for a person's obligation to use personal caution. Evil men can never be adequately restrained by the law as effectively as they can be by the terror of widespread opposition. You will essentially become friends with every evil man if you lose this perk. This benefit is only available when the defender shows a realistic level of apprehension or terror, and it can only be used to defend the aggressor.

Sections 96 through 106 of the Indian Penal Code explicitly establish the right to private defense, or the ability to successfully execute the law on one's own behalf to protect one's own person, property, or those of others. Under the privilege of the private defense, actions taken in conformity with Section 96 are legal. As a result, exercising one's right to self defense cannot be considered unlawful. The right to self-defense under Section 96 is obviously constrained by Section 99, which states that the right in no circumstance includes inflicting more harm than is required to achieve the ultimate objective of private protection. Each person is also responsible for their own actions. When a person directly causes another person's suffering or death, the right to private defence will totally exonerate that person of any liability in the following circumstances:

If the victim of the attack was the one who actually attacked, and if the crime that led to the use of the right to private protection of one's person and property falls under one of the six or four categories stated in Sections 100 and 103 of the Indian Penal Code.

Everyone has the right to defend their person and property, subject to the restrictions in Section 99. Section 97 discusses this right. His own body and the body of any other person against any crime against the human body; His own property and the property of any other person against any act that would be regarded as a burglary, devilishness, or criminal trespass offence, or an attempt to commit a burglary, theft, or act of mischief in furtherance of such an offence.

Under this article, the privilege or right of private defense may only be used if it is absolutely necessary. It must only extend as far as is necessary to keep the enmity. This provision of the Constitution divides the right to self-defense into two parts; for example, the first half covers the ability to protect one's person, and the second part addresses the ability to protect one's property from attack.

### **4.0 Basic Principles of Private Defense**

The two-judge SC panel in *Darshan Singh v. State of Punjab and Others* set the following guidelines for the Right of Private Defense:

- Self-defense is a fundamental aspect of human nature, and every country with a developed social structure views it as such in its criminal laws. All nations that are free, governed by the law, and enlightened

- recognise the right to one's own defense within reasonable boundaries;
- Only those who suddenly find themselves in need of averting an approaching danger and not self-creation are eligible for the prerogative of private defense;
  - To activate the right to private defense, only a small, reasonable worry is required. In the end, it is not necessary for there to be an actual commission of the crime in order to support one side of private defense. If the right to a private defense cannot be arranged, it is necessary that the accused is apprehended and that the offence is investigated;
  - When a reasonable fear first appears and continues, the right to private defense begins;
  - It is illogical to expect that a victim of an attack will modify his defense incrementally and with any degree of mathematical precision;
  - In a private defense, the accused's authority shouldn't be wholly out of proportion or much more prominent than would be appropriate for the protection of the person or their property;
  - It is widely accepted that, even if the accused does not claim self-defense, the court may still take such a request into account if the evidence suggests otherwise;
  - Beyond a reasonable apprehension, the accused need not establish their eligibility for the privilege of private defense;

The Indian Penal Code grants the right to private defense only when the unlawful or illegitimate act constitutes a crime. An individual who is in immediate and sensible danger of losing his life or an appendage may use self-defense by inflicting harm or, in the case of direct or indirect assault, by strangling his assailant to death.

#### **5.0 Proof Is Required For All Claims In Cases Involving Individual Bodily Defense.**

The courts are relied upon to oversee the law of private safeguard in a practical manner with sensible benevolence to effectuate its fundamental item, keeping in mind that the fundamental essential person of this right is preventive and not retributive. "The similarity of estoppel or of the specialised guidelines of common procedures is improper."

A criminal preliminary has made it plain that the common law rule of process does not protect the rights of a person who has been accused, and a criminal court, unlike in a common case, may find for a person who has been accused on a request that has not been made by the person. As a result, it rejects the assertion that it has provided additional support for the accused. The legal system's thinking and operation should be open to supporting the accused and guaranteeing that a reliable resident is never freed from prison, both of which depend on the standards of outright presumption of innocence. The accused's allegedly unlawful behavior may also have been done to exercise their right to private protection, or the offence may have been lessened since their right to private protection was established but also exceeded.

Additionally, the burden of proof shifts to the accused if it emerges during the course of the proceedings that specific conditions may have occurred and permitted the accused's activities to qualify for any of the general exemptions stated in the IPC. However, the arraignment truly needs to release its underlying weight as though the circumstances had never happened, with the rare exception of a settlement that calls into question the presumption of honesty. Additionally, even if they are unable to prove the existence of those conditions, the person is still eligible for a quittance if they can prove facts and circumstances under Section 105 of the Evidence Act that are sufficient to cast serious doubt on the circumstances of the arraignment and disprove at least one element of the crime. In that the accused need only show that the preponderance of probabilities is on their side, this is analogous to the idea of processes in a common case. As a result, it is very possible that the burden of proof on a defendant to establish the exceptional case is less onerous than the burden of proof on the indictment to establish each and every element of the accusation.

#### **6.0 Judge's Perspective on Private Defense**

The protection of life and property is a guarantee in every civilised society, but because it is impractical for the government to provide such protection at every event because police officers cannot be everywhere at once, everyone has the right to a private guard. The ability to hire a private guard gives people the legal right to take reasonable precautions to protect themselves in particular situations. The creators famously stated, "We left it still in an exceedingly deficient state... we are persuaded to conceive that it should be one 100% of the time of the most un-

accurate components of each arrangement of criminal regulation.” This suggests that they understood the requirement for a state of latent uncertainty to allow them to give judgement on their capacity to read and implement the arrangements in a reasonable manner.

However, the local courts have disregarded this advice to exercise caution and, after giving it some thought, have chosen an absurdly restrictive interpretation of the agreements to the point where private protection is no longer an adequate safeguard, defeating the purpose of the arrangement. The definition of “reasonable trepidation” under Sections 100 and 102 serves as an illustration of the discrepancy between the legal interpretation and the intention of the Code’s creators. Evidently, the local courts have rejected the inherent ambiguity of “sensible trepidation” in favour of a strict objective technique. This is in contrast to the current English law, which evaluates the risk concept fully based on the insight of the blame (totally abstract test).

*State v. Yogendra Moraji*

The Supreme Court carefully considered the scope and limitations of the right to individual bodily protection. One of the viewpoints emphasised by the court was that there should be no safe or reasonable means of escape via withdrawal for the person defying a growing risk to life or of serious real harm other than by killing the attacker. This perspective has caused major confusion since it subtly suggests that one should first look for opportunities to retreat rather than use force to defend themselves, which goes against the general rule that the law does not favour weakness in regard to an aggressor. Another viewpoint is that this idea of retreat is actually an acknowledgment of the English customary law rule of guard of body or property, which required precedent-based law courts to look first to see if the person being blamed could stop the commission of wrongdoing against him by withdrawing.

The Sikh accused of stealing a Muslim woman who had just been married and converting her to Sikhism is *Nand Kishore Lal V. Emperor*. The lady’s better half’s family members arrived and asked for her return about a year after the kidnapping. The charged refused to agree, and the woman herself made it clear that she didn’t want to reunite with her Muslim husband. The spouse’s family members started making forceful attempts to remove her right away. The charges resisted the attempt, and as a result one of them took a blow from the lady’s top assailants, which led to the death of the latter. According to the ruling, the accused did not commit a crime because their obligation to defend the victim against her assailants under this clause extended to the point of death.

*Mohinder Pal Jolly v. Punjab State*

Workers at a factory threw bricks from outside the gates, and the factory owner shot one of the workers, killing him. It was determined that this section did not protect the factory owner because there was no fear of death or serious injury.

*In re Mithu Pandey, State*

Two individuals, each equipped with a “tangi” and a “danta,” were dispensing a variety of natural goods harvested by labourers from trees owned by the accused individuals who opposed the demonstration. Given that the attack was the cause of the struggle that ensued, one of the accused had numerous wounds that continued to linger. They ascribed the cause of death to the misuse of power. The Patna High Court ruled that those who were to responsible were eligible for the ideal of private protection, even to the point of causing death.

*Haryana State v. Jassa Singh*

The Supreme Court ruled that even though a trespass demonstration relates to open land, the right of private property protection does not extend to the person who submitted it dying as a result of their actions. One of the offences under Section 103 is simply submitting a house trespass under circumstances that could reasonably cause passing or intolerable harm.

*The Private Defense Right’s Restrictions*

The right to an individual’s private defense as stated in the topic of its degree under Section 97 IPC is expressly reliant upon the restrictions included in the next parts, particularly Section 99. The boundaries of this right to a private defense are defined in Section 99. The three key limitations outlined by Section 99 are:

That a local official’s or another person acting under his orders doesn’t have the benefit of a private defense if they do so in good faith and within the law, but not if they do so in a way that would reasonably cause them to fear for their safety or suffer great harm;

That the accused must not exercise more power than is necessary in the exercise of their right to private defense;

That there is no possibility to develop a plan of action for the insurance of the open power.

## **7.0 Conclusion**

When crimes against people or property are perpetrated, private defence is frequently to blame. It can be used to

stop aggressors who have been accused or who have not, and it also applies to the guard of an outsider. It is only allowed when quick protection from weakened viciousness is required. A person who behaves in accordance with an incorrect assumption that they need to be protected is safe, but actually, the mistake should be clear. It should be sufficient that the power employed was actually required for protection on a basic level, even though the entertainer was unaware of this; nonetheless, the legislation is murky. Even a protector should always be able to declare his intention to quit the battle as doing so is not required. The right to private protection is unaffected by the safeguard's refusal to comply with illegal orders.

The amount of force used in defence should not only be necessary to stop the attack, but also reasonable—for instance, proportionate to the damage done. The standard is best expressed in the negative form, meaning that the amount of force used should not be such that a prudent man would have thought it was improper given the risk. In general, carrying firearms and other hostile weapons is frowned upon, but (1) an item is clearly not a "hostile weapon" if it isn't hostile in nature and is simply carried to instill terror, and (2) a person doesn't "have it with him" if he only pulls it out in an emergency.

Although the safeguard cannot be benefited from a confusion with the law of capture or self-preservation, the right to protection affords protection against the police in the case that they behave unlawfully. According to common opinion, owning a home could even lead to death. It implies that even a licensee (like a tenant) has the authority to invite trespassers. An occupant of a space may use basic and prudent power to protect it against an intruder or someone who is reasonably suspected of being one. It is forbidden to leave weapons or mantraps set up anywhere else during the hours between dusk and light. It is still debatable whether the unusual circumstance actually presents an exclusion from the normal legislation of offences against the person. If they make sense, spikes and dogs are appropriate forms of defence. Monitor dogs must always be entirely under observation, with the exception of in private residences or on agricultural property, according to the law.

We can see how the right to a private guard is very beneficial in giving locals a tool that, provided it is not abused and is subject to certain restrictions, helps them defend their lives as well as the lives and property of others.

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