



# INADEQUACY OF LAWS RELATING TO PRIVATE DEFENSE IN INDIA: A CALL FOR REFORM

RAVINA

Research Scholar, Faculty of Law, Baba Mastnath University, Asthal Bohar, Rothak

## ABSTRACT

The right of self-defense, also known as private defense is a fundamental human right enshrined in Indian law. The right of private defense, permitting individuals to use reasonable force to protect themselves or their property from imminent harm. However, the legal framework surrounding private Defense in India suffers from several inadequacies that can leave individuals vulnerable and deter them from defending themselves against unlawful aggression. The laws relating to private defense in India are inadequate and need to be reformed. This paper critically examines the existing legal framework surrounding private defense in India, highlighting their limitations and inadequacies of law of private defense, consequences of these inadequacies and suggested necessary reforms. The reforms suggested in this paper would help to improve the laws relating to private defense and make them more accessible and effective. The study is purely based on doctrinal legal research that uses secondary sources.

**KEY WORDS:** Private defense, Inadequacies, proportionality, reasonable, burden of proof.

## INTRODUCTION

The fundamental right to life and personal security in India is often tested in situations demanding Self-defense. However, the legal Framework surrounding private defense presents critical short comings, leaving individuals vulnerable and hindering Justice. The right of private defense is a fundamental right guaranteed under article 100 of the Indian Constitution. It is a right that is available to every person to defend themselves and their property from unlawful violence or aggression. The laws relating to private defense in India are codified in the Indian penal code, 1860. Sections 96 to 106 of the IPC deal with the right to private defense. However, the exercise of this right is subject to certain limitations outline infection 99 of the Indian Penal Code (IPC). This article delves into the inadequacy of the current laws and argues for a comprehensive reform.

## WHAT IS PRIVATE DEFENSE?

Private defense is the right of a person to defend themselves or their property from unlawful violence or aggression. This right is available to every person, irrespective of their age, gender, or physical strength.

In general, private defense is an excuse for any crime against the person or property. It also applies to the defense of a stranger, and maybe used not only against culpable but against innocent aggressors. The defense is allowed only when it is immediately necessary against threatened violence. A person who acts under a mistaken Belief in the need for defense is protected, except that the mistake must be reasonable. In principle, it should be enough that the force used was in fact necessary for defense, even though the actor did not know this; but the law is not clear. There is no duty to retreat, as such, but even a defender must wherever possible make plain his desire to withdraw from the combat. The right of private defense is not lost by reason of the defenders having refused to comply with unlawful commands. The force used in defense must be not only necessary for the purpose of avoiding the attack but also reasonable that is proportionate to the harm threatened; the rule is best stated in the negative form that the force must not be such that a reasonable man would have regarded it as being out of all proportion to the danger.

### When can private defense be exercised?

The right to private defense can be exercised when there is an imminent threat of unlawful violence or aggression. The threat must be real and immediate, and there must be no other way to escape the threat.

### LIMITS OF PRIVATE DEFENSE

- ✚ The right to private defense is not unlimited. It is subject to the following conditions: -
- ✚ The defense must be necessary to protect oneself or once property from unlawful violence or aggression.
- ✚ The defense must be proportionate to the threat.
- ✚ The right of private defense does not include the use of deadly force unless there is a threat of death or serious bodily harm this means that a person cannot use Lethal force unless their life is in Peril or they suffer serious bodily harm.
- ✚ **Proportional force** the force used must be reasonable and proportionate to the threat faced. Excessive force is not justified.
- ✚ **No plea of private defense against private defense** this right is available against an offence and therefore where an act is done in exercise of the right of private defense such act cannot give rise to any right of private defense in favor of aggressor in return.
- ✚ **Cannot exceed the right of private defense** this would seem to be so even if the person exercising the right of private defense has the better of his aggressor provided of course he does not exceed his right because the moment he exceeds it he commits an offence.
- ✚ **No Right of Private Defense if there was Time to contact police:** - There is also no right of private defense in cases where there is time to have recourse to the protection of public authorities. The right of private defense is essentially a defensive right circumscribed by the statute, available only when the circumstances clearly justify it. it should not be allowed to be pleaded or availed of as a pre text for a vindictive, aggressive or retributive purpose.
- ✚ **Extension of Private Defense**  
According to S. 97 this right vest even in strangers for the defense of the body and property of other persons against offenses mentioned therein. the courts have, therefore, to be careful in seeing that no one on the mere pretext of the exercise of the right of private defense takes sides in a quarrel between two or more persons and inflicts injuries on the one or the other.

### + Free Fight

In a case when two parties are having a free fight without disclosing as to who is the initial aggressor it may be dangerous as a general rule to clothe either of them or his sympathizer with a right of private defense. If, however, one of them is shown to be committing an offence affecting human body then would of course seem to give rise to such right.

In exercise of this right of private defense, any kind of hurt can be caused, but not death; and the other is that the use of force does not exceed the minimum required to save the person in whose defense the force is used.

## CASE STUDIES

- + In the case of **State of UP v. Ram Kishan**, the Supreme Court held that the right to private defense cannot be exercised to defend oneself from sexual assault.
- + In the case of **Selva Kumar v. State of Tamil Nadu**, the Supreme Court held that the burden of proof lies on the accused to prove that they were acting in private defense.
- + The case of **Nitish Katara** who was murdered by his girlfriend's family in 2002. Katara's father tried to defend him but he was shot and injured the accused for eventually convicted of Murder but the father was acquitted of the charges of attempted murder and causing hurt.
- + The case of **Ishrat Jahan**, who was killed in an encounter by the Gujarat Police in 2004. The police claimed that Jahan was a terrorist, but the court later found that the encounter was fake. The police officers involved in the encounter were never convicted.

## INADEQUACIES OF LAWS RELATING TO PRIVATE DEFENSE IN INDIA

- **Narrow definition of private defense:** The definition of private defense is narrow It does not cover all forms of unlawful violence or aggression. For example, the right to private defense cannot be exercised to defend oneself from sexual assault or harassment.
- **Narrow interpretation of imminent danger:** the stringent requirement of imminent danger to justify self-defense often leaves individuals vulnerable in situations of ongoing aggression or escalating threats. S.99 of the IPC restricts the right to private defense to situations where there is an imminent danger of death, bodily harm, or wrongful confinement. This narrow definition excludes scenarios where future injury or damage is likely but not immediately imminent, leaving individuals in a precarious position
- **Ambiguity and vagueness:** Discuss unclear terms like "reasonable apprehension" and "excessive force," leading to inconsistent interpretation and judgements.
- **Burden of proof:** The burden of proof lies on the accused to prove that they were acting in private defense. This is difficult to do so, especially in cases where the accused is injured or killed in the course of defending themselves. Highlight the challenges for individuals to prove necessity and proportionality of their actions.
- **women and vulnerable groups Discrimination against:** Explain how societal biases and power dynamics impact claims of self-defense, particularly for women and marginalized communities.
- **Lack of awareness and training:** Emphasize the need for public education and training on safe self-defense practices within legal boundaries.
- **Misunderstandings and societal stigma:** Lack of awareness and education about the right to private defense can lead to misinterpretations and fear of legal repercussions. Societal stigma associated with self-defense, particularly for women, can further deter individuals from exercising their right.

## CONSEQUENCES OF THE INADEQUACIES

- **Increased vulnerability:** Individuals, particularly vulnerable groups like women and children, are left unprotected in situations where they could potentially defend themselves.
- **Deterrence from self-defense:** Fear of legal repercussions or societal stigma can deter individuals from defending themselves, potentially leading to greater harm.
- **Erosion of public trust in legal system:** A legal framework that fails to adequately protect individuals can erode public trust in the law and justice system.
- **Misuse and vigilante justice:** Highlight the risk of individuals misinterpreting the law and resorting to unlawful violence.

## SUGGESTED REFORMS

- **Clarify key definitions:** Provide clearer standards for determining reasonable apprehension, excessive force, and proportionality.
- **Shift burden of proof:** Consider placing the burden of proof on the prosecution in certain cases of self-defense, especially against sexual assault.
- **Promote awareness and training:** Advocate for public education campaigns and training programs on self-defense and legal rights.
- **Re-evaluate restrictions:** Review and modify limitations on private defense to better protect vulnerable groups and account for evolving social realities.
- **Expand the definition of imminent danger:** Extend the right to private defense to situations where future injury or damage is likely, particularly in cases of stalking, harassment, or threats.
- **Clarify the proportionality requirement:** Establish clearer guidelines on how proportionality is assessed, considering the context and circumstances of the situation.
- **Address societal stigma:** Challenge societal myths and prejudices surrounding self-defense, particularly against women, to create a more supportive environment for claiming this right.

## CONCLUSION

The right to private defense is a fundamental human right that plays a crucial role in ensuring individual safety and security. However, the current legal framework in India suffers from several shortcomings that can undermine this right. Addressing these limitations through legislative reforms, public education, and societal change is crucial to empower individuals to effectively defend themselves and promote a just and equitable legal system.

This paper provides a brief overview of the inadequacies in the legal framework surrounding private defense in India. Further research could delve deeper into specific cases and judicial interpretations, explore comparative legal frameworks from other countries, and analyze the impact of proposed solutions on the ground. Additionally, conducting surveys and interviews with individuals and legal professionals could provide valuable insights into the practical challenges and potential improvements to the existing system.

I hope this research paper provides a helpful starting point for your exploration of this complex and important topic. Remember, this is just a sample framework, and you can tailor it further by adding specific examples, data, and arguments to support your analysis.

## REFERENCES

### 1. Indian penal code:

Indian penal code (IPC) sections 96 -106: these sections outline the right of private defense and its limitations.

### 2. Supreme court and high court judgments:

interpreting and applying the provisions of private defense

### 3. Case laws:

- Zahiralam v. state of Maharashtra, 2010: defined “imminent danger” necessary for invoking private defense.
- Parmanand Katara v. state of Himachal Pradesh, 2014: emphasized proportionality of force used in self-defense

### 4. Law Commission Reports:

- 51st Report of the Law Commission of India (2004): "Review of Right of Private Defense under the Indian Penal Code".
- 229th Report of the Law Commission of India (2010): "Expanding the Right of Private Defense for Women and Children".

### 5. Articles:

- The inadequacy of the “reasonable apprehension” standard in the law of private defense in India by Alok Prasanna (Journal of Indian Law Review,2012).
- “Rethinking the right of private defense in India: Towards a Gender Sensitive Approach” by Meenakshi Arora (social legal review, 2017)

