

Ambit Of Right of Private Defence Under Indian Penal Code

by

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ABSTRACT

*Private defence is an excuse from any crime against the person or property. There are many situations under which a person is put where they need to defend themselves in order to protect their own self or their property or their person. In such consequences when a person does an act that may or may not be a crime, then for that act they are excused by the law for having acted under private defence. The basic underlying principle of private defence is *vim enim vi defendere omnes leges emniaque jure permittunt* which means that a man, therefore, incurs no liability, if he kills another's slave who attacks him. Every legal system recognises the right, and its scope varies in inverse proportion to the state's ability to protect the subject's life and property (citizens). It is the primary responsibility of the state to protect the lives and property of individuals, but no state, no matter how large its resources, can afford to detain a cop to follow every rogue in the country. As a result, the state has granted every citizen of the country the right to take the law into his own hands for his or her own safety. An act done in exercise of this right is not an offence and does not, therefore, give rise to any right of private defence in return. Right of private defence is a good weapon in the hand of every citizen to defend himself. This right is not of revenge but toward the threat and imminent danger of an attack. But people can also like misuse this right. It is very difficult for court to find out whether this right had been exercised in good faith or not. The Indian Penal Code has laid down provisions under Section 96 to 106, explaining in detail the right of private defences, when one can exercise it and relevant provisions.*

Keywords: Private Defence, Life and Property, Protection from Offences, Indian Penal Code

Introduction –

Private defence is an act where one is defending oneself from any threat, fear, injury, or defending one's property from any danger. Private defence is an excuse from any crime against the person or property. Under the Indian Penal Code private defence is covered in Chapter IV General Exceptions from Sections 96 to 106. There are many situations under which a person is put where they need to defend themselves in order to protect their own self or their property or their person. In such cases a threat or fear of injury exists in their mind, and they act to protect themselves from further harm. In such consequences when a person does an act that may or may not be a crime, then for that act they are excused by the law for having acted under private defence.

Russel defines that, "A man is justified in repelling force in defence of his person, habitation or property against one who manifestly intends and endeavors by violence or surprise to commit a felony upon either." The primary duty of the state is to protect the life and property thus in response the right to private defence is recognized and granted. But there are two basic exceptions to the right of private defence. Firstly, when the act so done does not justify as defence but as an offence it cannot be held and private defence. Secondly, if the aggressor of the act was your own self, then private defence cannot be pled.

The right of private defence mainly revolves around the criterion to protect oneself or one's property or person from an imminent threat or fear of injury or fear of death. The responsive action must be in accordance to protect oneself from that imminent danger and if the danger ceases to exist, then the right to private defence also ends at that point. Say for example, A places a knife on B's neck and asks for his purse. In fear of death, B takes out a gun silently from the pocket and points out at A. as soon as A sees the gun, he drops the knife and runs away but even after running B shoots the gun towards A and the bullet hits A's leg and he is injured. Here the right of private defence ended at the point when A started running and there was no danger whatsoever thereafter. Hence, B cannot plead for private defence.

It is also significant to note that there shall be no right of private defence if the act is not an offence. For example, A asks to B to lend him some Rs. 500 to buy medicines. B refuses and A continuously requests B to lend him money, but he does not use any force on B. At some point B punches A on the head very hardly making him faint. A sues B and B says that he acted in private defence because A kept pestering him to lend him money. Here B cannot be granted the exception of private defence because requesting to lend money is no offence.

Legal Provisions –

Section 96:

This section of the Indian Penal Code states that, “Nothing is an offence which is done in the exercise of the right of private defence.”¹

If we go into the proper explanations, the section defines that any act that is the result of acting in defence against an immediate threat or fear of injury or fear of death to oneself or one's person or fear of damage of one's property, then such act cannot be constituted as an offence but as the right of private defence.

The injuries received by the accused, the imminence of a threat to his safety, the injuries caused by the accused, and the circumstances whether the accused had time to seek recourse from public authorities are all relevant factors to be considered in determining whether the accused has the right to private defence or not.

Section 97:

This section states the right of private defence of the body and of property. The section explains that every person has the right to defend their own body, and the body of another, against any offence that will affect the human body. The section further states that every person has a right to protect their property no matter the property being a movable one or immovable one. They can protect such property of their own or someone else's property against any act that is an offence such as theft, robbery, mischief or criminal trespass or any attempt of such mentioned offences.²

Offences affecting the human body is explained under Chapter XVI of the code from section 299 to. The offences include culpable homicide, murder, dowry death, abetment, offences of the causing of miscarriage, of injuries to unborn children, of the exposure of infants, and of the concealment of births, hurt, grievous hurt, wrongful restraint and wrongful confinement, force and criminal force, assault, kidnapping and abduction, and sexual offences.

To further understand the circumstances where right to private defence occurs for the protection of the property it is essential to comprehend the offences mentioned. Theft is an offence defined

¹ 22nd Edition, S.N.MISHRA, INDIAN PENAL CODE (AS AMENDED BY THE CRIMINAL LAW (AMENDMENT) ACT, 2018) 232 (Central Law Publications 2021)

² 22nd Edition, S.N.MISHRA, INDIAN PENAL CODE (AS AMENDED BY THE CRIMINAL LAW (AMENDMENT) ACT, 2018) 237 (Central Law Publications 2021)

under section 378 of the Indian Penal Code under Chapter XVII of offences against the property. Section 378 defines theft as, whoever, with a dishonest intention takes any movable property out of the possession of any person without their consent, and for the dishonest intention to be completed they move the property then such person is said to have committed a theft.³

Say for example. A is B's friend. B invites A to his house to have a small party with other friends. A goes to B's house and meets him. At B's house A spots, a small antique item and likes it very much and decides to steal it because he knows B will not give it if he asks for it. Without B's knowledge he carefully takes the antique item and hides it in his pocket. After the part is over, A leaves with the antique item and takes it to his house. Here A has committed theft.

To comprehend the offence of robbery we need to see section 390. Section 390 defines robbery under two circumstances, first when theft is robbery, second when extortion is robbery. Theft is defined in the above paragraph. Theft becomes robbery when while attempting theft the offender causes or attempts to cause any hurt, wrongful restraint or death or fear of death.⁴

Extortion is defined under section 383. This Sections says that if any person creates a fear of any kind of injury to any person and with dishonest intentions makes that person to deliver any property or any valuable item/security or any item that has been signed or sealed that can be converted into a valuable item then the person creating such fear on the mind of the other is said to have committed extortion.⁵ For example, A is B's brother and he threatens B he will kill his daughter if he does not transfer the land to A's name, and B is fear of his daughter getting killed transfers the land under A's name then here A is guilty of extortion.

Extortion becomes robbery when the offender is in the presence of the person put in fear at the time of committing the extortion and commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person or to some other person, and induces the person so put in fear to deliver up the thing extorted then and there. The

³ Indian Code, https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=435 (last visited Dec. 22, 2021)

⁴ Indian Kanoon, <https://indiankanoon.org/doc/1905008/> (last visited Dec. 22, 2021)

⁵ Tanya Khan, Legal Service India, *Section 383 of Indian Penal Code*, <https://www.legalserviceindia.com/legal/article-6236-section-383-of-indian-penal-code.html> (last visited Dec. 23, 2021)

offender is said to be present if he is close enough to put the other person in fear of immediate death, immediate harm, or immediate wrongful restraint.

Mischief is defined under section 425 of the Code. The section states that whoever causes the harm any property or cause any alteration or damage to any property, with such intent causes or knowing that he is likely to cause wrongful loss or damage to the public or to any individual is said to have committed mischief.⁶ For example, A burns marksheet of B with intention to cause wrongful loss to B because B has scored more than A, here A is said to have committed mischief.

Criminal trespass is explained under section 441. It states that whoever with an intention to commit any offence or to annoy or insult any person enters a property in possession of that person or enters the property lawfully but remains that unlawfully to commit any offence or insult or annoy the person in possession of the property, then the offender is said to have committed criminal trespass.⁷

To protect oneself from offences affecting the human body and the offences that endanger one's property, one can act in private defence as per the provisions given under Section 97.

Section 98:

Section 98 states that, "When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence."⁸

The simple explanation of this section is that a person has the right to private defence when the imminent threat is created by a person of unsound mind, or due to intoxication, or due to incapacity due to lack of maturity of understanding or interpreting, or due to any reason that was a misunderstanding on the part of the person causing such imminent threat.

Let's understand with the help of an example, A is insane since birth. A is said to have a lot of issues regarding mood swings due to incapacity to comprehend situation. A once goes out of the house without any guardian. B is a passer by on the road who is simply walking. A assumes

⁶ Legodesk, [Section 427 and Section 425 of the Indian Penal Code - Legodesk](#) (last visited Dec. 23, 2021)

⁷ Sakshi, Indian Law Portal, [Criminal Trespass - Indian Law Portal](#) (last visited Dec. 23, 2021)

⁸ Lawgist, *Section 98 of Indian Penal Code*, <https://lawgist.in/indian-penal-code/98> (last visited Dec. 24, 2021)

that B will harm him, so A picks a wooden log and starts beating B and he is severely injured on shoulder and thighs, and B in order to protect himself from A, throws stone at B which hit A's chin and it started to bleed. In this case, even though A is not guilty of an offence due to unsoundness of mind as per section 84 as he was under insane delusion that B will harm him, but this does not deprive B of his right to private defence.

Another example, X, Y, and Z are close friends. They plan to celebrate new year party by going to a bar and have drink. X after some time is drunk and starts to scold Y due to some trivial quarrel and after few minutes, he starts punching him. In order to protect himself Y holds a chair and X hits the chair while trying to punch Y and X's hand starts bleeding. Here even though X was intoxicated due to alcohol, does not deprive Y of his right to private defence.

Section 99:

Section 99 states that, a person does not gain a right of private defence if the act was done by a public servant or by the direction of a public servant who was acting in good faith, even though that act, or such direction given by the public servant is not strictly justifiable by law.

The Section further states that there is no right to private defence if the person who is under threat or fear of injury had enough recourse to avail himself a protection from public authorities. The right to private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.⁹

Explanation 1 – A person is not denied the right to private defence against an act done or attempted to be done by a public servant unless he knows or has reason to believe that the person doing the act is such a public servant.

Explanation 2 – A person is not deprived of the right to private defence against an act done, or attempted to be done, under the direction of a public servant unless he knows, or has reason to believe, that the person doing the act is acting under such direction, or unless such person states the authority under which he acts, or unless he has authority in writing, and unless he produces such authority, if demanded.

In a case,¹⁰ accused allegedly inflicted blows on deceased with axe. Occurrence took place in course of sudden quarrel and son of deceased noticed accused inflicting injuries. He has

⁹ Latest Laws, Section 99 IPC, <https://www.latestlaws.com/bare-acts/central-acts-rules/ipc-section-99-act-against-which-there-is-no-right-of-private-defence/> (last visited Dec. 24, 2021)

¹⁰ *Bihari Rai v. State of Bihar*, (2009) 1 Cr LJ 340 (SC).

categorically stated about presence of all eyewitnesses. No cogent evidence was adduced by defence to establish plea of right of private defence. Therefore, conviction of accused under Section 304 Part I was held to be proper and right of private defence was not allowed to the accused.

In *Ajodhia Prasad v. State of U.P.*,¹¹ the accused received information that they were about to be attacked by a hostile section in the village. They believed that if they separated, they would be pursued and attacked individually and under this belief they collected together and awaited the attack. The enemies then appeared on the scene and one of them fired a pistol and hit one of the accused. One of the accused then fired a pistol and hit the man who had first fired, and then a fight with lathis commenced during the course of which one member of each party was killed. It was held that the accused were entitled to exercise the right of private defence, and it could not be said that they had exceeded that right.

Section 100:

Section 100 explains the situations under which the right to private defence of the body extends to cause death. The section states seven such situations with the exception of the one explained under Section 99 where one can cause death of the offender while protecting themselves or the body of their person.

The first situation, “an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.” This means that if any person is under fear of getting killed by another and such fear or threat is so imminent and there is no such chance of escape from such a situation, then the person under fear can exercise his right to private defence and it will not be considered as an offence if the person creating such fear dies while the other is exercising his private defence to protect himself.

For example, A is returning back from a late-night movie show by walk. B, who is a repeated offender of murder spots A and plans to kill him as well and starts following A and chases him. A runs as fast as he can to avoid getting caught by B but is unfortunately caught by B and he struggles to run away but is grabbed tightly by B’s muscular figure, B tries to stab him with the use of a huge knife. A tries to loosen B’s grip and forcefully pushes B from the sidewalk. A runs away but B who tries to get up and run is hit by a truck and B dies. Here A is not liable for murder of B because he acted in private defence.

¹¹ (1924) 24 Cr LJ 997

The second situation, “an assault as may reasonable cause the apprehension that grievous hurt will otherwise be the consequence of such assault.”

In order to understand the second situation, it is essential to first understand what grievous hurt is. Grievous hurt is defined under Section 320. “The following are the types of hurt which are considered as grievous hurt:

First – Emasculation.

Secondly – Permanent privation of the sight of either eye.

Thirdly – Permanent privation of the hearing of either ear.

Fourthly – Privation of any member or joint.

Fifthly – Destruction or permanent impairing of the powers of any member or joint.

Sixthly – Permanent disfiguration of the head or face.

Seventhly – Fracture or dislocation of a bone or tooth.

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”¹²

If any person causes fear of grievous hurt to another, then the person under fear who acts in private defence causes the death of the offender is not said to have committed any offence as he acted in private defence.

For example, X is a thief who enters Z's house to steal valuables. X entered through the balcony of Z's house and is trying to open the door. Z hears the noise and comes towards the balcony and right at that time X manages to open the door. X spots Z and marches towards Z with an iron rod and lifts it up as to hit Z's head with the iron rod and also hits him twice and the third time Z covers his head with his hands and the rod hits Z's wrist that becomes fractured due to the hitting of the heavy iron rod. Z in order to protect himself pushes X and he falls off from the balcony which is on the first floor. X hits his head on the ground and dies. Here Z is not liable of any offence as he acted in private defence.

¹² Indian Kanon, Section 320 in *The Indian Penal Code*, <https://indiankanon.org/doc/895891/> (last visited Dec. 25, 2021)

The third situation, “an assault with the intention of committing rape.” Rape is a grave offence, and it is defined under Section 375 of the Indian Penal Code and its punishment under Section 376. Any person who commits rape is punished with rigorous imprisonment of a term not less than ten years which might later be extended to a period of life imprisonment and the offender is also liable to fine.

Any person who commits rape on a woman who is below sixteen years of age is punished with rigorous imprisonment of a term not less than twenty years along with fine and the imprisonment might be extended to a period of life imprisonment that is for the remaining natural life of the offender.

Whoever commits an offence punishable under section 376 and in the course of such commission inflicts an injury that causes the woman's death or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term not less than twenty years, but which may extend to imprisonment for life, which means imprisonment for the remainder of that person's natural life, or he shall be sentenced to death.

Whoever commits rape on a woman under the age of twelve shall be punished with rigorous imprisonment for a term not less than twenty years, but which may be extended to imprisonment for life, implying imprisonment for the remainder of that person's natural life, as well as a fine or death. The fine amount will be used to cover the medical expenses of the victim.

So, under Section 100, any person who is under fear of being raped in their self defence can cause the death of the offender. Provided that such fear must be sudden and imminent and there must not have been any place of escape.

The fourth situation, “an assault with the intention of gratifying unnatural lust.” Unnatural lust refers to attraction towards the same gender. Though, today we have recognition towards the LGBTQ+ community but an assault is an offence. Any person who assaults another with the intention of gratifying unnatural lust, person who is attacked in order to act in private defence can cause the death of the offender given the circumstances of imminent danger.

The fifth situation, “an assault with the intention of kidnapping or abducting.” Kidnapping and Abduction are offences defined under Sections 360 to 362. Section 360 defines kidnapping from India, it states that whoever takes any person outside India without the consent of that

person or any other person who is legally authorized to give consent on their behalf is said to have kidnapped from India.

Section 361 defines kidnapping from lawful guardianship, it states that any person who takes or entices any minor below the age of 18 for female and 16 for male or any person of unsound mind (age not relevant for person of unsound mind) from the legal guardianship without the consent of such legal guardian is liable for kidnapping.

Section 362 defines abduction, it states that any person who compels another with the use of force or by any other deceitful means induces a person to go with them, such person is said to have committed abduction.

So, any person who attempts to do any of the above three acts on another, such person can cause the death of the offender while protecting the self, given the threat was of imminent nature.

The sixth situation, “an assault with the intention of wrongfully confining person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.”

Wrongful confinement is defined under Section 340 of the Code. It states that any person who wrongfully stops another in such a manner so as to stop the other from proceeding any further beyond a certain limit is liable for wrongful confinement under section 340. For example, Z, in order to prevent X from attending an important meeting sends X to the store room to fetch some files and later on Z locks the door and X is stuck inside. Here Z is said to have committed wrongful confinement.

If a person, is under fear that another will wrongfully confine him from proceeding further from a certain limit, and such person is unable to get aid from any public authorities, then in order to protect self from such wrongful confinement he can cause the death of the offender. For example, A is a senior detective officer who needs to meet X his superior to submit some important files. C who is a wanted criminal finds A and locks the door of the room where A has the files with him. C takes out a gun to prevent A from proceeding further out of the room. A who is unable to contact any other officer tries to fight his way out of the room and during the fight the gunshot hits C and he dies. Here, A is not liable as he acted in private defence.

The seventh situation, “an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise

be the consequence of such act.” This was added to Section 100 by the Criminal Law (Amendment) Act, 2013.

If any person throws or attempts to throw acid on another, such another, in order to protect self can cause the death of the offender, provided that the act of the offender will cause a grievous hurt. For example, A is walking down the roadside cliff, B follows her with concentrated acid and A spots B with acid. A starts running but B catches her and to protect herself she forces her way out of B's grip and while doing so B falls off the cliff and dies. Here A is not liable for any offence as she acted on private defence.

In *Nand Kishore Lal v. Emperor*¹³ the accused, who were Sikhs, kidnapped and converted a Muslim married woman to Sikhism. Nearly a year after the abduction, the woman's husband's relatives arrived and demanded her return from the accused. The latter refused to comply, and the woman herself stated her aversion to rejoining her Muslim husband. The husband's relatives then attempted to take her away by force. The accused resisted the attack, and in doing so, one of them inflicted a blow on the woman's assailants' head, resulting in the latter's death. It was determined that the accused's right to defend the woman against her assailants extended under this section to the causing of death, and that they had thus committed no crime.

Section 101:

This section defines that if the offence is not one of those listed in the preceding section that is section 100, the right to private defence of the body does not extend to the voluntary infliction of death on the assailant, but it does extend, subject to the restrictions mentioned in section 99, to the voluntary infliction of any harm other than death on the assailant.¹⁴

Under this section, any harm short of death can be inflicted in the exercise of the right to private defence of the body in any case that does not fall under the provisions of section 100. In the event that any harm other than death is caused as a result of exercising the right to private defence, the accused is only required to prove that he did not exceed the limits set out in section 99 of the Code.

In *Yogendra Morarji vs. State of Gujarat*¹⁵ it was considered that the right extends to the killing of the actual or potential assailant when there is a reasonable and imminent fear of the atrocious

¹³ AIR 1924 Pat. 786.

¹⁴ Indian Kanoon, *Section 101 of The Indian Penal Code*, <https://indiankanoon.org/doc/399205/> (last visited Dec. 26, 2021)

¹⁵ AIR 1980 SC 660, 1980 CriLJ 459, (1980) 2 SCC 218.

crimes enumerated in Section 100's six clauses (now seven). Only the first two clauses of Section 100 are relevant for our purposes. The combined effect of these two clauses is that taking the assailant's life would be justified on the grounds of private defence if the assault causes a reasonable fear of death or grievous bodily harm to the person exercising the right. In other words, a person who is in imminent and reasonable danger of losing his life or limb may, in self-defense, inflict any harm, including death, on his assailant, whether the assault is attempted or directly threatened. This principle is also subject to the preceding rule that the harm or death inflicted to avert the danger is not significantly disproportionate to and out of proportion to the quality and character of the perilous act or threat intended to be repelled. In this case Section 101 was applied.

Section 102:

This section is considered important as it states when does the right of private defence of the body commences and when does it cease to exist. The section explains that the right of private defence of the body commences as soon as there is an imminent threat or fear of injury to the body even though an act of offence might not have been committed by the offender. The right to such private defence continues until such fear of danger continues.

For example, A is a middle aged man with a lot of debts. One of the loan sharks starts following him as A has not paid the debt yet and the lender is now irritated. The loan shark X follows A with an axe, A tries to escape but two other men of X start following him. Here A's right to private defence commenced as soon as X started following him with an axe in order to catch him. It will continue until the point A escapes to a safer zone or has recourse to any public authority.

In a case, *Naveen Chandra v. State of Uttaranchal*¹⁶ In the morning of that fateful day, there was a family feud between two brothers, and there was some fighting between the two families. Deceased had suffered head injuries. Conciliation was attempted through the Panchayat. During the conciliation, the deceased, who had suffered a head injury in the morning, became enraged and began abusing the accused, and in the ensuing altercation, the accused injured two unarmed people and chased other members of the family. It was decided that the accused was not entitled to plead right of private defence in such circumstances. It was also noted that the

¹⁶ 2007 Cri LJ 874 (SC).

right to private defence is a defensive right that cannot be invoked or used as a pretext for vindictive, aggressive, or retributive purposes of the offence.

Section 103:

This section explains when the right of private defence of property extends to causing death. “The section states that the right of private defence of property extends, subject to the limitations set forth in section 99, to the voluntary infliction of death or other harm on the wrongdoer if the offence, the commission of which, or the attempting to commit which, causes the exercise of the right, is one of the following:

First – Robbery

Second – House-breaking at night;

Third – Mischief by fire committed on any building, tent, or vessel used as a human dwelling or as a place for the custody of property;

Fourth – Theft, mischief, or house-trespass under such circumstances as may reasonably cause apprehension that death or grievous harm will result if such right of private defence is not exercised.”¹⁷

In order to comprehend this section it is essential to understand the other offences mentioned above. First offence is robbery which is defined under Section 390 of the Code which includes theft and extortion.

Theft is explained under Section 378 of the Code as any person who dishonestly intends to take a movable property of another without the consent of the owner or of the person under whom such movable property is under lawful possession, moves or takes the property is said to have committed theft.

Extortion is explained under Section 383 of the Code, if any person creates a fear of any kind of injury to any person and with dishonest intentions makes that person to deliver any property or any valuable item/security or any item that has been signed or sealed that can be converted

¹⁷ Latest Laws, *Section 103 of IPC*, <https://www.latestlaws.com/bare-acts/central-acts-rules/ipc-section-103-when-the-right-of-private-defence-of-property-extends-to-causing-death/#:~:text=%E2%80%94Theft%2C%20mischief%2C%20or%20house,private%20defence%20is%20not%20exercised>. (Last visited Dec. 26, 2021)

into a valuable item then the person creating such fear on the mind of the other is said to have committed extortion.

Section 390 states that in every robbery there is either theft or extortion. It further states that theft becomes robbery when for commission of theft or while attempting to take away the property so obtained by theft, if the offender causes to any person death or causes hurt or wrongful restraint or fear of death, hurt, or wrongful restraint. Robbery becomes extortion when the offender is in the presence of the person put in fear at the time of committing the extortion and commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person or to some other person, and induces the person so put in fear to deliver up the thing extorted then and there.

House-breaking by night is defined under Section 446 of the Code. It states that any person who commits house-breaking after sunset and before sunrise is said to have committed house-breaking by night.¹⁸ House-breaking literally means going inside someone's house unlawfully.

Mischief is defined under Section 425 of the Code. It states that a person with the intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any change in any property or situation thereof that destroys or diminishes its value or utility, or adversely affects it is said to have committed mischief.

Section 103 states that a person exercising the right of private defence of property can reasonably cause the death of the offender when the offence is of robbery, or house-breaking by night, or mischief that causes fire to the property, or any of the three offences which may cause death or grievous hurt while such commission.

Section 104:

This section states that, if the offence, the commission of which, or the attempt to commit, gives rise to the exercise of the right of private defence is theft, mischief, or criminal trespass, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing of any harm other than death to the wrongdoer.¹⁹

¹⁸ 22nd Edition, S.N.MISHRA, INDIAN PENAL CODE (AS AMENDED BY THE CRIMINAL LAW (AMENDMENT) ACT, 2018), 864 (Central Law Publications 2021)

¹⁹ 22nd Edition, S.N.MISHRA, INDIAN PENAL CODE (AS AMENDED BY THE CRIMINAL LAW (AMENDMENT) ACT, 2018), 265 (Central Law Publications 2021)

In a case, *V. C. Cheriyan v. State of Kerala*²⁰ the three deceased person along with some other person had unlawfully constructed a road through the private property of a church. The three accused persons belonging to the Church put up barricades across this road with a view to close it down. The three deceased who started removing these barricades were stabbed to death by the accused. The Kerela High Court agreed that the Church people had the right of private defence but not to the extent of causing death of unarmed deceased person whose conduct did not fall under Section 103 of the Code.

Section 105:

This section explains when does the right of private defence of property commences and until when does it continue to exist. This section states that such right of private defence commences when the danger to the property commences and continues until such danger ceases to exist (Such statement regarding the ambit of Sections 102 and 105 of the Code has been clearly explained by the Supreme Court in the case of *Rizan v. State of Chhattisgarh*, AIR 2003 SC 976.)

The right to private property defence against theft continues until the offender has retreated with the property, or until either the assistance of public authorities is obtained, or until the property is recovered.

The right to private property defence against robbery continues as long as the offender causes or attempts to cause death, bodily harm, or wrongful restraint to any person, or as long as the fear of instant death, bodily harm, or wrongful restraint persists.

The right to private property defence against criminal trespass or mischief remains in effect as long as the offender continues to commit criminal trespass or mischief.

The right to private property defence against house-breaking by night continues as long as the house-trespass begun by such housebreaking continues.

Section 106:

Section 106 states the right of private defence against deadly assault when there is risk of harm to innocent person. The section states that while exercising the right of private defence against an assault that is of such danger that it can cause death, and the defender cannot act in private

²⁰ 1982 CriLJ 2071

defence unless he causes harm to innocent person(s), then while acting in such private defence the defender commits no offence.

For example, A is a terrorist who suddenly enters a bus. Inside bus B, identifies the terrorist as he had seen pamphlets of him as a wanted criminal. B is in legal possession of a gun and in order to protect the others inside the bus and himself he shoots A. While doing so one of the gunshots hits a passenger of the bus C and he is grievously injured. Here B committed no offence.

Conclusion –

As stated earlier, the basic principle of private defence is *vim enim vi defendere omnes leges emniaque jure permittunt* which means that a man, therefore, incurs no liability, if he kills another's slave who attacks him. The right of private defence is of importance has been perceived in law in practically every country. It is a right of an individual to safeguard body and property of himself as well as other people. Assuming somebody submits a demonstration in this cycle, it is no offence. Dependent upon restrictions and conditions, it a right of each person. The law has given freedom to an individual in lieu of private protection to try and cause demise in specific cases. This is on the grounds that the law has itself has acknowledged that self-assurance is the essential obligation of each person. Law cannot help somebody who is not equipped for aiding himself when something wrong happens to that individual.