Right to private self defence and involvement of third party- (A study on Domestic and Foreign law)

By Sakina Anjarwala and Karthik.A.Gupta Christ (Deemed to be University)- Delhi NCR

Abstract

This paper elucidates on the right of self defence and how it may be extended to a third party that is incapable of preserving one's own being during the assault by another. Furthermore, it will encompass the situations wherein the exercise of this right may be deemed unreasonable and unnecessary.

The absence of institutional intervention and how it affects the actions of the citizens are taken into account as well as the case wherein the institutional intervention is the one to be defended against when applying excessive force.

The focus will then shift to the laws based on which the USA operates, to give an overview of how the courts abroad operate on matters such as these and as to how this right is extended to the third party and under which conditions the law gives it validity.

Introduction

The first rule of criminal law is self-help[1]. The right to self-defence is critical for ensuring the safety of an individual's life, liberty, and property. Without a question, it is the State's primary obligation to safeguard citizens' lives and property; nevertheless, no State, no matter how big its resources, can delegate a police officer to monitor each and every individual's action and protect them from criminal mischief. There may be times when assistance from state authorities is unavailable to repel an unlawful aggression, either because there isn't enough time to ask for it, or because there isn't enough time to ask for it.

To address such needs, the law has granted everyone the right to private bodily and property defence.

The right to private defence is founded on natural law. It is a natural instinct in man to defend himself and keep what is his against the unlawful assault of others. Nature has provided man with all of the tools he needs to accomplish this goal. The natural right of self-defence is unaffected by law, and so exists in full force. Private defence is a right that every Indian citizen has to protect themselves from any outside force that might cause them harm or injury.

The term "private defence" as used in the Indian Pal Co 1860 is not defined there. It is therefore the prerogative of the judiciary to develop a functional framework for law enforcement. Thus, in India, the right to self-defence is the right to defend one's own person or property or that of any other person against the conduct of another, which, if not invoked, would constitute criminal. This right thus creates an exception to criminal liability. Some aspects of the right to self-defence under the IPC are that no right of self-defense can exist for an unarmed and harmless individual, the right is available only against an aggressor and only the person in danger. imminent danger. anyone or property and only without state aid. The right to private defence is a natural right that manifests itself in specific circumstances and is not of the nature of a privilege .

[1] Self-Help and the Rules of Engagement- Adam B. Badawit

The most important principle, however, is that the right to self-defence requires that the force used for defence is necessary and reasonable in the circumstances[2]. But, in times of disturbed mental state, this cannot be measured by the golden scale. The existence of the necessary case must be determined from the point of view of the accused and his conduct must be considered in the circumstances when they present the case. Specific limits have also been put in place for cases where the right cannot be duly exercised, and the clause also specifies circumstances in which the right can extend to the aggressor's cause of death.

Reasonable apprehension can only be justified if the defendant honestly believes that there is a risk and that belief is reasonably substantiated by the aggressor's behaviour and surrounding circumstances. This adds an iota of an objective test to establish "reasonability". Imminent threat is also an important prerequisite for the exercise of the right of self-defence to be effective. Therefore, there should be a reasonable belief that danger is imminent and that force must be used to reel it.

The defendant must rationally think that there is a "present" or "imminent" danger of armed aggression, and that the use of fatal force is absolutely "necessary" and "proportionate" to ward off this illegal threat in order for self-defense to be legitimate.

If using fatal force is the only way to prevent an unlawful attack, the putative defender must demonstrate that the danger was serious and immediate, and that the use of force was reasonable and necessary. According to national legislation, the defendant had no less harmful option for preventing the attack, no possibility of withdrawal, or appeal to the police.

The defendant had no less damaging alternative to avoid the attack, no chance of retreat, and no recourse to the relevant public authorities.

Proportionality necessitates weighing the interests of the aggressor and the defence. As a result, defensive force must not be used excessively or disproportionately to the harm threatened by the illegal attack.

[2] Self-defence and Rule of law by Oscar Schachter

The necessity of imminence, on the other hand, denotes the time aspect of self-defence. Traditionally, pleas of self-defence are only allowed when the defendant's lethal response is prompt, immediately following the aggressor's threats or misconduct. The legitimacy of self-defence claims is generally harmed by a time gap between the illegal threat or conduct and the reaction.

Research Methodology

The paper has been written by referencing multiple authors and government recognized websites. The cardinal mode of acquiring information in this paper which has been put forth for a holistic understanding of the topic is by referencing numerous secondary sources, both foreign and domestic.

Domestic Situation

Section 96[3] of the Indian Penal Code (IPC) establishes that "nothing is a crime committed in the exercise of the right to private defence", while Section 97[4] establishes that "everyone has the right to defend themselves himself and the body of another person against any crime that affects the human body, the personal or immovable property of himself or another person, against any act that falls within the definition of theft, robbery, mischief or trespassing , or that it is an attempt to commit theft, robbery, mischief or burglary."

This means that no one can be convicted of damage caused by an act of self-defence against their own life or property or that of others. Indian law and common law do not require the defendant to have any relationship with the person he rescued in pursuit of a private defence against the life or property of another person. Any third party saving another person or their property You do so at his own risk and therefore does not require an existing relationship.

However, this section 96 right is not absolute, as it is limited by the provisions of section 99 and, more importantly, any violence used must be necessary and appropriate under the circumstances. The action must be proportionate to the foreseeable risk and must not

[3] IPC 1860
[4] Ibid

exceed this. A person claiming the right to self-defence should not have used violence disproportionate to the injuries suffered or threatened, and the burden of proof of self-defence rests with the person claiming it.

Except for disproportionate harm and without reasonable fear of death or injury, Section 99 establishes that there is no right to self-defence against an act performed under the direction of an officer especially if the situation relates to resisting arrest.

Section 97 speaks of the right to private defence of the body and property: - Every person, subject to the restrictions elucidated in section 99, has the right to defend his own body and that of another person against any crime that affects the human body.

Second, movable, movable or immovable property, of himself or of any other person against any act that falls within the definition of theft, robbery, mischief or trespassing, or that constitutes an attempted theft, robbery or damage by criminal commission. .

This limits the exercise of the right to private defence to what is strictly necessary. It should not be more than is necessary to avoid aggression. The threat posed by the assailant must justify the force used to deter. This section divides the right to private defence into two parts, the first part deals with the right to private defence of the person and the second part deals with the right to private defence of property.

Section 99[5] establishes the acts against which there is no right to private defence: - There is no right to private defence against an act in which death or serious injury should not be reasonably feared if committed or attempted by a servant, acting in good faith under the colour of their position, although that act may not be strictly legally justifiable.

The conditions and limits established within which the right to private defence can be exercised are mentioned. The initial two clauses establish that the right to private defence against a public official or a person acting in good faith in the exercise of their legal obligations cannot be invoked unless the act is illegal. Similarly, the limits on the right to private defence when there is time to seek help from public authorities should also be taken into consideration and accepted as an important factor. And the right must be

[5] IPC 1860

exercised in proportion to the damage caused as excessive force is in itself punishable. In other words, there is no right to private defence:

Against the actions of an official and against the acts of those who act under his authority or direction.

If there is enough time for the use of public authorities and the extent of the damage that may be caused must in no case exceed the damage necessary for defence purposes.

Section 100[6] specifies when the right to private defence of the body extends to the cause of death:

The right of private ,defence of the body extends, subject to the restrictions mentioned in the preceding section, to the voluntary causing of death or other harm to the assailant if the offence that prompts the exercise of the right is of any of the following descriptions: —

- Such an assault as may reasonably cause the apprehension that death will otherwise be the result of such assault,
- Such an assault as may reasonably cause the apprehension that death will otherwise be the result of an assault,
- An assassination with the intent to commit rape,
- An assault carried out with the intent of satisfying unnatural lust,
- An act of throwing acid or attempting to throw acid,
- An assault with the intent of kidnapping or abducting,
- An assault with the intent of wrongfully confining a person, under circumstances that may reasonably cause him to believe that he will be unable to seek release from public authorities.

Section 101[7] specifies when this right extends to causing harm other than death:

[6] IPC 1860
[7] Ibid

If the crime does not have any of the descriptions in the previous section, the right to private defence of the corpse does not extend to the voluntary cause of death of the assailant, but extends to voluntarily inflicting harm other than the death of the attacker under the restrictions set forth in Section 99.

Section 102 is very important since it deals with the initiation and maintenance of the right to defence of the private person:

The right to private defence of the person begins as soon as there is a justified danger to the body through an attempt or threat of the offence when the offence may not have been committed, and continues as long as this danger to the body continues. The perception of danger must be sensible and not fanciful. For example, you cannot shoot your enemy from a great distance, even if he is armed with a dangerous weapon and wants to kill. This is because they did not attack you and therefore there is no reasonable fear of attack. In other words, there is no attack and therefore there is no right to private defence. Furthermore, the danger must be present and imminent.

Section 103[8] determines when the right to defend private property extends to murder: -

The right to defend private property extends to the following situations, under the restrictions specified in section 99, such as to voluntarily causing death or other harm to the perpetrator if the crime, whose inspection or attempt to exercise the right is one of the descriptions listed below, namely: robbery, robbery at night, fire damage in a building, shop or boat, which building, store or ship as human dwelling or as a place for the custody of Property, theft, mischief, or trespassing are used in circumstances that raise reasonable concerns that death or serious injury will result if this right to private defence.

Section 103 establishes the right to private defence over property, section 100 is for the exercise of the right to private defence against the body of a person. Justify homicides in the event of burglary, burglary, arson and burglary, mischief, or burglary causing serious harm or concern. If a person does not have possession of the property, he does not have the right to private defense in relation to that property. The right to expropriate or evict an intruder does not belong to the true

[8] Ibid

owner if the intruder, to the best of his knowledge and belief, has successfully enforced his property. This right can only be exercised against certain criminal acts mentioned in this section.

Section 104[9] tells us when this right extends to causing harm other than death:

If the crime, its commission or attempt to exercise the right to private defence is theft, mischief, or burglary. This right does not extend to voluntarily causing death, but does extend to voluntarily inflicting harm other than death on the perpetrator, subject to the limitations set forth in Section 99. It cannot be said that this passage makes a concession to the accused to violate in any way his right to private defence. If someone violates your right to private defence and causes the death of the trespasser, you would be guilty under Section 304(2). This section is an addition to Section 103.

The supreme court in a recent case of Sukumaran vs State Rep. By The Inspector Of Police[10] stated that the right to self defense extends not only to one's own body but to protecting the person and the property of another and Supreme Court has interpreted the IPC provisions as such and widened the interpretation of sections 96 to 106 the facts of the case were that, the ranger Sukumaran who was sentenced to life in prison for murder by the Madras High Court but on further appeal to the Supreme Court his sentence was reduced to a term of 5 years as when filed to the apex court it was concluded that Sukumaran had shot the smuggler under threat to his own life and that of his driver the prosecution stated that the Ranger and his driver were in a jeep when the incident took place.

The smuggler of Sandalwood called Basha, had been smuggling Sandalwood around the area for many years and was therefore deemed to be a dangerous entity. The Ranger, Sukumaran upon an evident threat to his life and that of his driver being had shot him in self defence, the court observed that the right to private defence extends not only to the defence of one's own body but that of another and that it doesn't arise if there is time to seek aid from the protection of public authorities and also doesn't extend to the use of force more than deemed necessary at the time. Hence the doctrine of proportionality

[9] Supra

[10] CRIMINAL APPEAL No.5 OF 2009

has also been cited with regards to the incident, the court further stated that when death is caused the person exercising the right of self-defence must be under reasonable apprehension of grievous hurt or that of death to himself or to those around him whom he is protecting.The ruling has shown us that the Apex court has kept a strict vigilance over the matters regarding the interpretation of self defence and has ensured that only the cases that without a shadow of doubt are deemed to be done in a situation considered to be bona fide are adjudicated.

USA provisions and cases

In foreign law, namely the USA, a rule known as the alter ego rule states that the primary obsolete rule is that a person coming to the aid of a third party has no more the right to defend a third party than the third party would himself have to defend himself. Typically, a defendant may use defence of others as a defence in a situation where the force used under the reasonable belief that it was necessary to defend another person is a necessity. But a disagreement as to whether or not the defendant must have had a relationship with the person, he is protecting to invoke defence of another is some jurisdictions require that the defendant have a special relationship like that of husband and wife or parent or Child is protecting, this is a prerequisite in some of the states and not in the others.

In Foster versus Commonwealth, the alter ego rule states that a defendant who had you come to the aid of a third person places himself in that person's shoes, therefore the person who came to the aid of a third party did so at his own risk and the third party turned out not be entitled to use force to protect himself. The defendant was then not entitled to use force to protect the third party either, in a case of battery and assault the defendant would not be allowed use the defence of another even if it is simply the defendant that he had the right to use force to protect the third party for example if A is walking down the street and he sees what appears to be getting beaten up what is that B is acting out a fight scene of a movie, although the fight is real and he is being hit, he has no right to use force to protect B in this situation, as B himself consented to the act and hence doesn't have the right to self-defence. The question that is to be asked is that whether or not A can avoid liability for using force to protect B since in the situation we did not have the right to use force in self-defence was also observed in People vs Young.

A was walking along 54th Street when he noticed two white males, who seemed to be 45 or 50 years old, pulling on a young "colored child" he didn't recognize. They had almost yanked the little boy's pants off, and he was sobbing. A came there, knowing nothing about what had happened between the three guys and making no inquiries, and yanked one of the white males away from the little child, striking him on the head. The right kneecap of the man was damaged. It wasn't until later that A realised the two white males were police officers who weren't in uniform and were aiding with an arrest. The trial court found him guilty of third-degree assault.

On appeal, the Appellate Division concluded that one is not "criminally responsible for third-degree assault if he goes to the assistance of someone whom he wrongly, but reasonably, believes is being illegally battered, and thereby injures one of the apparent assaulters." The matter was taken to the New York Court of Appeals.

The rule established by the aforementioned case was “One who goes to the aid of a third person does so at his own peril.”

Furthermore, the Castle doctrine [11]and the “Stand your ground[12]” are applicable in multiple states of the USA .

The castle law, also known as the defence of habitation law, is a common law doctrine that states that a person who acts in self-defence against an intruder into his personal property has the right to legal immunity for his actions. A person defending his home against an intruder may use lethal force to protect himself and still be exonerated under the law. The defendant who invokes the castle doctrine must provide sufficient evidence to support his actions, as well as explain how the use of deadly force was an appropriate and reasonable response to the specific threat that he faced. When a person is threatened with bodily injury, he is permitted to use reasonable force to defend himself in any state in the United States.

[11] "Assembly, No. 159, State of New Jersey, 213th Legislature, The "New Jersey Self Defence Law"
[12] Fla. Stat. §776.012(2).

The amount of force used against one's safety must be proportionate to the amount of force used against one's safety. Many states in the United States have a responsibility to withdraw if it is possible to do so safely. In other states, this is not the case. In most cases, one is not obligated to withdraw if he is in his own home.

Whereas the Stand your ground law is an extension of the Castle law, and states that it allows a person to kill another person in a public place even though they could have plainly and safely de-escalated the situation by fleeing, thereby overturning traditional self-defence legislation. A person can use force to protect himself anywhere and at any time under conventional self-defence legislation. They cannot, however, use force that is likely to kill or badly harm someone when they are outside their house if there is a safe means to prevent it. This law is prevalent in 29 states of the USA.

Also, there was a 55% increase in murder rate in the states which had instated this law.

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Conclusion

A comparison of Indian and American law indicates that they are on the same footing, because the idea of "reasonable perception of danger" is believed to be the foundation for their inception and continuation in both countries.

Both countries are involved. As a result of the above debate, we have come to the conclusion that in order to establish a right of private defence, either an effort or a threat must be made.

At such a moment, the commission of an offence should not only begin but also continue. The non-conclusive nature of leading standards of reasonableness is also revealed in these

situations. With both qualitative and quantitative material that is adaptable, apprehension is a possibility.

Applying the test with any degree of precision or consistency is extremely challenging. The existence of diverse elements has made it harder to apply many of the requirements of the reasonable apprehension test, while also facilitating thinking in vicious cycles. Indeed, there is a single criterion that, by itself, either creates or negates the beginning, continuation, or termination of the right to private defence. Acts, behaviour, and the weapons employed by the parties involved in the fight are all considered in deciding the problem.

Judicial opinion is nevertheless, nearly universal that the fact the right of private defence start as soon as the reasonable apprehension for incoming danger begins and till the time it exists.

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