AILET

Learn about the Right of Private Defence

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The right of private defence is the right to protect one's own or another's person and property against the unlawful aggression of others. It is based on the principle that it is the first duty of man to help him even by taking law into his own hand as state might not always be available.

The doctrine of 'right of private defence' is based on the following expediencies:

- A private citizen whose life is threatened by a grave danger need not wait for the state aid; however where aid is available it must be obtained
- The right of private defence is protective or preventive and not offensive or punitive
- The act of private defence should not be deliberative or retributive
- The right must be exercised where there is real and immediate threat and there is a reasonable apprehension of such threat.
- The law does not require that a person should not exercise his right to self-defence if by running away he can avoid injury from his assailant

Right of private defence is available to all irrespective of age, health, capacity, status etc and it is available against all irrespective of other defences available to the other person like an unsound person, drunken person, child etc. Right of private defence can be exercised for the protection of oneself, family, friends or strangers.

The right of private defence commences as soon as reasonable apprehension of danger to the body or property arises from an attempt or threat to commit the offence, though the offence may not have been committed. However the threat must be instant and not distant. It is not necessary that offence must be actually committed, reasonable apprehension of such commission is sufficient to exercise right of private defence.

The right of private defence continues as long as danger to the body or property continues. Any act done while continuance of private defence shall be protected. The right terminates as soon as danger to the property or body ends. Once the danger ends the right also ends. If anything is done after termination of right, it will become punishable.

The protective measures employed must be relative to the danger ahead i.e. violence used must be proportionate to the injury or threat to be averted and must not exceed such limits. However the law does not require that a person in such circumstances should weigh the arguments for and against an attack in ‘golden scales’ but there must be no more harm inflicted than necessary for the purpose of defence as private defence is a preventive right which has been given to protect oneself from dangers.

Even if a person slightly exceeds his right in the flow of circumstances, the law will not punish him for exceeding the right because the law understands that a person faced with a situation of imminent danger might not be in a position to perfectly calculate the degree of harm which he must cause. Therefore, slight exceeding of the right is excusable. If a person completely exceeds his right and causes an excessive harm to the other person, then he shall be liable for the extra harm caused as private defence is not a retributive or punitive right. It cannot be used to take revenge or punish others.



The right of private defence is not an unlimited right. The right is not available in the following situations:

- The aggressors cannot claim the right of private defence as it being a preventive right it is given only to the defender i.e. to a person who is being attacked to allow him to save himself. In cases where an excessive harm is caused, even the aggressor gets the right of private defence because now the position of parties inter-change i.e. the original offender become the victim and the original victim becomes the offender. In a case when two parties are having a free fight without disclosing as to who is the initial aggressor then no right of private defence is available to either party and each individual is responsible for his own acts.
- There cannot be private defence against private defence. There is no right of private defence against any act which is not in itself offence under the criminal law.
- There is no right to private defence in cases in which there is time to recourse to protection of public authorities. The test is not whether police can be contacted or not but the real test is whether the police can effectively intervene in the situation and provide security to the victim. However this does not mean that a person must run away to have recourse to the protection of public authorities when he is attacked, instead of protection himself.
- There is no right of private defence against the acts of public servants done in discharge of their duties acting in good faith under the colour of his office, though the act may not be strictly justifiable by law; this is to allow public servants perform their duties smoothly and without any obstruction. The right of private defence can be exercised against a public servant only in the following cases:
- When the act of public servant reasonably cause apprehension of death or grievous hurt
- When the public servant does not act in good faith under colour of his office
- When the person executing his right does not have or know any reason to believe that the attacker is a public servant or is attacking under the direction of public servant

The right of private defence of the body or property extends to the voluntary causing of death or any other harm to the assailant in the following cases:

- An assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault

- An assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault
- An assault with the intention of committing rape
- An assault with the intention of gratifying unnatural lust
- An assault with the intention of kidnapping or abduction
- An assault with the intention of wrongful confinement under such circumstances that the person confined can neither escape nor can he contact public authorities for his release or protection
- An act of throwing or administering acid or an attempt to throw or administer acid
- An act or attempt of robbery
- An act or attempt of mischief by fire
- An act or attempt of house breaking by night
- An act or attempt of theft

If in exercise of right of private defence, the victim is so placed that if he exercises his private defence, there is a risk that some innocent person might get harmed; the law allows him to go ahead with the private defence and take that risk. However it is essential that the force was actually aimed at the guilty person and it is by chance that it falls upon an innocent person.

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