
ANALYSING THE RIGHT TO PRIVATE DEFENCE THROUGH THE LENS OF CRIMINOLOGICAL THEORIES

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CHAPTER-I INTRODUCTION

Self-defence rights often known as the right of private-defence, this essential criminal law principle enables an individual to defend oneself, other people, or their property from impending harm. Many legal systems recognize this privilege, and it is typically upheld. The use of force in self-defence, however, must be limited when someone is in imminent and direct danger. This is to guarantee the reasonableness of preventive measures. and prevents unlawful violence from occurring. Every Indian citizen is entitled to self-defence against any outside force that could endanger them. Right to private defense is mentioned under s. 96-106 of IPC, 1860.¹

The study of crime or criminology adds a deeper dimension to the right to self-defence. Criminal activity and societal responses gives information about the social, psychological, and environmental elements that influence how people view and react to dangers. Numerous factors affect it such as encompassing prior victimization, mental health, and personal history and the social setting According to criminology theory, people can misinterpret or exaggerate dangers.

DEFINITION OF PRIVATE DEFENCE

The term private defence is not properly defined in the IPC. In simpler terms it refers to the use of force by an individual to safeguard their life, liberty, or property. Sections 96 to 106 in chapter IV of IPC deals with General Exceptions which are exempted from the category of offenses under IPC.²

¹ [Analysis On Right Of Private Defence Under Indian Penal Code] [March 16, 2022]
[<https://Juriscentre.Com/2022/03/16/Analysis-On-Right-Of-Private-Defence-Under-Indian-Penal-Code/>]
(Accessed On 1st January, 2025)

² Indian Penal Code 1860, S. 96-106

Section 100 of the IPC ensures the right to self-defence against individuals who endanger life or property. In such cases, individuals are permitted to use defensive force that may be considered as unlawful.

The right to private defence is only available when there is a reasonable belief that harm is imminent. The force used must be justifiable and equivalent to the threat.

SOURCE OF PRIVATE DEFENCE

1. Early Indian Legal Traditions

In the past, India Self-defence as a legal notion has its roots in Dharmashastra. Texts on Religion and Ethics It is a natural right to have one's life, property, and honour protected. despite their belief that self-defence is not a legal right. However, they also understand the importance of reacting to unfair aggression or acts of violence. Self-defence is acknowledged as a natural right in ancient Indian jurisprudence, such as the Arthashastra of Kautilya or Chanakya.³ When there is an attack or an immediate threat to someone's life or property, ancient literature frequently discuss the use of force.

However, this is different from contemporary legal systems where the defence of oneself and one's property is viewed as being more directly related to the duty to uphold law and order and religion than to a person's unrestricted right to use force. In the past, the defendant was guilty of killing to protect himself. Following this, the idea of the theology of pardon emerged in the Middle Ages, which allowed the accused to have their misdeeds forgiven. Colonialism gave rise to the idea of the right to national defence some 160 years ago. According to Macaulay, the right to private defence enables people to employ defensive force in order to stop an attack that would be illegal.

2. The Indian Penal Code and Modern Law:

The Indian Penal Code It established the right to self-defence under particular clauses in the traditional view of Indian law when it went into force in 1860. The English common law that was in effect at the time is no different. Sections 96 to 106 of the IPC deal with the right to

³ [W L Cheah] [Private Dfence] [Ssrn] [https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=2207790] (Accessed On 1st January, 2025)

self-defence. It places a strong emphasis on using unlawful force to defend oneself, another individual, or property that has been invaded. English legal precedent served as their model. However, it has been altered to conform to Indian laws and customs. According to the IPC, proportionality is a key component of national defence. Attack responses ought to be proportional with the danger. One of the most significant advancements in the codification of the right to self-defence is this.

Because it helps distinguish lawful self-defense from retaliation. Private protection in relation to property is another extension of vested rights. IPC because it can be traced back to English common law. Distinguishing between the protection of one's life and the protection of property, the IPC extends the right to the use of defensive force to a serious level because it aids in differentiating between retribution and legitimate self-defence. Another extension of vested rights is private protection with regard to property. IPC since it has roots in English common law. The IPC significantly expands the right to use defensive force, making a distinction between the protection of one's life and the preservation of property.

NEED FOR PRIVATE DEFENCE

The most important reason to have personal protection is to protect life. Everyone has the right to protect their life from illegal aggression or threats. A person has an inherent right to protect themselves from such harm. Self-defense is necessary to protect your property from destruction, burglary, or illegal theft. Property rights are fundamental to maintaining the dignity and economic well-being of individuals, families, and communities. The right of private self-defense serves as a deterrent to potential criminals. Knowing that a person has a legal right to defend themselves can deter illegal aggression⁴. When the offender understands that their actions may result in injury or death. The probability of their committing violent or robbery-related crimes will decrease. Among these groups are minority communities, women, children, and the elderly. They are frequently more susceptible to abuse or exploitation. These vulnerable groups benefit from private sector protection, which shields them from violence, abuse, and assault. One essential idea is that each person has complete control over their own life and body. In the event that someone is attacked to preserve his independence and dignity, he must be able to defend himself. The natural right of people to safeguard their own wellbeing

⁴ *Supra* Note 3

is undermined when the private sector is denied this authority.

MISUSE OF PRIVATE DEFENCE

People can defend themselves, other people, or their property by exercising their right to self-defence. However, the amount of force must be proportional with the danger. When someone uses more force than is required to defend herself or others, it is referred to as excessive force. When someone uses extreme force in self-defence, they may be held criminally responsible for murder, severe bodily harm or other offenses. The situation and the amount of force used determine this. Only in cases where extinction is an immediate threat can private self-defence be used, if the danger has passed or if the threat is not immediate. The right to personal protection is not ensured by it. For physical injury, criminal responsibility may exist. Using force to commit murder or battery when there is no immediate threat because the personal protection defence is ineffective. The individual misinterprets the circumstances and overestimates the danger. This causes overreactions or illogical reactions. When the threat is not criminal or more serious—for example, using force to defend a harmless or legal act—private sector defence is not an option. People may occasionally infringe against their right to self-defence in household settings. This is particularly true when there is family conflict or domestic abuse. In certain situations, those in positions of power, such as law enforcement or security personnel, may misuse the right to personal protection. This might go beyond legal limits when protecting others or property.⁵

CRIMINOLOGICAL THEORIES ON PRIVATE DEFENCE

Criminology theories of private defense focus on the justification for an individual to take matters into their own hands when faced with an unlawful attack. Private defense, or self-defense, is typically considered a legal excuse for using force to protect oneself, others, or property. Criminology theories that explain private defense often seek to understand why individuals might resort to such actions, the ethical and legal justifications for it, and the social and psychological factors involved.

Below are some criminology theories related to private defense:

⁵ [Bilal Ahmad Dar, Sisrisha Shukla] [Legal Analysis of Right To Private Defence][Vol 2] [Indian Stream Research Journal](March 2022)

1. Social Contract Theory

Social contract theory as proposed by philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau⁶, it is suggested that individuals in society sacrifice certain freedoms in return for their security and protection of rights. According to this doctrine Private defense is acceptable when state defense fails or is inadequate. Therefore, it is the action of an individual in self-defense or the protection of others. This theory suggests that private sector protection can be viewed as a means of ensuring the social contract when state mechanisms are not functioning well, such as during periods of lawlessness or when the police are unable to respond quickly.

2. Routine Activities Theory

This theory, developed in 1979 by Lawrence Cohen and Marcus Felson,⁷ suggests that crime occurs when three elements meet: a motivated offender; appropriate target and the lack of capable guardians. In terms of self-defense. This theory suggests that when individuals become aware of threats or criminal activity in their environment, They may be urged to take preventative measures. This theory implies that national defense is often a response to perceived protection gaps. Where individuals feel compelled to act in the face of danger due to the lack of immediate state intervention.

3. Rational Choice Theory

Rational choice theory, developed by scholars such as Ronald Clarke and Derek Cornish, states that individuals Make decisions based on rational calculations of benefits and costs. It weighs the rewards against the risks involved in committing crimes. In the case of private defense. This theory suggests that individuals evaluate perceived threat based on the risk of harm or legal consequences before taking preventative action. If the threat appears significant and urgent Individuals may rationalize the use of force in self-defense or the defense of others. This theory emphasizes the idea that individuals are not passive victims. But it is an active agent who calculates the risks of intervening in situations where personal safety is at stake.

⁶ *Supra* Note 5

⁷ [W L Cheah] [Private Dfence] [Ssrn] [[Https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=2207790](https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=2207790)] (Accessed On 1st January, 2025)

4. Social Learning Theory

Social learning theory Developed by Albert Bandura,⁸ it emphasizes that behavior is learned through interactions with others, especially within social groups. People learn behavior through observation, imitation, and reinforcement. In this case, individuals may learn selfprotective behaviors from friends, family, or media influences. This is especially true in environments where aggression and violence have become normalized. If a person grows up in an environment where violence is used as a solution. They may be more Tends to engage in personal protection when faced with danger. Social learning theory helps explain why some people find the use of force in national defense acceptable or necessary. Especially if it conforms to the norms of their social circle.

5. Control Theory

This was especially advanced by Travis Hirschi,⁹ who argued that individuals are not protected from committing crimes by their ties to society. These bonds include attachment to others. Commitment to traditional goals Participation in activities and trust in social norms. When these ties are weak or absent (for example, in situations of social isolation or lack of trust in institutions), individuals may feel less constrained in using personal self-defense, and may be more likely to resort to violence in self-defense when social relationships end. This theory suggests that a lack of social control or institutional trust can increase individuals' propensity to engage in private sector protectionism. The amount of force must match the amount of force being used against one's safety.

RESEARCH GAP

Comparative studies on the application of the right to private defence in other legal systems (such as the United States, the United Kingdom, and India) are lacking, especially in light of criminology ideas.

Further detailed study is required to understand how cultural and societal norms influence how self-defence is interpreted, particularly in varied settings.

⁸ *Supra* Note 7

⁹ *Supra* Note 7

The direct impact of criminology ideas on court rulings in self-defence cases is not well studied.

More analysis is required to understand how legal systems limit excessive force in selfdefence claims while maintaining proportionality.

There is no sufficient data on the efficacy of private defense-related legal reforms, such as the effects of Stand Your Ground legislation.¹⁰

STATEMENT OF PROBLEMS

- Private defence being a defensive mechanism is being misused for causing an offence.
- One of the most significant issues in private defense is the lack of clear and consistent standards for when and how an individual can reasonably use force.
- How immediate must be the threat for private defense to be justified?
- Another critical problem is the disproportionate use of force in self-defense situations.
- Private defense laws can be applied inconsistently based on the social, racial, and gendered background of the individuals involved.
- Women, particularly those in abusive relationships, may find it harder to establish that their defensive actions were justified, especially in cases where they use force against male aggressors in non-immediate situations. This inconsistency determines the fairness of self-defense laws and states inequalities in the justice system.
- As technology becomes more relevant in daily life so it concerns about digital selfdefence and monitoring.
- Determining societal and environmental reasons, such crime rates, inefficient enforcement, or a lack of faith in the legal system, are frequently the cause of private

¹⁰ [W L Cheah] [Private Dfence] [Ssrn] [https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=2207790] (Accessed On 1st January, 2025)

defence. These factors can exacerbate the perception of threat, leading individuals to feel the need to protect themselves outside of the law.

- Different jurisdictions may interpret what constitutes “reasonable” or “necessary” force differently, influenced by local social norms.

PURPOSE

It seeks to gain a deeper comprehension of the elements that affect an individual's choice to defend themselves by using force. Criminology theories describe the legal, psychological, and social aspects of self-defence. Another objective is to guarantee fair & proportional legal consequences for individuals who use self-defence and determine how to eradicate unnecessary violence.¹¹ This will promote the development of a more comprehensive framework for understanding and addressing self-defence in the legal system as well as in society.

RESEARCH OBJECTIVES

- To study and analyse the theories of private defence.
- To study the nature, origin, importance & need of law relating to right of private defence.
- To study, analyse and compare the laws dealing with private defence between US, UK & India
- To find out the loopholes and statutory limitations in the existing laws on right of private defence in India.
- To analyse latest judicial and legislative trends on right of private defence.
- To suggest solutions so as to plug the loop holes in penal provisions relating to right of private defence in India.¹²

¹¹ [Analysis On Right Of Private Defence Under Ipc][<https://Lawessential.Com/All-Blogs/F/Analysis-Of-Right-Of-Private-Defence-Under-Indian-Penal-Code?Blogcategory=Criminal+Law>]
(Accessed On 1st January 2025)

¹² *Supra* Note 11

RESEARCH QUESTIONS

- What are the legal limits to the right of Private defense and how do you set the limits of proportionality in a private-defense claim?
- How much does a person's right to use force equivalent to their right to private defence?
- How do social and cultural elements affect the right to private defence?
- How are excessive force in self-defence handled in various legal systems (such as the US, UK, and India)? And what happens if one goes beyond the bounds of selfdefence?

CHAPTER II LITERATURE REVIEW

Right to private defence: A preventive right by: Ratnesh Kumar Tiwari & Aman Singh¹³

Before human civilization can be assessed, there are laws that govern society and that law is called Parakram Samyak. But at some point a change occurs in society and Rights may not be exercised in society and bring about the progress of society. State institutions assigned duties and roles to protect each Freedom of life and property of individuals in society, but at some point you have to look. How powerful and cunning is the state? Because it is impossible to police everyone. They track and observe every activity of everyone in society and ensure safety. They and everyone in society, at every point in their lives, demand individual rights. Therefore, this article deals with the rules regarding the right of private self-defense under the Indian Penal Code.

Right of Private Defence: How to be Understood and Applied¹⁴

Abul Hasanat and Dr. Salina Akter

Everyone has the right to protect their own physical property and sometimes the property of others as well. This right is recognized by long-standing social norms. The same applies to the Criminal Code, 1860 and the Constitution of the People's Republic of Bangladesh, 1972. However, the claim for this right must be conditioned on certain legal principles. In addition, the person claiming such rights must prove the relevant facts and circumstances in which he or she has already exercised the right to fight a personal matter in the case. Courts have a duty to grant voluntary private defense rights to defendants in qualifying cases.

Private Defence: Strict Conditions to Be Satisfied

Journal of Contemporary Roman-Dutch Law, Vol. 73, p. 328, 2010

The South African Criminal Court assesses criminal behavior with reference to the concept of illegality and beyond illegality. One of the accepted defenses is self-defense or self-defense. It is the latter term that is often favored by modern writers. Because the word "Self-defense"

¹³ [Ratnesh Kumar Tiwari & Aman Singh][Right Of Private Defence: A Preventive Right][Vol No .17] [Research Gate] (2011)

¹⁴ [Abul Hasant & Dr. Salina Akter][Private Defence: How To Be Understand And Appied][Vol No 72][Hein Online] (2005)

indicates that only a person defending himself can rely on this protection. And the guardians of others can also rely on the basis of the law. Moreover, not only their own persons are protected by law in their personal defense. But it also includes property, dignity, freedom of movement and sexual freedom, among other things, if a person initiates or threatens his own life or that of another. Physical integrity, property, or other interests protected by law. If you use force against an illegal human attack, even then it is necessary to take preventative measures to protect it. It happens that the threatened interests are directed at the attacker and account for a reasonable proportion of the attack.

Private Defence¹⁵

By Cheah Wui Ling

In this chapter, the personal defense provisions of the Macaulay Draft Code are referred to as Macaulay Personal Defense for convenience. Macaulay's definition of the right to private defense has remained remarkably stable over time, intact, and unchanged since the inception of the Indian Penal Code (IPC). Macaulay's draft emerged as British colonial officials moved to Toward a more centralized and efficient government. Macaulay's original draft noted that such reliance must be made in the manner specified in the Code of Criminal Procedure. Defenders argue that they have the right to use force to defend their victims without first requesting asylum from government officials. Many common law jurisdictions also require imminent threats, on the one hand, judicial developments such as the proximity rule. and proportional requirements Recommends a right-based approach to private self-defense, calling for consideration of the rights of attackers.

Evolving Judicial Approach Towards Right To Private Defence Against Body¹⁶

By Patil, Seema

It is said that "necessity does not recognize law", which means that the duty of necessity is exempt from the requirements of law. Today, every democratic society recognizes the right to self-defense in its legal provisions. The main objective of every welfare state is to achieve social justice. Self-reliance is part of social justice. Self-defense is not limited to

¹⁵ [Cheah Wui Ling][Privayte Defenc][Vol No 14][Researchgate] (2015)

¹⁶ [Patil, Seema][Evolving Judicial Approach Towards Right To Private Defence Against Body][Vol No12] (2024)

selfpreservation. Therefore, it is everyone's responsibility to protect social interests as well. in the Indian legal system The right to private defense is a valuable protection. and under "General Exceptions" to Sections 96 to 106 of the Indian Penal Code Every Indian citizen has the right to self-defense. But this right is often misused by most people who use it as an excuse to commit crimes such as crimes. The right to self-defense has many limitations and restrictions. The right to self-defense is given to Indian citizens as a means of self-defense. But many of them are often used for corrupt or illegal purposes. And now it is the duty and responsibility of the court to decide. Use your rights honestly. The purpose of this research is to analyze and study the concept of the right to personal bodily protection under Indian criminal law. and situations in which the right to defend one's body extends to causing the death of an attacker with the help of a judicial perspective.

Right to Private Defence in IPC-Statutory and Judicial Attitude Asadi Ahmad, Alizamini Yaser Esmaeilpou

Legal Status of Self-Defense: In most jurisdictions, when self-defence is Successful, self-defence is perfectly justifiable when the level of force used is comparable or proportional to the threat faced. Therefore, the use of deadly force is only excused in "extreme" situations. The danger would be if the defendant intentionally killed the robber. Petty theft that does not appear to be a physical threat The defendant will fail. And the defense will fail if the attacker stops threatening (i.e. freezes and holds back) and the defender pressures to attack. A somewhat less obvious application of this rule is that the defendant is still in sufficient danger to justify violence in The first can be interpreted as evidence that sometimes there is a duty to relinquish, which views the so-called castle exception creates a defense problem when applied to abusive relationships and purported theft situations to retreat from one's home cannot be expected: "A man's home is his castle, et domus sua cuique est tutissimum refugium," which means "every man's house and his alone." The safest recourse in the language. Latin" However, if one is "challenged" to a fight in a bar By accepting the challenge Instead of walking away It is not generally self-defense. In some countries, the concept of "anticipatory" self-defense is also limited. Given that the threat is imminent. Therefore, self-protection Legal "pre-emption" is therefore only landing on the first strike, with no hope of escalation or escape in the situation. Many self-defense coaches and experts believe that if a situation is so clear that some kind of intensity is felt.

Right to Private Defence in India¹⁷**P.K. Pandey**

Before the advent of human civilization, 'power is right' societies ruled, but the advancement of society has led to state institutions tasked with protecting the life, liberty, and property of every individual. and perform police duties everywhere and at every point life and provide stability It cannot be determined who needs the right of self-defense or self-defense. The Latin word 'se protect' is used to mean 'Self-defence' Hari Singh Gaur in his famous book on Indian criminal law aptly observed that self-help is the first rule of criminal law. It's still the law. Although in the process of time it has greatly diluted the concept of necessity. humanity and social order Bentham in his book 'Principles of criminal law' observes that "The right to self-defense is extremely important," based on the principle that man's duty is to help himself. This document deals with the law relating to the right of private self-defense under Indian criminal law.

An analysis of the law relating to the right of private defence in India with special reference to retreat rule in America¹⁸ Malik, Neeraj

Someone is threatening you with imminent and deadly power. You can safely withdraw from threats except you. Instead of doing that Choose to stand firm and face it with force. In doing so You will kill the attacker. You are guilty. Murder in America? In most cases in the United States, the answer is no, by law, by court decision. or combination In both cases More than thirty states have used it. 'Your position', that is, there are no rules of retreat that prevent litigation. A person who uses deadly force against an attacker without first attempting to retreat. or the person who makes an offer to such person Valid Self-Defense Claims Against Criminal Murder Charges On the contrary A minority of states enforced withdrawal. A requirement that a defendant cannot successfully claim self-defense if the defendant is able to do so safely. Stop but not before using deadly force against the attacker.

¹⁷ [Pk Pandey][Right To Private Defence In India][Cambridge Law Journal][Vol No16](2017)

¹⁸ [Malik,Neeraj][An Analysis Of Law Relating To Private Defence In India With Special Reference To Retreat Rule In America][Vol No 13](2022)

Moving Towards a More Restrictive Approach Towards Private Defence?¹⁹**Author: Kiat Seng Lee**

The judgment of High Court in the case of Public Prosecutor v. Asogan Ramesh s/o Ramachandran & Others is instructive in the local courts' latest approach to private defence. When they approach general protection If one studies the court's guidelines for dealing with petitions in these cases, We can see a continuation of the recent trend of local courts taking a narrow view of protection.

THE CONSTITUTION AND THE RIGHT OF SELF-DEFENCE²⁰ Author: Hamish Stewart

The implications of the proper constitutional concept for self-government in a liberal democratic state are examined in this article. Self-defence laws, like all other laws, must pass a constitutionally required test of legality: they must be such that people of standing cannot legitimately deny the vulnerability of the natural state. A civil road constructed for medical usage Even so, this substantive legality test is insufficiently strong to cover every aspect of the self-defence regulations. It has a number of significant ramifications, though: First, the right to self-defence in conventional situations where defenders react to unfair threats must also be recognized by positive law. Proportionate and necessary force Furthermore, whoever used²¹ appropriate and necessary force to neutralize an innocent threat It ought to be freed from positive law because the civil situation cannot justify punishing such a person.

Private Defence: A Right Available to all people in India by Mohi Kumari²¹

Every citizen has the right to private defence, which is a useful tool for self-defence. It is not a right for retaliation, but rather for the threat and imminence of an attack. However, people abuse this right, and the main obstacle is the defender's uncertainty about whether he has the right to use it even when his actions could cause harm to innocent people. It is also very difficult for the court to determine whether the right was used in good faith.

¹⁹ [Kiat Sing Lee][Moving Towards A More Restrictive Approach Towards Private Defence][Researchgate][Vol No34](2008)

²⁰ [HamishStewart][Constitution And The Right Of Self Defence][Academia.Oup.Com][Vol No11](2022)

²¹ [Mohit Kumari] [Right To Private Defence In India][Researchgate.Net][Vol No9](2002)

A STUDY ON PRIVATE DEFENCE IN INDIA : A LEGAL ANALYSIS²²

By A.Gowtham & K.Roja

When exercising the right to private defence against an attack that legitimately raises the possibility of death, the defender must be in a position where he cannot effectively do so that there should be no risk of hurting an innocent person. Each citizen's right to private defence is a useful tool for self-protection. This right is directed towards the threat and imminence of an assault rather than retaliation. However, people may also abuse this privilege. Determining whether or whether this right was utilized in good faith is extremely challenging for the court.

Right of Private Defence By Simran, Chanakya²³

There may be situations in which a person or his property is in immediate danger and the assistance of governmental machinery is unavailable. A person may use force in these circumstances to protect their person or property from an immediate threat. This is the private defensive right. This right is granted to the people so they can protect their property and themselves without hesitation out of fear of being prosecuted. In certain situations, the right even goes so far as to kill the person posing the threat. However, such a privilege is not always available and is subject to certain limitations.

Study on Right to Private Defence by NANDHARAGH P.H²⁴

In the past, the idea of the right to private defence in western nations was associated with absolute responsibilities, and as a result, murder was seen as a criminal offence. Every citizen's right to private defence is a useful instrument for self-protection. However, this right to use the defenses under sections 96 to 106 is also subject to certain limitations. However, it is directed at the threat and imminence of an assault rather than retaliation. However, the right can also be abused. Determining whether an act was committed with good or evil intentions is the state's biggest challenge. Every state in America permits the use of reasonable force to protect oneself when one is in immediate danger of physical injury.

²² [A.Gowtham & K.Roja][A Study On Private Defence In Indi: A Legal Analysis][Cambridge Law Journal][Vol No32](2024)

²³ [Simran, Chanakya][Right Of Private Defence In India][Hein Online][Vol No5](2017)

²⁴ [Nandaragh P.H][A Study On Right To Private Defence][Cambridge Law Journal][Vol No21](2019)

THEORIES DEALING WITH PRIVATE DEFENCE

NATURAL LAW THEORY

According to the natural law idea, some rights are innate to human nature. This point of view holds that everyone has an inherent right to defend himself and their belongings. According to natural law theory, the right to self-defence is an essential component of human dignity and existence. According to this theory, maintaining individual independence and upholding natural rights depend on safeguarding the private sector.

RETRIBUTIVE THEORY

Retributive theory focuses on the idea that punishment should be equivalent to the crime committed. In the discussion of criminal law It is often used to determine the extent of a crime. In the case of private defense Response theory suggests that self-defense is justified when a person responds to the threat of unjustified harm. Defensive actions must be proportionate to aggression and self-defense serves as a way to balance the levels of justice.

UTILITARIAN THEORY

Utilitarianism, proposed by philosopher such as Jeremy Bentham, suggests that actions there must be righteousness, if they promote the greatest good to the greatest number. It focuses on the consequences or consequences of an action. The right to self-defense is reasonable. This is because it allows people to defend themselves, which improves society's well- being.

SOCIAL CONTRACT THEORY

According to the social contract idea, which are given by philosophers like Thomas Hobbes, John Locke, and Jean-Jacques Rousseau²⁵. In this theory, people agree to the establishment of society and follow its laws for their safety. According to the social contract theory, people can defend themselves and their natural rights—life, liberty, and property—without the government getting involved too soon.

Social contract theory As proposed by philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, it is suggested that individuals in society sacrifice certain freedoms in

²⁵ *Supra* Note 7

exchange for the security and protection of their rights. According to this doctrine Private defense is acceptable when state defense fails or is inadequate. Therefore, it is the action of an individual in self-defense or the protection of others. This theory suggests that private sector protection can be viewed as a means of ensuring the social contract when state mechanisms are not functioning well, such as during periods of lawlessness or when the police are unable to respond quickly.

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SOCIAL LEARNING THEORY

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²⁶ *Supra* Note 2

environments where aggression and violence have become normalized. If a person grows up in an environment where violence is used as a solution. They may be more Tends to engage in personal protection when faced with danger... Social learning theory helps explain why some people find the use of force in national defense acceptable or necessary. Especially if it conforms to the norms of their social circle.

CONTROL THEORY

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²⁷ [W L Cheah] [Private Dfence] [Ssrn] [https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=2207790] (Accessed On 1st January, 2025)

CHAPTER III LEGISLATIVE MEASURES IN RELATION TO PRIVATE DEFENCE

Section 96 of the Indian penal code

Section 96 of the IPC states that nothing done in the exercise of the right to private defence is illegal. This provision establishes the fundamental principle that individuals have the legal right to protect themselves, others, and property in the event of an imminent attack.

One famous case that illustrates Section 96 is *R v. Dr. Bonham* (1610).²⁸

It established the foundation for the acceptance of the self-defence principle and had an impact on legal philosophy all over the world.

Section 97 of the Indian Penal Code (IPC)

The conditions under which the right to private defence of the body extends to inflicting death are explained in Section 97 of the IPC. It states that the right to private defence does not include the ability to kill someone unless the person using that right has a reasonable belief that the crime cannot be stopped in any other way and the circumstances warrant using deadly force.

This provision puts a severe restriction on the use of fatal force in self-defence, emphasizing the necessity of a genuine belief in the imminent threat that necessitates such drastic actions. The purpose of the clause is to strike a compromise between the right to self-defence and the need to prevent unnecessary deaths.

Private defence being a defensive mechanism is being misused for causing an offence.

One of the most significant issues in private defense is the lack of clear and consistent standards for when and how an individual can reasonably use force.

- How immediate must the threat be for private defense to be justified?
- Another critical problem is the disproportionate use of force in self-defense situations.

²⁸ [*R V. Dr. Bonham*] (1610)

- Private defense laws can be applied inconsistently based on the social, racial, and gendered background of the individuals involved.
- Women, particularly those in abusive relationships, may find it harder to establish that their defensive actions were justified, especially in cases where they use force against male aggressors in non-immediate situations. This inconsistency determines the fairness of self-defense laws and states inequalities in the justice system.
- With the increasing presence of technology in everyday life, issues surrounding surveillance and digital self-defense have emerged.
- Private defense often arises from underlying social and environmental factors, such as crime rates, ineffective policing, or lack of trust in the justice system. These factors can exacerbate the perception of threat, leading individuals to feel the need to protect themselves outside of the law.
- Different jurisdictions may interpret what constitutes “reasonable” or “necessary” force differently, influenced by local social norms.

Section 97 essentially reaffirms that although the right to private defence is an important legal protection, the use of deadly force must be supported by a sincere and reasonable belief that it is the only way to prevent an immediate and serious threat.

Section 98 of the Indian Penal Code (IPC):

The exercise of the right to private defence against an act of communication for which a person has time to seek the protection of public authorities is covered under Section 98 of the IPC. Put more simply, this section addresses circumstances in which the person has the chance to ask for assistance from law enforcement or other public authorities and there is no immediate threat.

Section 98 states that if a person has time to seek protection from authorities, they are not entitled to the right to private defence. Instead of taking matters into their own hands in these situations, the law expects people to rely on the established mechanisms of law enforcement.

Section 99 of IPC

The definition of private defence is explained in Section 99, which also specifies the circumstances under which the right can result in death. It highlights that causing more harm than is required for defence is not covered by the right. The Supreme Court of India reaffirmed the need for force to be appropriate to the threat in the seminal case of *Om Prakash v. State of U.P.* (2017)²⁹, underscoring the importance of Section 99 in limiting the use of excessive force.

Section 100 of IPC

Section 100 outlines some situations in which the right to private defence includes the ability to cause death. In the well-known *State of U.P. v. Ram Swarup* case (1974),³⁰ an individual was defending himself against a group of people brandishing lathes. The court ruled that using force that is likely to result in death is part of the right to private defence in the event of an armed attack.

Section 101 of the Indian Penal Code (IPC):

The circumstances under which the right to private property defence extends to causing death are described in Section 101 of the IPC. It states that unless an act is done to deter certain crimes, such as theft, robbery, nighttime housebreaking, or mischief by fire, the right to defend property does not include the voluntarily infliction of death.

For example, in the 1962 case of *K.M. Nanavati v. State of Maharashtra*,³¹ the Bombay High Court heard a case concerning the shooting of an individual who was trying to have an affair with the accused's wife. The court examined the applicability of Section 101, highlighting the fact that the power to kill someone in order to defend property is only applicable in certain legally specified circumstances.

Section 102 of the Indian Penal Code (IPC):

The IPC's Section 102 addresses the establishment and maintenance of the private defence of

²⁹ [*Om Prakash V. State Of U.P.*] (Air 2017)

³⁰ [*State Of U.P. V. Ram Swarup*] (Air 1974)

³¹ [*K.M. Nanavati V. State Of Maharashtra*] (Air 1962)

property right. It states that the right to private property protection begins as soon as there is a reasonable fear of harm to the property and lasts for as long as there is such fear.

To put it another way, Section 102 acknowledges that where there is a reasonable suspicion that one's property is under danger, one has the right to defend it. As long as there is a perceived risk to the property, this privilege will remain in effect.

Section 103 of the Indian Penal Code (IPC):

The scope of the private defence of property against robbery is covered in Section 103. It says that as long as the person protecting their property has a legitimate fear that they could be killed or seriously harmed if they oppose the robbery, they have the right to private defence against it. In such a case, the individual protecting the property has the right to use force, even if it means killing someone.

In the 2007 case of *Lakshman v. State of Maharashtra*³². In this case, the court examined Section 103 and stressed that the right to private defence against robbery includes the right to use force if there is a reasonable belief that doing so is required to prevent death or serious injury.

Therefore, Section 103 ensures that the right to private defence is proportionate to the seriousness of the threat posed by the crime of robbery by giving people the legal framework to defend their property with force in the event of a robbery.

Section 104 of the Indian Penal Code (IPC):

Section 104 of the IPC states that the right of private defence against actions by several persons is more extensive than against actions by an individual. However, this extended right is applicable only when the defender believes in good faith that they are under a threat of death or grievous harm.

Section 105 of the Indian Penal Code (IPC):

When there is a legitimate fear of property danger, the right to private property protection

³² [*Lakshman V. State Of Maharashtra*] (2007)

begins.

The right to private property defence against theft remains in effect until the criminal has moved with the goods, the property has been recovered, or the aid of the government is secured.

As long as the perpetrator causes or seeks to cause death, injury, or wrongful constraint to anyone, or as long as there is a persistent fear of immediate death, harm, or personal restraint, the right to private property defence against robbery will be in effect.

Section 106 of the Indian Penal Code (IPC):

The right to private defence extends to the running of that risk if the defender is in a position where he cannot effectively exercise that right without running the risk of harming an innocent person while defending himself against an assault that reasonably raises the fear of death.

CHAPTER IV: JUDICIAL DISCOURSE ON PRIVATE DEFENCE

The protection of an individual's life and property is fundamental to all civilized societies because the State cannot always protect them because law enforcement cannot always intervene in a situation and save the individual; for this reason, the law grants the individual the right to private defence.

*1. Sukumaran v. State Rep. by the Inspector of Police*³³

In this case, the Tamil Nadu forest ranger who was charged with shooting and murdering a sandalwood smuggler in a particular forest region was exonerated by the Supreme Court. He was given a life sentence for murder by the trial court. The Madras High Court, however, shortened the sentence to five years. The accused argued in his appeal to the Apex Court that the deceased smuggler had threatened both his life and the life of his driver. Just a legitimate fear is sufficient to activate the right to self-defence. Stated otherwise, it is no to put it another way, the right to private defence does not always require that the crime be committed in real life. The appellant correctly concluded that the deceased party was smuggling sandalwood's into the forest after observing the deceased party's suspicious actions there. As a result, he had the right to pursue and capture the deceased in order to prosecute them for committing an offence that was punishable by forest regulations. That was, in fact, his responsibility, and the appellant had no ulterior motivation against any of the dead party's members.

*2. Darshan Singh v. State of Punjab*³⁴

Guidelines for Citizens' Right to Private Defence were established by the Supreme Court. It was noted that a person has every right to murder the aggressor in self-defence and cannot be expected to behave timid when faced with an immediate threat to their life. The court acquitted a murderer, stating that the Legislature's intention in enacting Sections 96 to 106 of the IPC was to clearly instil in citizens the spirit of self-defence in the face of serious danger.

The Court established 10 rules under which citizens might exercise their right to self-defence, but it also cautioned that one cannot use this right to threaten or imperil the lives and property of others or to exact personal retribution. According to the Apex court's conclusion, a person

³³ [Sukumaran V. State Rep. By The Inspector Of Police](Air 2019)

³⁴ [Darshan Singh V. State Of Punjab](2010) 2 Scc 333

who is in immediate danger is not expected to use the precise amount of force necessary to repel the attack, and his actions cannot be evaluated on "golden scales." The Court established the legal stance in accordance with the ten rules listed below:

- a) Self-preservation is a fundamental human instinct that is acknowledged by the criminal justice systems of all civilized nations. The right to individual defence is acknowledged in all free, democratic, and civilized nations, within certain limits.
- b) The right to private defence is only granted to those who are unexpectedly forced to defend themselves against an imminent threat, not to create themselves.
- c) The right to self-defence can be activated by a simple, reasonable fear. In other words, it is not necessary that there should be an actual committing of the offence in order to give birth to the right of private defence. It suffices if the accused is aware that such an infraction is being considered and that, should the right to private defence be denied, it is likely to be committed.
- d) The right to private defence begins as soon as a legitimate fear materializes and lasts for the length of that fear.
- e) A person who is being attacked cannot be expected to modify his defence in a methodical manner with any degree of mathematical precision.
- f) The accused's use of force in private defence should not be completely out of proportion or significantly more than what is required to safeguard the person or property.
- g) It is well established that if the evidence on file supports the accused's plea of selfdefence, it is permissible to accept it even if the accused does not make it.
- h) The accused does not have to establish beyond a reasonable doubt that the right to private defence exists.
- i) Private defence is only permitted under the Indian Penal Code in cases when an act is illegal or incorrect.
- j) When an assault is attempted or directly threatened, a person who is in immediate and

serious risk of losing his life or limb may, in the exercise of self-defence, cause his attacker any harm, including death.

3. *Kesho Ram vs Delhi Administration*³⁵

According to sections 353/332/333 of the Indian Penal Code, the appellant was found guilty and given the appropriate sentence. According to the prosecution, the appellant struck one of the officers on the nose, causing it to bleed and be discovered fractured, and obstructed three inspectors and a peon of the Delhi Municipal Corporation as they attempted to seize the appellant's buffalo in the course of their duty to collect the milk tax from him. The fundamental claim of the appellant was that the attempt to realize the arrears of milk tax and recovery charges was invalid because no demand noticed under Sec. 154 of the Act was served on the appellant. so, he had the right to private defence. The prosecution cited Section 99 of the Indian Penal Code, which states that a public worker acting in good faith while carrying out the duties of his position is not entitled to private defence, even if the act may not be legally justified. The prosecution further claims that Section 161 of the Act granted the Corporation's Inspector the authority to confiscate and remove the appellant's buffalo due to nonpayment of taxes, giving them the ultimate authority to do so. Consequently, the prosecution claimed that the appellant was guilty of the charges. The Court ruled that a public official may claim immunity under Section 99 of the IPC, if he acted in good faith under the colour of his office even though the legality of the act could not be sustained.

4. *Yogendra Moraji v. State*³⁶

The scope and restrictions of the right to private body defence were thoroughly examined by the Supreme Court. The Court stressed, among other things, that if someone is facing imminent danger to their life or serious bodily harm, they must have no safe or reasonable way to flee other than to kill their attacker. This viewpoint appears to be at odds with the idea that the law does not promote cowardice on the part of the victim of an attack. Another perspective, however, holds that this retreat theory is actually a recognition of the English common law doctrine of body or property defence, which has always required common law courts to first

³⁵ [*Kesho Ram Vs Delhi Administration*](Air 1974 Sc 1158)

³⁶ [*Yogendra Moraji V. State*] (Air 1980 Sc 660)

determine whether the accused could prevent the commission of crime against him by retreating.

5. *Nand Kishore Lal v. Emperor*³⁷

A Muslim married woman was kidnapped by Sikh accused and converted to Sikhism. The woman's husband's family arrived over a year after the kidnapping and made a demand that she come back. The accused did not cooperate, and the woman herself made it clear that she was not interested in going back to her Muslim spouse. The husband's family then made an attempt to forcibly remove her. When the accused opposed the effort, one of them struck the woman's attackers in the head, killing the latter. It was decided that the accused had no crime as their entitlement to protect the victim from her attackers under this section included causing her death.

6. *Mohinder Pal Jolly v. State of Punjab*³⁸

13 Workers of a factory threw brickbats from outside the gates, and the factory owner by a shot from his revolver caused the death of a worker and it was held that as per this section, it does not protect him, as there was no apprehension of death or grievous hurt.

CHAPTER V COMPARATIVE ANALYSIS OF LAWS DEALING WITH PRIVATE DEFENCE BETWEEN U.S, U.K & INDIA

LAWS DEALING WITH PRIVATE DEFENCE IN USA

In the U.S legal system Right to Private defense helps a person to protect himself from imminent danger.

Private-defense is only reasonable if there is an immediate threat of harm. The force used must be equivalent to the threat. The use of deadly force is permitted in cases of imminent threat. It allows a person to use force without first attempting to escape. The castle doctrine allows a person to use force to defend his or her home without being under a duty to retreat. Although

³⁷ [*Nand Kishore Lal V. Emperor*](Air 1924 Patna 789)

³⁸ [*Mohinder Pal Jolly V. State Of Punjab*](Air 1979 Sc 577)

self-defense is a basic right, But laws like Stand Your Ground have also faced criticism for promoting violence and racial bias.

"When someone is in imminent peril of fleshly detriment, they're permitted to defend themselves with reasonable force in every state in the US." The quantum of force must be commensurable with the quantum of force being used against one's safety. In numerous countries of United States there's an obligation to retire, if one can safely do so. One does not in other countries. Generally speaking, one is not obliged to flee if he's in his own home, but he'd need to corroborate the original laws. In substance, there's agreement on a single abecedarian principle if there's no other option, one has the right to employ a reasonable position of force against an bushwhacker. "As a general rule, a defendant cannot be set up shamefaced of a crime for conduct that he nicely believed were needed to cover himself from what he nicely believed to be an impending and illegal attack on his person. The doctrine's perpetration consists of three main factors

i) the defendant's perception must be reasonable; ii) the attack must be immediate; and iii) it is interdicted to use further force than what would feel to be necessary to fight the attack.

According to the Model Penal Code, only a sincere belief in the data and circumstances leading up to the right to defend oneself or others should be needed. A plea of tone- defence is used in circumstances involving complaints for assault and killings, but New York courts have espoused different procedures in certain cases." In a homicide case, the defendant must demonstrate that he stressed serious physical injury and that killing his bushwhacker was the only way he could get down. When a plea of tone- defence is raised in cases involving complaints for homicide and assault, this rule is harmonious with the provision that applies colorful rules. In a homicide case, the defendant must demonstrate that he was the victim of a felony assault, that he stressed serious physical damage, and that the only way to get down was to kill his bushwhacker.

LAWS DEALING WITH PRIVATE DEFENCE IN UK

In the United Kingdom, Right to Private defense is a basic legal principle that allows a person to protect themselves from imminent danger.

Private defense is possible only when there is an immediate threat or danger. Use of excessive

force may lead to criminal prosecution. Even if the person initially acted in private-defense.

Unlike some legal systems, there is no legal duty to retreat before using force in the UK.

If a person uses force in self-defense, He or she will be judged on the basis of what a reasonable person would have acted on that situation.

Use of excessive or disproportionate force can lead to charges of murder Although it was initially claimed that it was self-defense.

In the united kingdom, the court will carefully evaluate whether the force used was reasonable. In cases where deadly force is used, the law focuses on fairness and proportionality in the context of self-defense.³⁹

Generally speaking, a person is free to take any defensive or evasive actions they feel are appropriate under the circumstances. In contrast to a large portion of common law, selfdefence is a topic that is specific to each case and is not based on a set of rules. In *Zecevic v. DPP* (1987), the accused killed his neighbour during an argument, and the case serves as Australia's primary authority on the right to self-defence. The accused took out his revolver and shot his neighbour dead because he thought the deceased had a knife and a gun. Zecevic was found guilty because the judge dropped the self-defence argument throughout the trial.

A retrial was ordered following an appeal to the High Court, with Dawson and Toohey JJ outlining the precise conditions for self-defence: "The question to be asked in the end is quite simple." It concerns whether the accused had a reasonable belief that what he did was required for self-defence. He is entitled to an acquittal if he held such belief, there were good reasons for it, or the jury is left with a reasonable doubt about the case. When expressed in this way, the question is not specific to homicide instances but rather has broad applicability. The Criminal Code 1994's Section 10.4(2) codifies the requirements for self-defence, which state that an individual may act in self-defence if and only if they believe it is necessary to:

- i) defend themselves or another person;
- ii) prevent or terminate the unlawful imprisonment of himself or another person; or

³⁹ *Supra* Note 2

iii) protect property from unlawful appropriation, destruction, damage, or interference;
or

iv) prevent criminal trespass to any land or premises; or

v) remove from any land or premises a person who is committing criminal trespass.

As stated in Section 418(2)(a) of the Crimes Act 1900 (NSW) and Sections 9AC and 9AE(a) of the Crimes Act 1958 (VIC), jurisdictions permit self-defence beyond these restricted categories. The notion of self-defence can be applied to actions taken to protect property. However, the standard set by Dawson and Toohey in *Zecevic* most likely does not justify the use of lethal force. In that instance, the High Court determined that the only situation in which the use of fatal force is justified is when the individual was reasonably afraid that the attack would result in death or serious injury.

LAWS DEALING WITH PRIVATE DEFENCE IN INDIA

The right to Private defense in India is governed by sections 96 to 106 of the Indian Penal Code (IPC).

Private defense is reasonable when there is an imminent threat of harm to oneself or others.

The power used in self-defense must be proportional to the threat faced. A person can protect himself without trying to escape when threatened.

The right to self-defense includes protecting others who are in imminent danger.

If the use of force is excessive and disproportionate to the threat. It can lead to criminal liability. If the action exceeds what is necessary for protection, the person may face charges such as murder or attempted murder. The Indian Penal Code allows individuals to protect themselves and others from unlawful aggression. But it is emphasized that the response must be reasonable and proportionate.

The right to private defence is fundamentally one of self-defence or self-protection; it is not a right to retribution, and the harm done in self-defence cannot exceed what is reasonably required for defence. Additionally, the right coincides with the onset and presence of a

reasonable fear of bodily harm from an effort or threat to conduct the act. It only protects against actual, imminent, and present danger. Everyone has the right to stand their ground in these situations rather than fleeing like a coward. He has the right to respond to the attacker with counterattacks that might be out of proportion to the harm done.

It must be demonstrated that:

- a) the deceased attacked the accused and the assault was unlawful;
- b) that it was such as might reasonably cause an apprehension of that death or grievous hurt would be the consequence of such assault, unless the accused exercised his right of private defence
- c) That voluntarily causing the death of his assailant was necessary for the purpose of defence.

These factors are necessary to establish or plead that an act of killing is justifiable homicide in the exercise of the right of private defence and not culpable homicide.

Three conditions must be met when hurting someone in self-defence:

- (i) no more harm must be inflicted than is necessary for the purpose of defence and
- (ii) there must be a reasonable apprehension of danger to the body from the attempt or threat to commit some offence;
- (iii) the right does not begin until there is that reasonable apprehension.

These factors were also acknowledged in *Balbir Singh v. State*, where it was declared that the following conditions must be met before exercising the right to self-defence:

- (i) the accused must not have been at fault for starting the encounter;
- (ii) The threat of death or severe physical harm must be present and imminent, either real or so obvious as to give rise to an honest belief of an existing necessity;
- (iii) There cannot be a reasonable or safe way to retreat, and;
- (iv) The taking of life had to be necessary.

Given that the foundation of this right is protection from violent crimes, the killing in selfdefence was not justified in cases where the defendant lacked a reasonable expectation of such a killing.

The Supreme Court ruled in *George Dominic Varkeyv. State of Kerala* that the following principles underpin the right to private defence:

- (i) No more harm must be inflicted than is required for the purpose of defence;
- (ii) There must be a reasonable fear that the threat or attempt to conduct an offence would endanger the body and
- (iii) A reasonable fear of danger is necessary for the existence of a right to begin.

SIMILARITIES:

Proportionality: The UK, USA, and India all stress that the amount of force used in selfdefence needs to be commensurate with the danger. Excessive force beyond what is required to protect oneself or others is illegal in all three nations.

Imminence of Threat: The right to private defence is only granted in the United Kingdom, the United States, and India in cases when there is an immediate danger to one's life, property, or physical integrity. Preemptive or retaliatory strikes that take place after the threat has passed are not permitted by the law.

Property Defence: People are permitted to protect their property under all three legal systems, but only if the amount of force employed is commensurate with the danger.

DIFFERENCES:

The United Kingdom (UK)

Duty to Retreat: Although there isn't a strict need to retreat in the UK, the law does advise people to attempt to avoid using force whenever feasible. Nonetheless, there is still a tacit expectation that people will behave sensibly to prevent confrontation if at all possible.

Protection of Others: Under UK law, people are permitted to use force not only for their own

protection but also for the defence of others. But the law also stipulates that the amount of force must be commensurate with the danger to the person being protected.⁴⁰

Public vs. Private Spaces: In the UK, there are restrictions on the right to self-defence in public areas. The law takes into account whether the use of force was appropriate given the circumstances and if the individual was in a public setting.

USA

Stand Your Ground: The Stand Your Ground theory, which is applicable in numerous states, is one of the main distinctions in the USA. This implies that people in these situations are free to use force without thinking about the possibility of retreat.

Another notable distinction in the USA is the Castle Doctrine, which permits people to defend themselves inside their homes with lethal force without having to flee. **State-Specific Variations:** Because of the United States' largely decentralized legal system, state-by-state variations in self-defence legislation are significant. For example, Florida may have a more expansive right to use force in self-defence than California.

India

Use of Deadly Force: Compared to the UK and the USA, India has a little more limited right to private property defence. Deadly force is only permitted under Section 103 of the IPC in certain circumstances where there is a substantial risk to the property, such as robberies, housebreaking's, or when the invader is carrying a weapon.

No "Stand Your Ground" Doctrine: India does not recognize a "Stand Your Ground" statute, in contrast to the United States. Generally speaking, the right to private defence only applies in cases when there is an imminent threat to life or property, and the use of force must not be greater than what is required.

Defence of Property and Body: India allows the use of force to protect property and the body, but it also imposes constraints on property defence. For example, it is not acceptable to use

⁴⁰ *Supra* Note 11

lethal force to defend property unless there is a risk to life in addition to the property.⁴¹

CHAPTER- VI ANALYSIS

Private defense is a basic legal principle that allows a person to protect themselves, others, or their property from imminent danger. And although it is internationally accepted Interpretation and application vary in different legal systems. To be proportional Reasonableness and violations.

Main strengths:

1. Protecting personal safety: Rights enable individuals to protect themselves from imminent danger. Strengthen personal safety
2. Ethical Reasoning: Self-defense is consistent with the ethical principles of survival. Because it allows a person to act in self-defense when threatened.
3. Flexibility: This law applies to a wide variety of situations. From physical assault to home invasion. This is to ensure that individuals have the means to protect themselves.

Challenges:

1. Issue of Proportionality: Determining whether the force used is proportionate to the threat is subjective. This leads to inconsistent legal results.
2. Abuse of Power: A person may make false claims of self-defense to justify previous violence or retaliation. This is especially true in cases where the threat is not immediate.
3. Duty to retreat: Some jurisdictions impose a duty to retreat before using force. In realworld scenarios, this might not always be feasible or secure.
4. Racial and cultural bias: Laws pertaining to self-defence may be implemented unfairly. Additionally, minorities are occasionally treated more harshly. As a result, there are

⁴¹ [Abul Hasant & Dr. Salina Akter][Private Defence: How To Be Understand And Appied][Vol No 72][Hein Online] (2005)

now worries about discrimination in court.⁴²

Legal changes:

1. United States: Stand Your Ground laws in the United States remove the need for repentance.
2. United Kingdom: Proportionality is strictly enforced, and excessive enforcement may result in criminal liability, even if they claim it's self-defense.
3. India: Laws under the Indian Penal Code require that self-defense be proportionate. And it can lead to criminal charges, such as murder using excessive force.

The foundation of classical criminology is the idea that people behave logically and weigh the advantages and disadvantages of their choices. This suggests that people should only use force in private defence situations when they are confronted with an actual, immediate threat, and that their reaction should be commensurate with that threat. However, in real-world circumstances, particularly in high-stress settings, humans might not always evaluate threats proportionately or logically.

According to strain theory, people who are subjected to societal stressors like poverty, prejudice, or a lack of chances may be more likely to defend themselves by employing force. Being marginalized and insecure can increase one's sense of threat and make one more likely to use self-defence, perhaps in circumstances that don't call for it.

The social learning hypothesis places a strong emphasis on how socialization and external factors shape behaviour. People may be more inclined to believe that self-defence is a legitimate and even required reaction to conflict if they are raised in settings where violence is accepted. People are more prone to use force when threatened in some societies where selfdefence is viewed as a cultural norm or expectation.

According to conflict theory, power dynamics and class conflicts are the root causes of crime and criminal justice systems. According to this viewpoint, members of oppressed or

⁴² [Analysis On Right Of Private Defence Under Indian Penal Code] [March 16, 2022]
[<https://Juriscentre.Com/2022/03/16/Analysis-On-Right-Of-Private-Defence-Under-Indian-Penal-Code/>]
(Accessed On 1st January, 2025)

marginalized groups may see the right to private defence as an essential means of fending off abuse and violence from more powerful entities, such as the police, businesses, or affluent individuals.⁴³

Self-defence is frequently gendered, especially in situations of domestic violence, according to feminist criminology. The right to private defence of women who experience abuse may be questioned or undervalued, particularly if their reaction to the abuse is seen as excessive. The history of violence that led to the defensive action may not necessarily be acknowledged by the law in these circumstances.

The right to private defence is based on the concept of determining what "reasonable" or "proportionate" force is, however, one of the most difficult tasks in exercising this privilege. The distinction between excessive force and self-defence is frequently hazy, particularly in emotionally charged circumstances when people may feel endangered even when the threat is not as serious as they believe.

For instance, if someone feels physically intimidated by someone brandishing a knife, they might react by brandishing a pistol, which might be out of proportion to the threat and result in legal repercussions. Sometimes people overreact or take preventative action, which results in more violence than was required to eliminate the threat.

Some legal systems, especially common law states, require people to try to flee or avoid conflict before using force. The responsibility to retreat is based on the principle that using force should only be done as a last resort and that there are frequently other methods to diffuse a potentially violent situation.

However, the obligation to retreat is eliminated in areas where the "Stand Your Ground" philosophy is in effect, enabling people to employ force without trying to avoid combat. This may result in circumstances where self-defence is applied in needless or improper ways, raising the possibility of an escalation.

Differences in how self-defence laws are interpreted and unclear legal definitions frequently obscure the right to private defence. For instance, what is meant by a "imminent" threat, and

⁴³ [Simran, Chanakya][Right Of Private Defence In India][Hein Online][Vol No5](2017)

how urgent must it be in order to warrant the use of force? There is potential for subjective interpretation because the concept of "imminence" can differ in different jurisdictions.

Furthermore, pre-emptive strikes—attacks carried out first out of fear of further harm—make it more difficult to enforce rules pertaining to self-defence. The question of whether a threat was actually imminent or if the parties involved had set the stage for the conflict is frequently left to the courts.

Cultural and psychological aspects are important in the right to private defence. People from violent cultures or those who have suffered trauma in the past, for example, may react more aggressively to perceived threats and go beyond what is reasonable for self-defence.

Self-defence may be seen as a necessary and acceptable reaction to any insult or provocation in some cultural or sub-cultural contexts. This can result in a "culture of honour" where selfdefence is overused to demonstrate status or dignity. The application of legislation pertaining to self-defence may be made more difficult by this cultural element.

The right to private defence is significantly influenced by gender dynamics, particularly where domestic abuse is involved. After being abused for a long time, women, especially those who are victims of domestic violence, may resort to using force to defend themselves. However, the judicial system frequently ignores the context of long-term abuse, which results in the decriminalization of self-defence when women use deadly force.

For instance, even though a woman suffers severe physical and psychological suffering, it might not be considered self-defence when she kills her violent boyfriend after years of abuse.

The possibility of exercising the right to private defence is frequently influenced by social inequality, which includes racial, economic, and political divides. Communities who are marginalized, especially those that experience high levels of violence or discrimination, may be more prone to recognize dangers and take preventative action in self-defence. Racial discrepancies in self-defence claims are an issue since people from particular racial or ethnic backgrounds may be more likely to be prosecuted for using force, even in cases where it was justifiable.

CONCLUSION

The right to private defence is considered a fundamental human right that cannot be taken away by social laws. When the state does not provide aid straight away, individuals have the right to defend him against any illegal aggression. A society cannot afford to grant everyone the unrestricted right to private defence.

The judicial and legislative processes have made the right to private defence permanent. Denying the absolute right to private defence does not, however, imply denying the right in situations when there is a legitimate fear of harm to oneself or one's property and access to governmental assistance may be difficult to come by. Although the state's primary responsibility is to safeguard the interests of its inhabitants, it is impossible for the state to do so for everyone, everywhere, at all times. Therefore, based on natural impulses, the individual has the right to defend himself and his property against unlawful violence when the state does not provide quick relief.

Although it is a fundamental legal right, the right to private defence is complicated. To guarantee that the right is used fairly and equitably, due consideration must be given to the difficulties involved in its application, including proportionality, the obligation to retreat, psychological issues, and gendered situations. It is possible to reduce the likelihood of abuses of this privilege while maintaining its legitimacy as a tool for personal defence by changing legal definitions, establishing more precise guidelines for the use of force, and addressing social injustices. In the end, it's important to find a balance between letting people defend themselves and stopping the violence in our communities from getting worse.

The legal concept of the right to private defence is intricate and multidimensional, impacted by a variety of social, economic, and psychological elements. It is clear from examining it under the prism of criminology theories that, despite its significance, this right can be influenced by more general societal problems like power struggles, inequality, and cultural norms. Along with more precise legal standards, social support networks, and cultural changes, reforms targeted at resolving these fundamental problems can help guarantee that the right to private defence is used sensibly and fairly across all communities.

Although the UK, USA, and India all recognize the right to private defence, each legal system treats it differently, with different tenets, doctrines, and restrictions. Although the principles of

proportionality of force, imminence of threat, and property protection are common, there are differences in how these are applied, especially when it comes to Stand Your Ground, the Castle Doctrine, and property defence. All three nations may benefit from legal clarification and reforms that would assist strike a balance between the right to self-defence and the need to avoid abuse and excessive violence.

Therefore, it is evident that the right to private defence is immensely beneficial in providing citizens with a right that, when exercised responsibly and subject to certain limitations, enables them to safeguard their own and others' lives and property.⁴⁴

SUGGESTIONS

A clearer, more standardized set of guidelines for determining the proportionality and reasonableness of fear in self-defense cases would help reduce inconsistency in court decisions.

Law enforcement and the judiciary should be better trained in the cultural, psychological, and social aspects of self-defense claims. This is especially true to prevent racial and social bias from influencing the results.

Stand Your Ground law in the United States should be critically examined to assess the impact on violent crime rates and racial disparities arising from its application.⁴⁵

Providing easily understandable legal standards that stress the necessity of proportionality in self-defence is one of the most crucial approaches to guarantee the equitable use of the right to private defence. Campaigns for legal education can assist the public in comprehending the boundaries of permissible force and the significance of defusing possible confrontations.

Addressing self-defence occurrences that result from miscommunications or conflicts can be accomplished through the implementation of restorative justice procedures. Instead than just punishing individuals, restorative justice aims to identify the root causes of conflict and repair suffering. In some circumstances, this might enable reconciliation and lessen the need for force.

⁴⁴ *Supra* Note 7

⁴⁵ [Analysis On Right Of Private Defence Under IPC] [<https://Lawessential.Com/All-Blogs/F/Analysis-Of-Right-Of-Private-Defence-Under-Indian-Penal-Code?Blogcategory=Criminal+Law>] (Accessed On 1st January 2025)

According to strain theory, addressing socioeconomic disparities can frequently lessen the perceived need for self-defence. The stresses that frequently result in aggressive behaviour and a sense of vulnerability can be lessened by funding community centers, mental health services, educational opportunities, and job programs.

Trauma-informed techniques ought to be incorporated into legal systems, particularly when dealing with women, children, or marginalized groups. This would imply that law enforcement, judges, and legal experts be educated to comprehend how a victim's attitude to a danger and self-defence may be influenced by prior experiences of victimization, including domestic abuse.

Legal protections for marginalized groups, including ethnic minorities and economically disadvantaged populations, should be strengthened in order to solve the issues brought up by conflict theory. Anti-discrimination laws, improved access to legal representation, and police changes can all contribute to reviving public trust in the legal system and lessening the perception that self-defence is the only option to ensure personal safety.

More precise rules for figuring out the proportionality of force could be part of private defence. This might entail:

Law enforcement and judicial personnel receive training on how to evaluate events by taking into account psychological variables and context that may affect an individual's response. Improved public education campaigns that highlight the restrictions on the right to private defence and stress that using force should only be done in extreme cases and in proportion to the threat.

Reiterate the idea that people should try to avoid violence wherever possible, but acknowledge that there are occasions in which it may not be feasible or required to retreat, such as in one's own house or in specific public settings.

Establish a system where judges and law enforcement have the authority to decide whether someone acted in self-defence without having to flee, depending on the situation and type of threat.

Clarifying the legal definitions of imminence and proportionality. Clearly defining what an urgent threat is, for instance, and how the degree of action should be proportionate to the

threat's seriousness.

Lowering the possibility of manipulating self-defence claims by establishing a legal presumption of justifiable self-defence in certain situations (such as when a person is in their house or is being physically attacked).

When the right to private defence is exercised, psychological evaluations ought to be included in court proceedings, especially when there are heightened emotions or perceived cultural standards at play.⁴⁶

Reduce the use of self-defence as a means of revenge by creating community education initiatives that teach people about alternatives to violence and encourage de-escalation tactics. Legal changes should make sure that when assessing cases of self-defence in domestic violence situations, contextual elements like past abuse or psychological damage are taken into account. When victims of domestic abuse claim self-defence, courts and law enforcement should be taught to spot patterns of coercion and battered woman syndrome.

The use of the right to private defence should not be impacted by social injustice or prejudice, according to policymakers:

Make sure that underprivileged groups have equal access to legal safeguards and are not unfairly punished for defending themselves by conducting research and reviews on racial and socioeconomic inequities in self-defence cases.

Put in place community-based safety programs to provide alternate channels for protection and dispute resolution, hence reducing the need for private defence in high-crime regions.

⁴⁶ *Supra* Note 2

ANNEXURE I: REFERENCES

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