BLOGS

IPC Notes- Right of Private Defence

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Introduction

Individuals' safety and security have become increasingly essential worries in today's society. With rising crime rates, it is critical to safeguard oneself, one's belongings, and one's loved ones from possible harm. The legal system acknowledges this need and has enacted a variety of provisions to allow people to protect themselves and their possessions.

The Right to Private Defence is one such idea that is a cornerstone of criminal law. Individuals have the right to use force if required to defend themselves, their property, and others from unlawful assault.

In this post, we will look more closely at the idea of the Right of Private Defence.

Relevant sections under the IPC

1. Section 96: This section defines the general right to private defence, stating that everyone has the right to defend themselves or others against any act that causes a reasonable fear of death or serious bodily harm, or any act that attempts to commit theft, robbery, mischief, or criminal trespass.
2. Section 97: The scope of the right to private defence is defined in this section. It says that the right includes the use of action that is proportionate to the harm feared to repel the assault.
3. Section 98: This section addresses the right to private defence against the actions of a person who is insane, intoxicated, or in any other comparable state. It says that such a person is responsible for their actions as if they were rational, and that they have the right to private defence.

4. Section 99: This section defines actions that are not subject to private defence. These include acts performed in good faith for the advantage of the person performing them, acts authorised by law, and acts performed with the permission of the person affected by them.
5. Section 100: This section addresses circumstances in which the right to private bodily defence goes to inflicting death. It says that such action may be used when there is a reasonable fear of mortality or serious bodily harm, and the individual exercising the right of private defence has no other way of escaping.
6. Section 101: This section addresses circumstances in which the right to private bodily defence stretches to inflicting harm other than death. It says that such action may be used when there is a reasonable fear of grave harm and the individual exercising the right of private defence has no other way of escaping.
7. Section 102: This section addresses the establishment and maintenance of the right to private property defence. It says that the right begins when a person has a reasonable fear of theft, burglary, mischief, or illegal intrusion and continues for the duration of the danger.
8. Section 103: This section addresses circumstances in which the right to private property defence stretches to inflicting death. It says that such force may be used when there is a legitimate fear of mortality or serious bodily harm in order to prevent stealing, burglary, mischief, or illegal intrusion.
9. Section 104: This section addresses circumstances in which the right to private property defence stretches to inflicting harm other than death. It says that such force may be used to prevent stealing, burglary, mischief, or illegal intrusion when there is a legitimate fear of injury.
10. Section 105: This section addresses the establishment and maintenance of the right to private defence of one’s person and property. It says that the right begins when a person has a legitimate fear of an attack or other crime and continues for as long as the danger exists.
11. Section 106: This section deals with the right of private defence against a deadly assault when there is a risk of harm to an innocent person. It states that such force can be used when there is a reasonable apprehension of death or grievous hurt to the innocent person, and the person exercising the right of private defence has no other means of preventing the harm.

Limitations to Right to Private Defence

While the right to private defence is an important aspect of criminal law, it is not an absolute right. In order to prevent the misuse of this right, there are certain limitations that have been imposed by the law.

These limitations ensure that the force used in self-defence is reasonable and proportionate to the threat faced, and that innocent individuals are not harmed in the process. Understanding these limitations is essential to ensure that the right to private defence is used judiciously and responsibly.

They are as follows:

1. The amount of power used must be proportional to the threat: The individual defending themselves must not use more force than is required to repel the assault. For example, if someone assaults another person with a fist, the defence cannot react with a deadly tool because that would be excessive force.
2. The right to private defence applies only while the danger exists: Once the threat has passed, the right to private defence expires. As a result, if someone attacks another person and the attack is repulsed, the defender cannot use force against the assailant because the danger has passed.
3. The individual exercising their right to private defence must have a reasonable conviction that such force is required to protect themselves or others: this means that they cannot use force based on a simple suspect or conjecture of an assault. A reasonable perception that an attack is impending or underway is required.
4. The right to private defence does not include the use of deadly force unless there is a threat of death or serious bodily harm: This means that a person cannot use lethal force unless their life is in peril or they suffer serious bodily harm.
5. Except in instances of imminent mortality or serious bodily harm, the right to private defence does not include the use of lethal force: This means that unless a person’s life is in peril or they suffer grave harm, they cannot use deadly force. For example, if someone assaults another person with a knife, the defender may defend themselves with a firearm because a dagger can cause serious harm or death.
6. The person using the right to private defence must not act in a cruel or unusual manner, which can cause harm or injury beyond what is necessary to repel the attack: This means that the defender cannot cause unnecessary harm or injury to the attacker once the threat has been

repelled.

7. The person using the right to private defence cannot use this right to justify pre-emptive strikes, revenge, or retaliation: This means that the defender cannot attack an individual based on a previous threat or perceived threat.

Exceptions to the Right of Private Defence

1. When the person protecting themselves or others is the perpetrator or initiator of the attack: The right to private defence cannot be used to excuse the use of force in such instances.
2. When a person exercising their right to private defence goes beyond the scope of their defence and causes more damage or injury than is required to resist the attack: In such instances, the individual may be made liable for the damage done.
3. When a person exercising his or her right to private defence causes harm or injury to a third party who was not engaged in the assault, the person may be held liable for the harm caused to the third party.
4. When a person exercising their right to self-defence employs lethal force in a circumstance where it was not required to repel the assault, the person may be held liable for the use of excessive force.

Conclusion

The right to private defence is an essential element of Indian criminal law. It acknowledges a person's right to defend themselves, their property, and others from damage or hurt. This right, however, is subject to certain limitations and exclusions, and it is critical that people practise this right with prudence and care in order to avoid legal obligations.

Important Notes on IPC

- IPC Notes- General Exceptions under the IPC (Part 1)
- IPC Notes- Offences Against the State
- Notes on Death Penalty in India
- IPC Notes- Sedition Law in India (Part 1)
- IPC Notes- Sedition Law in India (Part 2)