
The right of person for defence

The subject matter of the right of defence extends to the defend one's own body and even the act gives the right of self-defence not against any unlawful act has been committed or has been attempted, the right only arises when such act is an offence and the right arises only after the commission of the offence. The subject matter of the right to private defence extends not only to the human body or person but also to the property as well. The scope of private defence arises out of section 96, where it clearly states that nothing is an offence that is done in exercise of right to private defence. This right is not limited to own body and may also extend till the protection of others body as well. The scope of protection of human body gets restricted to the offences listed out in the Chapter XVI of the Penal Code.

This means that the right of private defence arises only when an offence is committed and can be exercised in defence of such an offence. Further the question which arises relates to the legal position of the aggressor (against whom the right of private defence was exercised). Section 98 therefore goes on to ensure that the right of private defence is also available against those aggressors whose acts have been excused under the penal code. The question which must then arise relates to the legal position where the person against whom the right of private defence is exercised has a valid defence and, as a consequence, would then not be considered in law to have committed an offence at all. Therefore, Section 98 adds meaning and compliments Section 97 and ensures that the exercise of private defence against persons or acts exempted under section 84 is also valid under law. But the offences are not just limited to the Chapter- XVI of the Code, it also recognises the local law or the interpretation of any special law that defines offence against human body.

In the case of Pancham v. Emperor it was discussed that the application of private defence is also justified in those circumstances where the person is forced to be taken to a different place for exploiting his services and labour. A wife has the right of private defence in cases of marital rape[7], as such intercourse is against her body and against consent. Any use of force against the human body must be consensual as it was discussed in the case of Emperor v. Babulal.[8] In this factual scenario, a vaccinator tried to vaccinate the child of the accused against his wishes. The accused (father of the child) and some of his relations intervened and assaulted the vaccinator and this act was held as perfectly justified as such act was against the wishes of the person.

A person who has not been directly affected by the assault could also exercise the right of private defence. In a case where the complainant, raised his fist at the accused and took a step forward, with the threat of striking him, it was held that there arises an apprehension of threat

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP

and the accused had the right of self-defence.

The scope of the defence against other person's body extends to:

Right to Defend Body of Another Person:

A person has the right of private defence not just to defend his own body but also extends to that of other people.[11] In the case of State of Uttar Pradesh v. Ram Niranjan Singh[12], it was held that if an incident relating to the death of more than one person, is an integrated one and cannot be divided into parts, the accused will have the same right of private defence in respect of each individual death. The accrual of the right begins the moment when there is an apprehension of threat or a reasonable apprehension of a grievous injury being caused. It is also pertinent to note that in England to use the right of private defence to protect someone else, there has to be shown some prior relation between the parties, whereas in India this right can be utilised to protect the body of any third person.

Right of private defence of person is not unrestricted.

The law provides this right to protect oneself and others against the imminent threat and the apprehensive danger. The caveats associated with such right of defending another person is similar to that applying on oneself. Such right is available under section 102 as soon as a reasonable apprehension of danger approaches the body from the threat to or attempt to commit any offence and continues till such threats mentioned under section 100 and 101 continues. The limitations discussed under section 99 also applies to the right of defense of another person. Such apprehension must be reasonable and the amount of force must be proportionate. There exists no right against the right of private defence. As the right of private defense is not available against an offence, therefore where an act is done in exercise of the right of private defense, the aggressor doesn't have a counter right.[13] Considering a situation where A being the aggressor hits B, and to the immediate reaction B in exercise of his private defence right injures A, in such a situation, A won't be allowed to hit B under the right of private defence as there arises no right of private defence against a right of private defence.

Need help with the assignment?

Our professionals are ready to assist with any writing!

GET HELP