CONTENTS

Declaration  ii
Acknowledgement  iii
Abbreviations  iv-v
List of Cases  vi-xx
Table of Contents  xxi- xxix

CHAPTER I  1-32
THE CONCEPT OF SELF-DEFENCE
1.1 INTRODUCTION
  1.1.1 Self-Defence and Private Defence
1.2 THE CONCEPT OF SELF-DEFENCE
  1.2.1 The Literal meaning of Self-Defence
  1.2.2 Basis of the Right of Private Defence
  1.2.3 Legal concept of Self-Defence
    1.2.3.1 Difference between “Self-Defence” and “Under Provocation”
  1.2.4 Concept of Private defence in India
1.3 RESEARCH METHODOLOGY
1.4 AIMS AND OBJECTIVES
1.5 HYPOTHESIS
1.6 REVIEW OF LITERATURE
1.7 SCHEME OF CHAPTERISATION

CHAPTER II  33-54
HISTORICAL EVOLUTION OF THE CONCEPT OF SELF-DEFENCE
2.1 INTRODUCTION
2.2 HISTORICAL EVOLUTION
  2.2.1 Roman Law
  2.2.2 English Law
2.2.2.1 During Ancient Period
2.2.2.2 During Medieval Period
2.2.2.3 During Modern Period
2.2.3 American Law
2.2.4 Australian Law
2.2.5 Indian Law

2.3 **OBJECT AND SCOPE OF SELF-DEFENCE**
   2.3.1 Object
   2.3.2 Scope

2.4 **JURISPRUDENTIAL ASPECT OF THE RIGHT OF SELF-DEFENCE**
   2.4.1 Social Contract Theory
   2.4.2 Retributive Theory
   2.4.3 Utilitarian Theory

**CHAPTER III**

55-117

**RIGHT OF PRIVATE DEFENCE OF BODY IN INDIA**

3.1 **INTRODUCTION**

3.2 **THINGS DONE IN PRIVATE DEFENCE**
   3.2.1 Introduction
   3.2.2 Necessity of the Right of Private Defence
      3.2.2.1 Right of Private Defence in light of Article 21 of the Constitution of India
   3.2.3 Meaning of the Right of Private Defence
      3.2.3.1 Use of English Precedent
      3.2.3.2 Right of Private Defence: When a complete defence
      3.2.3.3 Right of Private Defence and Section 34 of I.P.C.
      3.2.3.4 Right of Private Defence to Aggressors
         3.2.3.4.1 Who are likely to be Aggressors?
         3.2.3.4.2 Limited rights to Aggressor for Self-Defence
         3.2.3.4.3 Absence of evidence as to the manner of the start of incident
3.3 **AVAILABILITY OR NON-AVAILABILITY OF PRIVATE DEFENCE: FACTORS TO BE KEPT IN VIEW**

3.3.1 Right of Private Defence is very narrow

3.3.2 No right of Private Defence tills at least an attempt to commit an offence

3.3.3 Factors to be considered by the court in deciding the plea of Private Defence

3.3.3.1 Burden of Proof

3.3.3.1.1 Introduction

3.3.3.1.2 Burden of proof when becomes relevant

3.3.3.1.3 No general rule regarding plea of Private Defence

3.3.3.1.4 Scope of plea of Private Defence

3.3.3.1.5 When accused not pleads Right of Private Defence

3.3.3.1.6 When accused pleads Right of Private Defence

3.3.3.1.7 When Burden of Proof of defence is discharged

3.3.3.1.8 When Plea of Private Defence to be raised

3.3.3.1.9 Preponderance of Probabilities

3.3.3.1.10 Standard of Proof

3.3.3.1.11 Right of Private Defence and Plea of Alibi

3.3.3.1.12 The Theory of Rigid Approach

3.3.3.1.13 The Theory of Liberal Approach

3.3.4 When there is a gap between the attack and counter attack

3.4 **PARTICULAR FACTUAL SITUATIONS WHERE THE RIGHT OF PRIVATE DEFENCE OF BODY ARISES**

3.4.1 Reasonable apprehension of danger to body

3.4.2 Resistance to an illegal search or arrest

3.5 **PARTICULAR FACTUAL SITUATIONS WHERE THE RIGHT OF PRIVATE DEFENCE OF BODY DOES NOT ARISES**

3.5.1 Sudden Fight

3.5.2 Free Fight

3.5.3 Time to recourse to public authorities

3.5.4 Private Defence versus Private Defence
3.5.5 Retaliation for past injury
3.5.6 Against Lawful Acts
3.5.7 Against Unarmed Person
3.5.8 Lawful Assembly

3.6 APPRAISAL

3.7 STATUTORY PROVISIONS IN RELATION TO RIGHT TO PRIVATE DEFENCE OF BODY
3.7.1 Introduction
3.7.2 Meaning of phrase “Every person has a Right to Defend”
   3.7.2.1 Distinction between enforcing a right and maintaining a right
3.7.3 Restriction under section 99 of I.P.C., 1860
3.7.4 Preparation and use of weapons for Private Defence
3.7.5 Private Defence by Public Servant
3.7.6 Right of Private Defence against acts of lunatics, intoxicated persons
3.7.7 Right of Private Defence extends to the causing of unavoidable harm to innocent persons

CHAPTER IV

RIGHT OF PRIVATE DEFENCE OF PROPERTY IN INDIA

4.1 INTRODUCTION

4.2 RIGHT OF PRIVATE DEFENCE OF PROPERTY

4.2.1 Private as well as Public property
4.2.2 Where Right of Private Defence of Property may be exercised
   4.2.2.1 Private Defence of Property after offence committed
   4.2.2.2 Circumstances when defending property is justifiable
       4.2.2.2.1 Co-sharer’s right to defend the property
   4.2.2.3 No Right to Defend where no possession
   4.2.2.4 Defence of Property under Section 145, Cr.P.C.
   4.2.2.5 Injunction and Self- Defence
   4.2.2.6 Shooting animals on other’s lands
   4.2.2.7 Right of Defence of Property against Transferee
4.2.2.8 True owner cannot claim Right of Private Defence of Property against Transferee
   4.2.2.8.1 Right of Private Defence of Trespasser against true owner
4.2.2.9 Right in respect of integrated incident
4.2.3 Which property to be defended
   4.2.3.1 De-facto possession and not title
   4.2.3.2 Possession to be defended should not belongs to trespasser
4.2.4 Particular factual situations where the Right of Private Defence of Property arises
   4.2.4.1 Unlawful Act
   4.2.4.2 Trespasser in settled possession against true owner
      4.2.4.2.1 Right of trespasser in settled possession
4.2.5 Particular factual situations where the Right of Private Defence of Property does not arises
   4.2.5.1 Time to recourse to Public Authorities
   4.2.5.2 Against Lawful Acts
   4.2.5.3 Lawful Assembly
   4.2.5.4 When assailant runs away after attack
   4.2.5.5 Exchange of abuses and threats
4.2.6 Why Right of Private Defence of Property available against four offences only?
   4.2.6.1 House- Breaking and Dacoity, if included within the scope of the Section 97, I.P.C.
4.2.7 Right of Private Defence of Property against specified offences
   4.2.7.1 Theft
   4.2.7.2 Robbery
   4.2.7.3 Mischief
      4.2.7.3.1 If Mischief has already begun, Right of Private Defence has come into existence
      4.2.7.3.2 Use of force to prevent Mischief
   4.2.7.4 Criminal Trespass
4.2.7.4.1 Cattle Trespass
4.2.7.4.2 Trespasser’s right
4.2.7.4.3 No right against a Trespasser’s settled possession

CHAPTER V
EXTENT, LIMITATION AND RESTRICTIONS ON RIGHT OF PRIVATE DEFENCE TO CAUSE DEATH OR OTHER HARMS IN INDIA

5.1 INTRODUCTION

5.2 ACTS AGAINST WHICH THERE IS NO RIGHT OF PRIVATE DEFENCE

5.2.1 Against the acts of Public Servant
   5.2.1.1 When acts are lawful
       5.2.1.1.1 Good Faith
       5.2.1.1.2 Colour of office
       5.2.1.1.3 Not strictly justifiable by law
   5.2.1.2 When acts are unlawful
       5.2.1.2.1 When warrant is legal but irregular
       5.2.1.2.2 When there is no warrant
       5.2.1.2.3 When mode of execution of warrant is illegal
       5.2.1.2.4 Where there is a lack of jurisdiction
   5.2.1.3 Law Commission recommendation

5.2.2 Where time for recourse to the protection of the public authorities
   5.2.2.1 Statutory Requirements
   5.2.2.2 Law Commission Recommendations

5.2.3 Right does not extend to causing more harm than necessary

   5.2.3.1 Mandatory requirements
   5.2.3.2 Harm caused must be proportionate
       5.2.3.2.1 Justifiable Harm
       5.2.3.2.2 Excessive Harm
           5.2.3.2.2.1 Consequences of excessive harm

5.3 When the right of Private Defence extends to causing death
5.3.1 In case of body
   5.3.1.1 Reasonable apprehension of death or grievous hurt sufficient
   5.3.1.2 Assault with intention of committing rape or gratifying
       unnatural lust
   5.3.1.3 Assault with intention of kidnapping or abducting
   5.3.1.4 Assault with intention of wrongful confinement
   5.3.1.5 Act of throwing or administering acid or its attempt
5.3.2 In case of Property
5.4 When the Right of Private Defence does not extends to causing death
   5.4.1 In case of body
   5.4.2 In case of property

CHAPTER VI

COMMENCEMENT, CONTINUANCE AND TERMINATION OF THE
RIGHT OF PRIVATE DEFENCE IN INDIA

6.1 INTRODUCTION
6.2 RIGHT OF PRIVATE DEFENCE OF PROPERTY
   6.2.1 Commencement
   6.2.2 Continuance
   6.2.3 Termination
6.3 RIGHT OF PRIVATE DEFENCE OF PROPERTY
   6.3.1 Commencement: Actual Commission or Attempt or Threat
   6.3.2 Continuance
      6.3.2.1 In case of Theft
      6.3.2.2 In case of Robbery
      6.3.2.3 In case of Criminal Trespass or Mischief
      6.3.2.4 In case of House- Breaking by night
   6.3.3 Termination
      6.3.3.1 In case of Theft
      6.3.3.2 In case of Robbery
      6.3.3.3 In case of Criminal Trespass and Mischief
      6.3.3.4 In case of House- Breaking by night
6.4 REASONABLE APPREHENSION OF DANGER
   6.4.1 Concept
   6.4.2 Scope
   6.4.3 Nature
   6.4.4 Time as a factor to determine reasonable apprehension
   6.4.5 Requiring Imminence

6.5 APPRAISAL

CHAPTER VII

CHAPTER VII 225-265

COMPARATIVE STUDY OF RIGHT OF PRIVATE DEFENCE AS UNDER THE LAWS OF INDIA, ENGLAND, AMERICA AND AUSTRALIA

7.1 INTRODUCTION

7.2 ESSENTIAL ELEMENTS
   7.2.1 Essential elements under English Law
   7.2.2 Essential elements under Indian Law
   7.2.3 Essential elements under Australian Law
   7.2.4 Essential elements under American Law
   7.2.5 Appraisal

7.3 SCOPE
   7.3.1 Scope of Self-Defence in England
   7.3.2 Scope of Self-Defence in India
   7.3.3 Scope of Self-Defence in Australia
   7.3.4 Scope of Self-Defence in America
   7.3.5 Appraisal

7.4 COMMENCEMENT, CONTINUANCE AND TERMINATION OF RIGHT OF SELF-DEFENCE
   7.4.1 Scope of reasonable apprehension of danger
      7.4.1.1 Under English Law
      7.4.1.2 Under Indian Law
      7.4.1.3 Under Australian Law
      7.4.1.4 Under American Law
7.5  APPLICATION OF RETREAT RULE

7.5.1  General
7.5.2  Under English Law
7.5.3  Under Indian Law
7.5.4  Under American Law
    7.5.4.1  Exceptions to Retreat Rule
        7.5.4.1.1  Castle Rule
        7.5.4.1.2  Stand Your Ground
            7.5.4.1.2.1  Appraisal
7.5.5  Under Australian Law

7.6  AMOUNT OF FORCE

7.6.1  English Law
7.6.2  American Law
7.6.3  Australian Law

7.7  CONSEQUENCES OF EXCESSIVE FORCE

7.7.1  English Law
7.7.2  Indian Law
7.7.3  American Law
7.7.4  Australian Law

CHAPTER VIII  266-279
CONCLUSION AND SUGGESTIONS
8.1  CONCLUSION
8.2  SUGGESTIONS

BIBLIOGRAPHY  280-288