# IPC Section 105: Commencement and continuance of the right of private defence of property.

## Section 105 of the Indian Penal Code: Commencement and Continuance of the Right of Private Defence of Property  
  
Section 105 of the Indian Penal Code (IPC) defines the timeframe within which the right of private defence of property exists. It outlines when this right begins and when it ends. Similar to the right of private defence of the body (Section 102), the right to use force in defence of property is not perpetual. It is available only during the period when there is a reasonable apprehension of danger to the property. Section 105 clarifies this temporal aspect, ensuring that the use of force is legally justifiable only during the period of actual threat.  
  
\*\*The exact wording of Section 105 is:\*\*  
  
"The right of private defence of property commences when a reasonable apprehension of danger to the property commences.  
  
The right of private defence of property against theft continues till the offender has effected 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 defence of property against robbery or house-breaking by night 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 of instant hurt or of instant personal restraint continues.  
  
The right of private defence of property against mischief continues till the offender has effected his retreat with the property or till the assistance of the public authorities is obtained.  
  
The right of private defence of property against house-trespass or trespass continues as long as the offender continues in the house or on the property wrongfully."  
  
\*\*Breaking down the elements of Section 105:\*\*  
  
1. \*\*General commencement:\*\* The first paragraph sets the general principle: the right of private defence of property begins when there is a \*reasonable apprehension of danger\* to the property. This doesn't require the actual commission of an offence; the mere threat or attempt is sufficient.  
  
2. \*\*Continuance against theft:\*\* The right continues until the thief has successfully escaped with the property, assistance from public authorities is obtained, or the property is recovered.  
  
3. \*\*Continuance against robbery or house-breaking by night:\*\* The right continues as long as the offender poses a threat of death, hurt, or wrongful restraint, or as long as the fear of such immediate harm persists. The focus here is on the continuing threat to the person, even after the immediate threat to the property might have subsided.  
  
4. \*\*Continuance against mischief:\*\* The right continues until the offender retreats with the property or until assistance from public authorities is obtained. This is similar to the timeframe for theft, focusing on the ongoing deprivation of property.  
  
5. \*\*Continuance against house-trespass or trespass:\*\* The right continues as long as the offender remains unlawfully on the property. Once the trespasser leaves, the right of private defence ceases.  
  
  
\*\*Key considerations in applying Section 105:\*\*  
  
\* \*\*Reasonableness of apprehension:\*\* The apprehension of danger must be objectively reasonable, based on the circumstances. A subjective feeling of insecurity is not sufficient. The test is whether a reasonable person in the same situation would also apprehend danger to the property.  
  
\* \*\*Imminence of danger:\*\* The threat must be immediate or imminent. A vague fear of future harm does not justify the use of force.  
  
\* \*\*Cessation of danger:\*\* The right of private defence ends when the threat to the property ceases, as defined in the specific clauses for each offence. Continuing to use force after the threat has subsided is unlawful.  
  
\* \*\*Proportionality:\*\* While Section 105 defines the timeframe for the right, the force used must still be proportionate to the threat, as stipulated in Sections 103 and 104.  
  
\* \*\*Seeking assistance from public authorities:\*\* The section emphasizes the importance of resorting to law enforcement when possible. The right of private defence continues only until such assistance is obtained. This reinforces the principle that private defence is a last resort.  
  
\*\*Distinguishing Section 105 from Section 102:\*\*  
  
While both sections deal with the commencement and continuance of the right of private defence, they apply to different subjects: Section 102 focuses on the \*body\*, while Section 105 focuses on \*property\*. The timeframe for the right of private defence of property varies depending on the specific offence involved, reflecting the different types of threats posed by different property offences.  
  
  
\*\*Conclusion:\*\*  
  
Section 105 of the IPC provides crucial guidance on the temporal aspects of the right of private defence of property. It defines when this right begins and ends for different property offences, emphasizing the need for a reasonable and imminent apprehension of danger. The section also highlights the importance of seeking assistance from public authorities whenever possible. Understanding these principles is essential for exercising the right of private defence lawfully and avoiding the use of excessive or unjustified force in protecting one's property. It provides a clear framework for assessing the legality of actions taken in defence of property based on the specific offence and the timeline of the threat.