



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 5 AND ISSUE 9 OF 2025

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 9 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-10-of-2025/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

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## UNLEASHING DURGA: EXPLORING THE ROLE OF PRIVATE DEFENSE IN PROTECTING INDIAN WOMEN

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**BEST CITATION** – PUJA BANERJEE, UNLEASHING DURGA: EXPLORING THE ROLE OF PRIVATE DEFENSE IN PROTECTING INDIAN WOMEN, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (10) OF 2025, PG. 880-885, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

India is a nation where security is highly demanded and when it comes to women, it plays a crucial role. In our stereotype nation women always regarded as vulnerable beings where it's easy for patriarchy to dominate and scare women and even to abuse them. So *private defense* plays a major role, it is a right which is available to every individual to secure themselves from any external harm or injury. Right of self-defense is based upon the general maxim that "*necessity knows no law*" and "*it is primary duty of man to first help himself*".

**Keyword:** Private defense, Security, Women, India, Law

### INTRODUCTION

In India there are many cases of violence against women which goes unreported and unregistered. As because India is nation where society taught girls from the very beginning of her birth to not get rape but they don't teach the male not to rape. The worst form of attack on women in India is molestation, rape, murder, kidnapping and even acid attack. In India it first begun with the *Gulabi Gang* or *Rose Gang* they used carry bamboo sticks with them for women's safety which was introduced by *Sampath Pal Devi* in a small village of Uttar Pradesh. This is why it became crucial for Indian women to learn self-defense for their own safety. The origin of women's self-defense emerged back to the *second-wave feminism* of the 1960 and 70's. In this period women across the country took up boxing and jiu-jitsu which protected them from male attackers. In **Indian Penal Code (IPC)** under General Exception the right of private-defense is mentioned for both men and women which can be exercised in the time of survival.

**Section 96 to 106 of IPC** states the law relating to private defense of person and property.

In **Section 96** where it says that nothing is an offence which is done in the exercise of the right of private defense. In **Section 97** it gives right to private defense of body and of property. In **Section 106** it gives right of private defense against deadly assault where there is risk of harm to innocent person. A person is allowed to use only reasonable force. Self-help is the first rule of criminal law. The right of private defense came from ancient law givers. One of the most crucial principles of private defense is "*reasonableness*" of the defense used. There are several limitations as well as exceptions to this right. Some remedies are also available if this right is being misused according to the maxim "*ubi jus ibi remedium*" that is "*where there is a right there is a remedy*".

### Importance of Private defense

The primary need of private-defense for women is essential so that they able to protect themselves against anything that is unacceptable. It empowers women to lead a prosperous and healthy life. It also encourages

them to deal with this eminent danger independently. Just because you are a woman it doesn't make you different from man and you shouldn't ask to travel with a companion.

### Lacking in the current knowledge

- Post scenario: If we go back to the early time where women were not the chattels that they became in the dark medieval time but rather they were warriors who enjoyed a great amount of liberty and fair number of rights. They had access to education and they were equal to the male in society. For instance, *Rani Lakshmi Bai of Jhansi (1826-1856)* who learned shooting, fencing and horsemanship. She defended Jhansi against British troops when Sir Hugh Rose besieged it on March 23, 1856. *Chand Bibi (1550-1599)* was Ahmednagar's Sultanate who was a highly educated women and she was a great warrior at the same time she was skilled in fencing and horse riding. *Razia Sultana (1205-1240)* who was the daughter of Shams-ud-din Iltutmish where she was trained to administer the kingdom on her abilities and diligence.

- Present scenario: historically in India women are given the position of goddess. But in reality, it's just the opposite of this concept on one hand they worship them as goddesses and on the other, they assault them at every point of their life and consider women as inferior. There is dowry related torture, marital rape, domestic violence, dowry and so on. We have issues of gender discrimination, where in *Article 14 of the Constitution* its clearly mention about the right to equality before law and equal protection of laws within the territory of India. Violence against women is a serious issue faced in India. Every citizen and government must try to make it a better place for women to be in.

### Scope of research

- To understand the right of Private defense guaranteed under Section 96 to 106 of the Indian Penal Code 1860.
- To know the necessities, limitations and exception to this right and its applicability in India.

- To analyze the judicial perspective of private defense.

### RESEARCH METHODOLOGY

This project is based on women's safety in India regarding Private-defense. It talks about the laws of private-defense in our legal system. The aim of the paper is to clarify the rights of self-defense in current status of the women in the society comparing to earlier scenario. The project goes on examine the status of women and theoretical debate on the rights of women. Data is collected from several books, judgement, journals and websites. During the course of the project comparative, historical and analytical methods have been used as a secondary source data.

### REVIEW OF LITERATURE

#### IPC Sec 96(Things done in Private-defense)

The right of private defense is absolutely necessary for the protection of one's life, liberty and property. In this section it gives authority to an individual to use necessary force against the assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the State machinery is not readily available and in doing so that person will not be answerable in law for his deeds.

#### IPC Sec 97(Right of private-defense of the body and of Property)

Every man has a right to defend his own body and the body of any other person, against any offense affecting the human body. To invoke the plea of right of private-defense there must be an offence committed or attempted to be committed. Under Sec 97 even a stranger can defend the person or property.

In *Bhim Singh v State of Bihar*<sup>846</sup> two of accused, having received simple injuries, ran back to their house, fetched a sword and inflicted fatal blows on the head of the deceased with that sword. The court held that even assuming that the deceased had inflicted simple injuries on the accused, there could be no justification for any of the accused to hit the deceased with a sword on a vital part of the body such as the head. The

<sup>846</sup> *Bhim Singh v. State of Bihar and Ors*, AIR 1985 HC 671

severity of the injuries could not be said either to have been a matter of chance. Their acts bore a stamp of design. The right of private-defense, therefore, could not be availed by the accused.

### **IPC Sec 98 (Right of private-defense against the act of a person of unsound mind)**

This act lays down the principle that the right of private defense is available against such attackers who is insane or lack of maturity due to reason of youth, unsoundness of mind or intoxication, he would not be liable under Sec 84 as that person has no *mens rea* but the person who is being attacked by the insane person has the same right of private defense against the act which would have if the act were that offence.

### **IPC Sec 99(Act against which there is no right of private defense)**

There is no right of private-defense against an act which does not reasonably cause apprehension of death or of grievous hurt, if done or attempted to be done, by the direction of public servant acting in good faith under color of his office, though that direction may not be strictly justified by law. This section gives a defensive right to a man and not an offensive right. It encourages an individual to help themselves and others, if there is reasonable apprehension of danger to life and property. In *William v Police (1981)* where two uniformed constables, who had been directed to investigate a complaint of assault, stopped a vehicle corresponding to the complainant's description of his assailant's car. Two of the occupants, Williams and Blue gum, got out. They denied of any knowledge of the assault and were asked to wait until the complainant arrived to see and identify them. William refused and moved to get into the car, but he was pushed away by the constable quite forcibly though he managed to stay on his feet. The other constable also endeavored to block his way. He too was pushed but with less force. The first constable then purported to arrest Williams. He resisted, and Blue Gum grabbed the constable. Both were arrested. Both William and Blue Gum were charged and convicted by the

trial court with assaulting both the constables and obstructing them in execution of their duty. Allowing the appeal, the High Court of New Zealand held that the constables had no power to detain the vehicle or its occupiers. By pushing the constables as he did, Williams committed technical assaults on them, but they were not assault committed while the constables were acting in the execution of their duty. The two constables not only stood in William's way, but one of them made it clear that they were not going to let Williams get into car. In those circumstances, he was entitled to do what he did, the force applied was not excessive, and no offence was committed.

### **IPC Sec 100(When the right of private defense extends to causing death)**

Sec 100 justifies the killing or of causing any other harm to the assailant. The right be of any description enumerated namely:

- Causing the apprehension of death;
- Causing the apprehension of grievous hurt;
- With the intension of committing rape;
- With the intention of gratifying unnatural lust;
- With the intention of kidnapping or abducting;
- With the intention of wrongfully confining a person under circumstances which may give apprehension that he will be unable to have recourse to the public authorities for his redress.
- Throwing or administering acid causing reasonable apprehension that it will result in grievous hurt.

In *Nand Kishore (1924)*<sup>847</sup> accused who were Sikhs, abducted a Mohammedan married woman and converted her to Sikhism. Nearly a year the abduction, the relatives of the woman's husband came and demanded her return from the accused. The latter refused to comply and the woman herself expressly stated her willingness to rejoin her Muslim husband. Thereupon the husband's relative attempted to take her away by force. The accused resisted the attempt and in so doing one of them

<sup>847</sup> Nand Kishore Lal v. Emperor, AIR 1924 HC 158

inflicted a blow on the head of one of the woman's assailants, which resulted in the latter's death. It was held that the right of the accused to defend the woman against her assailants extended under this section to the causing of death and they had, therefore, committed no offence.

**IPC Sec 101(When such right extends to causing any harm other than death)**

If the offence which entitles a man to exercise the right of private defense be not of such serious description as specified in clauses (1) to (4) to Section 100, the right of private-defense does not extend to the voluntary causing of death. That is to say, under this section any harm short of death can be successfully inflicted in exercising the right of private-defense, subject to the restrictions mentioned in Section 99 of the Indian Penal Code.

**IPC Sec 102(Commencement and continuance of the right of private-defense of the body)**

Section 102 to 105, IPC fix the time when the right of private-defense commences and the time during which it continues. According to Section 102, IPC the right of private-defense of body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit an offence, *albeit* the offence might not be committed, and such right continues so long as such apprehension of the danger to the body continues. The threat, however, must reasonably give rise to a present and imminent, and not remote or distant danger.

*Santosh Singh v State of Punjab (2009)*<sup>848</sup> the Apex Court held that Section 102 and 105, IPC deals with the commencement and continuance of the right of private defense of body and property. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, threat to commit an offence, although the offence may have not been committed but not until there is a reasonable apprehension of danger and the right lasts so long as the reasonable apprehension of the danger continues. Merely

because there was a quarrel and some the accused persons sustained injuries, that doesn't confer a right of private-defense extending to the extent of causing death in this case. Though such right can't be measured in scale, it has to be established that the accused were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private-defense as claimed by the accused persons has been rightly discarded.

**IPC Sec 103(When the right of private-defense of property extends to causing death)**

The right of private-defense of property extends, under the restriction mentioned in Section 99, to voluntary causing of death, in case of robbery, house-breaking by night, theft or mischief, when such theft or mischief is committed in such circumstances as may reasonably cause an apprehension that death or grievous hurt will result, if such right of private-defense is not exercised.

**IPC Sec 104(When such rights extend to causing any harm other than death)**

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defense, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in Section 103, the right of defense extends only to the voluntary causing of any harm other than death.

*Nathan v State of Madras*<sup>849</sup>, the Supreme Court held that since it did not appear that the harvesting party was armed with any deadly weapons and there could not have been any fear of death or grievous hurt on the part of the appellant and his party, under Section 104, IPC their right was limited to the causing of any harm other than death. The accused, though were exercising the right of private-defense of property, exceeded that right when they caused the death of one of the harvesting parties and hence their case fell under Exception 2 to section 300, IPC and they will be liable for

<sup>848</sup> Santosh Singh v. State of Punjab, AIR 2009, SCC 285

<sup>849</sup> Nathan v. The State of Madras, AIR 1972, SC 803

culpable homicide not amounting to murder under section 304, IPC and not for murder.

### **IPC Sec 105(Commencement and continue of right of private defense of property)**

- The right of private defense of private defense of property against theft continues till the offender has affected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.
- The right of private defense of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or instant hurt or of instant personal restraint continues.
- The right of private defense of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.
- The right of private defense of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

### **IPC Sec 106(Right of private defense against deadly assault when there is risk of harm to innocent person)**

Section 106 deals with a case of extreme necessity, in which a person is authorized by law to run the risk of harming even innocent persons in order to protect himself from mortal injury. *Illustration*, if A is attacked by a mob intending to murder him and he cannot effectively exercise his right of private defense without firing on the mob, and he cannot fire without the risk of harming young children who have mingled with the mob, he commits no offence if by so firing, he injures any one of the children. A had no option under the circumstances of the case for protecting himself except to fire at the mob and so his action is justified.

### **Leading cases on women's private-defense**

- *Yeshwant Rao v State of Madhya Pradesh*<sup>850</sup>, explains the position of Law as respect to the third and the fourth provision of

Section 100. For this situation, the expired attempted to have sex with the little girl, the accused while she went to the toilet at the backside of her home. The accused while observing the little girl being assaulted hit the deceased with the spade and the deceased died as a result. The Supreme Court held that the accused was supported in practicing the privilege of Private-defense of the body against the perished and subsequently was prosecuted. Here it tends to be seen that the assault that occurred on the girl was adequate to make sensible apprehension in the mind of the accused and in this way his demonstration was supported under Section 100. The privilege of private defense was practiced by the accused to secure the body of another.

- *Bhadra Ram v State of Rajasthan*<sup>851</sup> where the litigant spared her widow-sister-in-law from the grip of Nand Ram and assaulted him with *gandasa* while he was running was given the exemption under the provision third of Section 100 of IPC. For this situation, the appellant's sister-in-law was a widow woman who caught by Nand Ram in the dead hour of night so as to harm her modesty for submitting assault. Hearing her shout the appealing party came with a *gandasa* and assaulted Nand Ram while he attempted to rape the widow woman. It can be seen here that there was sensible dread of the threat to the body of appellant's sister; therefore, the privilege of Private-defense was properly applicable.

- *Vishwanath v State of Uttar Pradesh*<sup>852</sup>, here the accused's sister left her husband's house and dwelling with her father and sibling. At some point, the deceased spouse went to the house and attempted to take his wife with him to which she revolted and got hold of the entryway. In the meantime, so as to shield her sister from the deceased, the accused took a blade and injured the deceased as a result, he died. The accused argued he should be given the advantage under Fifth provision of Section 100. The Allahabad High Court gave the

<sup>850</sup> Yeshwant Rao v. State of Madhya Pradesh, AIR 1992, SCC 520

<sup>851</sup> Bhadar Ram v. State of Rajasthan, AIR 1999, HC 1174

<sup>852</sup> Vishwanath v. The State of Uttar Pradesh, AIR 1959, SCR 646

judgement for the litigant and held that the accused won't be given the privilege of private-defense as there was no other plan combined with abduction. Supreme Court dismissed the conflict and held that the word "abduction" in condition fifth must be perused in a plain significance as characterized under Section 362 of the IPC and in this way acquitted the accused.

#### CONCLUSION

The right of private defense was granted to the citizens of our Nation as a security to protect themselves from evil when necessity. Now it is the duty and liability of the Judiciary to decide over the matter to examine the right exercised in good or bad faith. There are several crucial points on the basis of which the Court will take into consideration while making its decision:

- Injuries caused by the accused
- Injuries caused to the accused
- Whether the State aid was available (whether the accused had time to contact the public authorities)
- Accession of threat to his safety

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