CHAPTER - 9

LEGAL PROVISIONS RELATING TO RIGHT OF PRIVATE DEFENCE OF A PERSON

In early times, it was considered that one could defend himself by the method of running to the safe place, instead of killing or injuring the assailant. It was popularly known as rule of retreat. This remained in fashion or vogue for a long time in western countries, which reflects the universal justice in the domain of self defence. But as the time changed, such trend has been eliminated from the society and the victim is not bound to run away from there and he is entitled to stand there and repel the force and exercise his Right of Private Defence.

The law does not require a law-abiding citizen to behave like a coward when confronted with an imminent unlawful aggression. There is more degrading to the human spirit to run away at the time of danger than to fight with that danger. This right is designed to serve a social purpose which deserves to be fostered within the prescribed limits. The Right of Private Defence has been given to a person just to defend himself and not to retaliate. This right has not given to take revenge. This right has been used as a shield not as a sword to take revenge.

The Russel defines the rule as to the Right of Private Defence\(^\text{94}\) “….. a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended, and if in a conflict between them he happens to kill his attacker, such killing is justifiable.”

\(^{94}\) Ref Crime (11th Edn., Vol.1, p.491)
Hari Singh Gour\textsuperscript{95} aptly observed that self-help is the first rule of criminal law. It still remains a rule, though in process of time much attenuated by considerations of necessity, humanity, and social order.

Bentham,\textsuperscript{96} has observed “the right of defence is absolutely necessary”. It is based on the cardinal principle that it is the duty of man to help himself.

The Right to Private Defence is a right inherent in every person and it is based on the premise that the foremost duty of man is to protect himself. Although it is the primarily duty of every state to protect the person and his property but no state can provide such protection at all times, that’s why state has given such

Right to every person to take the law into his own hand but only for his own safety that’s we have known as Right of Private Defence.

\textbf{NATURE OF THE RIGHT OF PRIVATE DEFENCE}

It is the first duty of man to help himself. The right of self-defence must be fostered in the Citizens of every free country. The right is recognised in every system of law and its extent varies in the inverse ratio to the capacity of the state to protect life and property of the subject (citizens). It is the primary duty of the state to protect the life and property of the individuals, but no state, no matter how large its resources, can afford to depute a policeman to dog the steps of every rogue in the country. Consequently this right has been given by the state to every citizen of the country to take law into his own hand for their safety. One thing should be clear that, there is no right of private defence when there is time to have recourse to the protection of police authorities. The right is not dependent on the actual criminality of

\textsuperscript{95} Penal Law of India (11th Edition 1998-99)

\textsuperscript{96} ‘Principles of Penal Laws’
the person resisted. It depends solely on the wrongful or apparently wrongful character of the act attempted, if the apprehension is real and reasonable, it makes no difference that it is mistaken. 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.

To justify the exercise of the Right of Private Defence the following things are to be examined:-

- **The entire accident.**
- **Injuries received by the accused.**
- **Imminence of threat to his safety.**
- **Injuries caused by the accused.**
- **Circumstances whether the accused had time to recourse to public authorities.**

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. Its very difficult for court to find out whether this right had been exercised in good faith or not.97

**RIGHT OF PRIVATE DEFENCE OF A PERSON**

The provisions relating to Right of Private Defence of a person have been under **Section 96 to 106**, in which **Section 96** provides that –

“Nothing is an offence which is done in the exercise of the right of Private defence.”

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97 Article by Mohi kumari on Private Defence ; A right available to all people in India
It means when a person does any act in the Right of Private Defence then such act is not an offence and he is not liable for it. The Hon’ble Supreme Court in the case of *Laxman V/s State of Orissa*\(^98\) has explained that when such right is available to a person. The Supreme Court has held that the Right of Private Defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his own creation. Such necessity must be present, real or apparent.

- **Case :- ** *Munney Khan V/s State*\(^99\)

  In this case, the Hon’ble Supreme Court observed: “The right of private defence is codified in Section 96 to 106 of Indian Penal Code, with have all to be read together in order to have a proper grasp of the scope and limitations of this right. By enacting the sections the authors of the Code wanted to except from the operation of its penal clauses acts done in good faith for the purpose of repelling unlawful aggression.

  Now, the question arises that whether there is a Right of Private Defence against the act of self defence. To resolve this controversy, the Hon’ble Supreme Court in the case of *Pammi V/s State of M.P.*\(^100\) has held that the aggressor can’t avail this Right of Private Defence as entry in the house of deceased with the weapons, was an act of aggressions, and the Right of Private Defence can’t be claimed against an act of Self Defence.

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\(^{98}\) 1988(cri.L.S.188(SC)

\(^{99}\) AIR1971 SC1491: (1970) 2 SCC 480

\(^{100}\) AIR 1998 SC 1185
No Private Defence in a Free Fight :-

Where two parties come armed with determination to measure their strength and to settle a dispute by force and in the ensuing fight both sides receive injuries, no question of right of private defence arises. In such a case of free fight both parties are aggressors and none of them can claim right of private defence.101

RIGHT OF PRIVATE DEFENCE OF THE BODY AND OF PROPERTY

The provision relating to Right of Private Defence of the Body and of Property has been given under Section 97, which provides that-

“Every person has a right to defend–

(a) His own body, and the body of any other person, against any offence affecting the human body;

(b) The property, whether moveable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of Theft, Robbery, Mischief or Criminal Trespass, or which is an Attempt to commit Theft, Robbery, Mischief or Criminal Trespass.

It means every persons has a Right to defend not only his body or property but also the body or property of other persons against the offences mentioned as above in this section. But this Right is subject to the restrictions contained in Section 99. But the aggressor himself can’t plea the Right of Private Defence against the defender. In other words, it means, there is no Right of Private Defence against the person who is exercising his Right of Private Defence.

Such Right of Private Defence has also available against the act of a person of unsound mind, Infant etc. **Section 98** provides 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.”

It means such right is available not only against the person capable by law of committing an offence but also against incapable person. It means one can exercise of Right of Private Defence against an infant, insane, an intoxicated person or one suffering under misconception of facts.

**For Example** :– ‘A’ under the influence of madness attempts to Kill ‘B’. ‘A’ is guilty of no offence. But at the same time ‘B’ has the same Right of Private Defence as he would have if ‘A’ were sane.

**TYPES OR PARTS OF RIGHT OF PRIVATE DEFENCE**

From the analysis of the **Section 97** of the code, it is clear that there are two types of Right of Private Defence, which are as follows –

(1) **Right of Private Defence of the Body** :–

As per **Section 97**, “Every person has a right to defend his own body and the body of any other person against the offence affecting the human body”. But this right is subject to the restrictions provided Under **Section 99**.
The Right of Private Defence of the Body, have been explained under the following heads –

(A) **When death may be caused** :-

The law authorises a person, who is under a reasonable apprehension that his life is in danger, to cause the death of the assailant either when the assault is committed or directly threatened, but such apprehension must be reasonable and not an imaginary only **Section 100** provides the circumstances or cases in which a defender may cause the death of the assailant. **Section 100** provides that -

“The Right of Private Defence of the Body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely –

- **Firstly** - Such an assault as may reasonably cause the apprehension that Death will otherwise be the consequence of such assault;
- **Secondly** - Such an assault as may reasonably cause the apprehension that Grievous Hurt will otherwise be the consequence of such assault;
- **Thirdly** - An assault with the intention of committing Rape;
- **Fourthly** - An assault with the intention of Gratifying Unnatural Lust;
- **Fifthly** - An assault with the intention of Kidnapping or Abducting;
- **Sixthly** - An assault with the intention of Wrongfully Confining a person, under circumstances which may reasonable cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

But this right is not an absolute right, it is subject to restriction provided under **Section 99**. It means the defender can’t caused the death of the assailant in the circumstances provided under **Section 99**.
• **Case:** — *Vishwanth V/s State of U.P.*

In this case, the deceased went to his father-in-law’s house and without their consent dragged his wife with a view to take her. The accused on seeing his sister being dragged gave a blow with a knife to the deceased who died immediately. It was held that when sister is being abducted, the brother in the exercise of the right of private defence can kill the abductor and such killing will be within the meaning of the Right of Private Defence.

(B) **When any harm other than death may be caused:**

Section 101 provides the circumstances in which a defender may inflict any harm to the assailant in the exercise of Right of Private Defence but he can’t cause the death of assailant. Section 101 provides that —

“If the offence be not of any of the descriptions enumerated in the last preceding section i.e. Section 100, the Right of Private Defence of the body doesn’t extend to the voluntary causing of death to the assailant, but does extend to the voluntary causing to the assailant of any harm other than death”.

But this right is also not an absolute right and it is subject to the restriction provided under Section 99.

It means the defender may cause any harm short of death in the exercise of the Right of Private Defence in any case which doesn’t fall within the provision of Section 100, but he is required to prove that he didn’t violate the restriction laid down in the Section 99 of the Code.

(C) **Harm to Innocent Person:**

Section 106 provides the circumstances in which the defender may exercise the Right of Private Defence against the deadly assault although

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102 AIR 1960 SC 67
there is a risk of causing harm to some innocent person. Section 106 provides that -

“If in the exercise of the Right of Private Defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he can not effectually exercise that right without risk of harm to an innocent person, his Right of Private Defence extends to the running of that risk.”

A risk of harm to an innocent person in the exercise of the right of private defence. The court examined whether the right could be available to a person who caused the death of a man who had no role to play in the dispute. This Section should be read in the light of Section 100. Injury to Innocent Persons in the exercise of the Right of Private Defence is Excusable under it.103

**For Example** :- ‘Z’ is attacked by a mob who attempt to murder him, he can’t effectually exercise his Right of Private Defence without firing on mob but there is a risk of harming some young children who are also mingled with them. ‘Z’ commits an offence if he harms any of the children while firing on the mob.

(D) **Commencement and Continuance of Right of Private Defence of Body:**–

Now, the question arises that when the Right of Private Defence of Body commences and till what time it continues? The answer of this question has been provided under Section 102 of the Code, which provides that –

“The right of Private Defence of the Body commences as soon as a reasonable apprehension or danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.”

It means the Right of Private Defence of the Body of the defender commences only when the reasonable apprehension of danger to the body arises and it continues till such apprehension lasts.

**For Example** :– ‘A’ threatens ‘B’ to leave the house in consequences of which ‘B’ left the house but after some time he come back and caused the death of ‘A’. In such case, he can’t get the benefit of the Right of Private Defence as he hasn’t exercised it at the appropriate time and as he left the house all danger to his body was over.

(2) **Right of Private Defence of the Property** :–

As per Section 97, “Every person has a right to defend his own property and the property of any other person against the offence of the Theft, Robbery, Mischief or Criminal Trespass or their Attempt”. But this right is subject to the restriction provided under Section 99.

The Right of Private Defence of the Property has been explained under the following heads –

(A) **When Death may be caused** :–

A person who is under a reasonable apprehension that his property is in danger, authorised by the law, to cause the death or any harm to the assailant cases where the assailant committing the offence or attempt to
commit the offence specified in Section 103 of the Code. Section 103 provides that -

“The Right of Private Defence of Property extend to the voluntary causing of death or any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the description hereinafter enumerated, namely –

• **Firstly** - Robbery
• **Secondly** - House Breaking by Night
• **Thirdly** - Mischief by Fire committed on any building, tent or vessel, which is used as a human dwelling or as a place for the custody of property.
• **Fourthly** - Theft, Mischief, or House Trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such Right of Private Defence is not exercised.

But such right is not an absolute right and is subject to the restrictions provided in Section 99.

**Case:** – *Jassa Singh V/s State of Haryana*\(^{104}\)

In this case, the Supreme Court has held that in case of theft, mischief, or house trespass, these offences must have been committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be consequence. Though right of private defence is available in respect of criminal trespass or mischief as against the property owned by

\(^{104}\) 2002 cri. L.S. 563 (SC)
himself or of any other person, but criminal trespass is not enumerated as one of the offences under Section 103 of Indian Penal Code.

Therefore, such right will not extend to the causing of death of the assailant, if the act of trespass is in the respect of an open land. Such right can be exercised only when a house trespass is committed under the circumstances specified under Section 103 of Indian Penal Code.

The accused did not close his flour mill on the day of “Bharat Bandh”, organized by some political parties. The activists entered the mill and demanded closure. They were armed with sharp-edged weapons. They threatened and assaulted the person who was operating the mill. He fired at them resulting in death of two persons and also injuring some innocent people. His property was set on fire. It was held that his acts of the accused were within the reasonable limits of the right of private defence. His conviction was set aside.105

(B) **When any harm other than death may be caused:**

Section 104 provides the circumstances in which the defender may cause any harm short of death in the exercise of the Right of Private Defence of Property if the offence committed or attempted to be committed is theft, mischief, or criminal trespass simpliciter. Section 104 provides that –

“If the offence the committing of which, or the attempting to commit which, occasions the exercise of the Right of private Defence, be Theft, Mischief, or Criminal Trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing

of death, but does extend to the voluntary causing to the wrong-doer of any harm other than death.”

But this right is also not absolute and is subject to the restriction provided in Section 99. Therefore, a pick pocket can’t be killed in the exercise of the Right of Private Defence.

(C) **Commencement and Continuance of the Right of Private Defence of Property:**

**Section 105** provides when the Right of Private Defence of Property commences and till what time it continues. **Section 105** provides that –

“The right of private defence commences when a reasonable apprehension of danger to the property commences. The right commences not when the actual danger to the property commences but when there is reasonable apprehension of danger, and continues against:-

i) **Theft, till** -
   - offender has effected his retreat with the property, or
   - the assistance of public authorities is obtained, or
   - the property has been recovered.

ii) **Robbery, as long as** -
   - the offender causes or attempts to cause to any person death, or hurt, or wrongful restraint, or
   - the fear of instant death, or of instant hurt, or of instant personal restraint continues.

iii) Criminal Trespass or Mischief as long as the offender continues in the commission of trespass or mischief.
iv) House breaking by Night, as long as the house-trespass, which has been begun by such housebreaking, continues.”

In other words, it means a defender may inflict such harm in the exercise of Right of Private Defence which is necessary to inflict for the purpose of his defence.

**LIMITATIONS ON THE RIGHT OF PRIVATE DEFENCE**

As it is well known that the law doesn’t given an absolute right to any person. It means every right have some limitations or restrictions to put a check on it. As such these Right of Private Defence are also not absolute, they are subject to the restrictions or limitations contained in **Section 99**. It means a person can’t exercise the Right of Private Defence in the following situations which are provided under **Section 99** of the Code, which are as –

1. **Public Servant**:

   There is no Right of Private Defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith or under his or her directions under colour of his office, though that act may not be strictly justifiable by law.

2. **Person acting under direction of Public Servant**:

   There is no Right of Private Defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith or under his directions under colour of his office, though that act may not be strictly justifiable by law.
(3) **Recourse to the Protection of the Public Authorities:**

There is also no Right of Private Defence in cases in which there is time to have recourse to the protection of the public authorities.

It means in any of the above situation a person can’t exercise the Right of Private Defence whether in case of body or of property.

**For Example** :- The accused received information one evening that the complainants intended to go on his land on the following day, and uproot the corn sown in it. At about three o’clock next morning he was informed that the complainants had entered on his land and were ploughing up the corn. Thereupon he at once proceeded to the spot, followed by the remaining accused, and remonstrated with the complainants, who commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants’ party was killed. It was held that the complainants being the aggressors, the accused had the right of private defence and that they were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night attack on their property.\(^{106}\)

➢ **Extent to which right may be exercised** :-

The Section 99 further provides that how much right such of Private Defence can be exercised by the person or defender to defend himself or herself. It means how much harm may be inflicted by the defender for the purpose of his defence. The Section 99 provides that –

“The Right of Private Defence in no case extends to the inflicting more harm than it is necessary to inflict for the purpose of defence.”

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\(^{106}\) Narsang Pathabhai, (1890) 14 Bom 441; Pachkauri, (1897) 24 cal 686.
It means a defender can’t take the undue advantage of the Right of Private Defence, it should be exercised upto some limits or extends. In other words, it means a defender may inflict such harm in the exercise of Right of Private Defence which is necessary to inflict for the purpose of his defence. The object behind it is that such right has been exercised as a shield not as sword or weapon. Such right has been given to a person just to protect himself or the property not to take a revenge. If any person exceeds his Right of Private Defence, he shall liable for that act and shall be punished for their consequences as per law.

➢ **Explanations** :-

There are two explanations attached to this section which further extends the scope of the section which provides that –

(1) **Public Servant** :-
A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such unless he knows or has reason to believe, that the person doing the act is such public servant.

(2) **Person acting under direction of Public Servant** :-
A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

It means if the defender doesn’t know that the assailant is a public servant or a person acting under the direction of public servant, he is not
deprives from the exercise of the Right of Private Defence. In other words, we can say that the above explanations can be operated as an exceptions of the above limitations of the Right of the Private Defence of a Person. Under the aforesaid circumstances, a defender can exercise his Right of Private Defence against the assailant although he is a public servant or acting under the direction of such public servant but the main condition upon such right is that such defender does not have the knowledge about the assailant’s legal position of being public servant or acting under the direction of public servant.

JUDICIAL OPINION ON THE RIGHT OF PRIVATE DEFENCE OF A PERSON

The Indian Judiciary from time to time have given their opinion on the Right of the Private Defence of a Person through the different case laws in which some are as follows:-

1. The legal position which has been crystallized from a large number of cases is that law does not require a citizen, however law-abiding he may be, to behave like a rank coward on any occasion.107

2. The law clearly spells out that Right of Private Defence is available only when there is reasonable apprehension of receiving the injury. The law makes it clear that it is necessary that the extent of Right of Private Defence is that the force used must bear a reasonable proportion of the injury to be averted, that is the injury inflicted on the

107 Mahandi v. Emperor [(1930) 31 Criminal Law Journal 654 (Lahore); Alingal Kunhinayan & Another v. Emperor Indian Law Reports 28 Madras 454; Ranganadham Perayya, In re (1957) 1 Andhra Weekly Reports 181.)
assailant must not be greater than is necessary for the protection of the person assaulted. A person in fear of his life is not expected to, modulate his defence step by step, but at the same time it should not be totally disproportionate.

3. In a civilized society the defence of person and property of every member thereof is the responsibility of the State. Consequently, there is a duty cast on every person faced with apprehension of imminent danger of his person or property to seek the aid of the machinery provided by the State but if immediately such aid is not available, he has the Right of Private Defence.\(^{108}\)

4. It is needless to point out in this connection that the Right of Private Defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his creation.\(^{109}\)

5. No court expects the citizens not to defend themselves especially when they have already suffered grievous injuries.\(^{110}\)

6. The accused has taken a specific plea of Right of Self-Defence and it is not necessary that he should prove it beyond all reasonable doubt. But if the circumstances warrant that he had a reasonable apprehension that death or grievous hurt was likely to be caused to him by the deceased

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108 State of Orissa v. Rabindranath Dalai & Another 1973 Crl LJ 1686 (Orissa) (FB)


or their companions, then if he had acted in the Right of Self-Defence, he would be doing so lawfully.  

7. The following circumstances in which the Right of Private Defence can be exercised by a person :-
   (i). There is no sufficient time for recourse to the public authorities
   (ii). There must be a reasonable apprehension of death or grievous hurt to the person or danger to the property concerned.
   (iii). More harm than necessary should not have been caused.

8. In **Bhagwan Swaroop V/s State of Madhya Pradesh**
   this court had held as under:
   “It is established on the record that Ramswaroop was being given lathi blows by the complainant party and it was at that time that gun-shot was fired by Bhagwan Swaroop to save his father from further blows. A lathi is capable of causing a simple as well as a fatal injury. Whether in fact the injuries actually caused were simple or grievous is of no consequence. It is the scenario of a father being given lathi blows which has to be kept in mind and we are of the view that in such a situation a son could reasonably apprehend danger to the life of his father and his firing a gun-shot at that point of time in defence of his father is justified.”

111 Jagtar Singh v. State of Punjab AIR 1993 SC 970
112 Puran Singh and Others V/s State of Punjab (1975) 4 SCC 518
113 (1992) 2 SCC 406
9. A person who is unlawfully attacked has every right to counteract and attack upon his assailant and cause such injury as may be necessary to ward off the apprehended danger or threat.\textsuperscript{114}

10. In \textit{James Martin v. State of Kerala},\textsuperscript{115} this court again reiterated the principle that the accused need not prove the existence of the Right of Private Defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

11. The Right to Private Defence is a very valuable right and it has been recognized in all civilized and democratic societies within certain reasonable limits.\textsuperscript{116}

12. In \textit{Mahabir Choudhary V/s State of Bihar},\textsuperscript{117} this court held that “the High Court erred in holding that the appellants had no right to private defence at any stage. However, this court upheld the judgment of the sessions court holding that since the appellants had right to private defence to protect their property, but in the circumstances of the case, the appellants had exceeded right to private defence. The court observed that right to private defence cannot be used to kill the wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right to private defence including killing”.

\textsuperscript{114} Kashmiri Lal & Others v. State of Punjab (1996) 10 SCC 471
\textsuperscript{115} (2004) 2 SCC 203,
\textsuperscript{116} Gotipulla Venkatasiva Subbrayanam and Others V/s State of Andhra Pradesh and Another (1970) 1 SCC 235
\textsuperscript{117} (1996) 5 SCC107)
13. It is well settled that even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of materials available on record.118

14. Every person has a right to defend his own body and the body of another person against any offence, affecting the human body. The right of self defence commences as soon as reasonable apprehension arises and it is co-terminus with the duration of such apprehension. Again, it is defensive and not retributive right and can be exercised only in those cases where there is no time to have recourse to the protection of the public authorities.119

15. No decision relied upon by the Appellants lays down a law in absolute terms that in all situations injuries on the persons of the accused have to be explained. Each case depends upon the fact situation obtaining therein.120

16. The Right of Self-Defence is a very valuable right, serving a social purpose and should not be construed narrowly. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that

118 Munshi Ram and Others V/s Delhi Administration (1968) 2 SCR 455
119 State of Madhya Pradesh V/s Ramesh (2005) 9 SCC 705
which would seem absolutely necessary to a perfectly cool bystander.

The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.\(^{121}\)

17. As soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the Right of Private Defence.\(^{122}\)

18. In order to find out whether Right of Private Defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

19. A person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically

\(^{121}\) Vidhya Singh v. State of Madhya Pradesh (1971) 3 SCC 244

\(^{122}\) Jai Dev V/s State of Punjab AIR 1963 SC 612
viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negatived. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.\textsuperscript{123}

\textbf{20.} It is settled position of law that in order to justify the act of causing death of the assailant, the accused has simply to satisfy the court that he was faced with an assault which caused a reasonable apprehension of death or grievous hurt. The question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no strait-jacket formula can be prescribed in this regard. The weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not?

\textsuperscript{123} Buta Singh V/s State of Punjab (1991) 2 SCC 612
GUIDELINES REGARDING THE RIGHT OF
PRIVATE DEFENCE OF A PERSON

The Honourable Supreme Court in the case of Darshan Singh V/s State of Punjab in the Criminal Appeal No. 1057/2002 dated 15.01.2010 had issued the following guidelines regarding the exercise of Right of Private Defence of a Person:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the Right of Private Defence within certain reasonable limits.

(ii) The Right of Private Defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the Right of Self Defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the Right of Private Defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the Right of Private Defence is not exercised.

(iv) The Right of Private Defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
(vi) In Private Defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead Self-Defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the Right of Private Defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the Right of Private Defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of Self Defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

In the above mentioned cases the Hon’ble Supreme Court and different High Courts have elaborated the concept of Right of Private Defence. They have given the extensive meaning to such right. They have explained or may be said that they have propounded the principles which tell us that when a person could take a plea of such right and what precautions should be adopted by the Court while giving the benefits of such rights to the accused.