A RESEARCH PAPER ON THE STUDY ON CAUSING DEATH WHILE EXECUTING OF SELF DEFENCE.

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ABSRTACT:

*Because of some valuable reasons some time the execution of self defence or private defence may lead to death also in this situation whether the petitioner is liable for the offense or the respondent is liable for his act in that situation. This study conveys about the punishments are given higher on what basis to whom the offence committed. If there is a valid reason for the commit of offence the punishments would be depends upon the nature of the crime committed by the executer of self defence.*

INTRODUCTION:

There are circumstances when the state mechanism may not be accessible to the citizens to defend themselves in case of impending danger, and in those situations, a person is allowed to employ force to avert the impending threat. People have the right to protect themselves when state aid cannot be obtained and this right is called the right of private defence of body.This right is provided under Sections 96-106 of the Indian Penal Code (IPC).However, this right can only be exercised when the circumstances justify it and not otherwise. The right of private defence is subject to restrictions given under Section 99 of the IPC. Section 99 provides that the right to private defence cannot be availed when there is sufficient time to take recourse to the public authorities, and also reasonable apprehension is caused. It also provides that force used must not be excessive than is necessary to ward off the impending threat.In certain circumstances, the right of private defence also extends to causing death of the person who poses such a danger. This right is provided under Section 100 of the IPC.In order to avail this, there must be reasonable apprehension that death or grievous hurt might be caused, or in case of assault with intention of committing rape, abducting, wrongfully confining a person or when there is apprehension of throwing or attempting to throw acid.Although the law permits causing of death in certain circumstances of private defence, it ensures that the person does not exceed this right.This right can only be availed when the danger or the threat is imminent and the force applied must be proportionate to the danger.

However, as stated in Puran Singh v. State of Punjab,there is no set of scales that determines whether the accused has exceeded the right. It has to be determined from the facts and circumstances of each case.

OBJECTIVES:

1. To study about the rule rules confirmed for the execution of self defence in Indian penal code.

2. To know that when it is done without intention the execution of punishments would be high or not.

3. To study about the limits of execution of self defence person in The time incident took place.

LIMITATIONS:

1. Lack of secondary sources.

2. Restricted accessibility to primary source of data.

RESEARCH METHODOLOGY:

Type of research:

* Applied research
* Descriptive research

Research method:

Quantitative & Qualitative method

Data collection:

Secondary source of data that includes research papers, journals, books, and Articles.

WHEN RIGHT TO PRIVATE DEFENCE OF BODY EXTENDS TO DEATH OF A PERSON :

No state has so much resource to place a police officer with every individual. Thereby, the Indian Penal Code recognises an individuals right to protect body and property of himself and any other person against an impending threat when the state aid cannot be obtained and thus provides the right of Private Defence to protect them under section 96-106 of Indian Penal Code (IPC).This right is provided to ensure the safety of the citizens and a person is not responsible in law for his actions. However, this right can only be exercised when the circumstances justifies it and not otherwise. There has to be a reasonable apprehension of the threat although actual injury may or may not happen. Also, this right is subject to restrictions given under Section 99 of the IPC. In certain situations in cases of private defence of body, this right extends to causing death of the person who poses such a danger and this is recognized by section 100 of the IPC.The right of Private Defence of the body extends to causing of voluntary death of the assailant in seven circumstances that have been enumerated below. However, this right can only be exercised and must be guided by restrictions given under S.99 IPC. Also, the assault under the six circumstances is not simply an assault but an aggravated form of assault. It means assault coupled with any other wrongful act.

1. Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

2. Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.

3. An assault with the intention of committing rape

4. An assault with the intention of gratifying unnatural lust

5. An assault with the intention of kidnapping or abducting

6. An assault with the intention of wrongfully confining a 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. 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.

REASONABLE APPREHENSION OF DEATH OR GRIEVOUS HURT

The first and the second clause of S.100 lays down and stipulates that the right of Private Defence to the extent of causing death is available when the assault employed by the assailant reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. Such an apprehension must be real and not illusory and the danger must be imminent. And in that event, the accused can go to the extent of causing death of the assailant in the exercise of right of Private Defence even though no actual injury may have been inflicted. The burden is on the accused to prove that he had a right of private defence which extended to causing of death.

In the instant case, there was a dispute between the two brothers regarding the agricultural field. Gurcharan Singh, the deceased, was the brother of Bakhtawar Singh and uncle of Darshan Singh. According to the prosecution story, Gurcharan Singh and his son were irrigating their field when Gurcharan Singh and Darshan Singh came to their field and started abusing the complainant party. They had gun and gandasa with them. Bakhtawar Singh gave a gandasi blow to Gurcharan Singh and in order to save himself, he also caused injury on the head of Bakhtawar Singh. After that, Darshan Singh fired two shots at Gurcharan Singh as a result of which, he died. However, according to the accused version, it was Gurcharan Singh who first inflicted injury on Bakhtawar Singh and then, in order to protect himself, Darshan Singh fired shots at Gurcharan Singh. The accused pleaded Right of Private Defence. The trial Court considered the defence of the version as more probable and acquitted the accused and put forth two questions as to who was the aggressor and who had the motive to open the attack. Also, it considered as to where did the incident take place. It came to a conclusion that Gurcharan Singh was the aggressor and he also had the motive to attack. The place where incident happened belonged to the accused. On this basis, it justified its decisions. However, the High Court reversed the judgment without giving any cogent reasons. Consequently, the appeal was allowed and the decision of the High court set aside. It was held that a mere apprehension is enough to put the right of private defence into operation and actual commission is not required. And in this case Darshan Singh had reasonable apprehension that Gurcharan Singh might also injure him. Also, it was held that even though the accused may not plead the right of Private Defence, still it need to be given to him.

ASSAULT WITH INTENTION OF COMMITTING RAPE OR GRATIFYING UNNATURAL LUST

The third and the fourth clause of S.100 stipulate that the right of Private Defence to the extent of causing death is available in cases of assault with the intention of committing rape of gratifying unnatural lust. This right, being a preventive right must be utilized with utmost care and caution. Since, the burden is on the accused to prove that he has exercised his right of private defence, he need not prove it beyond reasonable doubt but only on preponderance of probability that creates doubt in the mind of the judge. Various cases are referred to analyse the clause in a better manner.

This right of Private Defence is available to everyone irrespective of the moral character of the person exercising her right as in the case of State of Orissa v. Nirupamma Panda, where the woman while preventing herself from the non-consensual sexual intercourse stabbed the person when the deceased tried to rape her and she was given the benefit of this right. It was contented that the character of the accused was in doubt and thereby she should not be given the right of private defence. It was held that she was entitled for an acquittal as she had every right to save her honor even by causing death and her alleged immoral character is of no consequences. The Court also observes that while providing the right of Private Defence under thirdly S.100, the personal character of the accused is immaterial.

ASSAULT WITH INTENTION OF KIDNAPPING OR ABDUCTING

The fifth clause of S.100 IPC provides that the right of private defence is available when the assault is made with the intention of kidnapping or abducting. Abduction is an offence against the human body and takes place when a person is compelled to go from any place. Whoever, by force compels, or by any deceitful means induces, any person to go from any place, is said toabduct that person. Relevant case laws are referred to in order to understand this particular clause.

Abduction given under fifthly of Section 100 IPC has to be taken in its plain meaning as enumerated in Vishwanath v. state of Uttar Pradesh. In this case, the accused‟s sister left her husband‟s house and was residing with her father and brother. One day, the deceased husband came to the house and tried to take her wife away with her to which she rebelled and caught hold of the door. In the meanwhile, in order to protect her sister from the deceased, the accused took out a knife and stabbed the deceased husband. As a consequence, he died. The accused pleaded that he must be given the benefit under fifth clause of S.100. However, the prosecution contended that the right of Private Defence under this clause is only available when there is some other intent coupled with abduction. The Allahabad High Court gave the judgment in favor of the defendant and held that the accused will not be given the right of private defence as no there was no other intent coupled with Abduction. Allowing the appeal and setting aside the judgment of the high court, the Supreme Court rejected the contention and held that the word „abduction‟ in clause fifth has to be read in a plain meaning as defined under S.362 of the IPC and therefore acquitted the accused. It held that this right is only available for Abduction simpliciter and only when compelled by force. In the second category of Abduction by deceitful means given under S.362, Private Defence is not available as there is no compulsion by force. The Supreme Court said that at the time the accused intervened, his sister was forcibly compelled to go from the place of the accused and thereby, there was an assault with the intention of abduction under S.100 clause fifthly. The accused therefore had the right of private defence that could even extend to causing the death of the assailant.

ASSAULT WITH INTENTION OF WRONGFUL CONFINEMENT

The sixthly clause of S.100 provides that the right of Private Defence extending to causing death is available when an assault is carried out with the intention of wrongfully confining a person. However, in order to avail this right there must be a proof that there was an assault and that was with the intention of wrongful confinement. Also, it has to be proved that the circumstances were such that caused reasonable apprehension in the mind of the accused that he will not be able to take recourse to the public authorities for his release. Even if the act satisfies all these prerequisites, it has to fall under the restrictions mentioned in S.99 of IPC.

As stated in Abdul Habib v. State, when a person is wrongfully arrested and taken to the police station for being handed over to the police cannot be said to have reasonable apprehension that he will not have recourse to the public authorities for his release. In this case, the appellant tried to steal away the bicycle of one Swaran Singh. Swaran Singh made an effort to stop him and caught hold of his bicycle and the appellant in order to save himself gave a stab blow in the right elbow with a knife and ran away. Swaran Singh raised a hue and cry and many people joined in the pursuit of the fleeing appellant. One Naresh Kumar is said to have heard the slogans that the appellant must be arrested and therefore ran towards him but the appellant, in order to evade his arrest, struck a blow by his knife and stabbed him. Naresh Kumar attempted to commit an assault but the intention was to apprehend the appellant and take him to the police station. The question before the court was whether this act of arresting amounted to wrongful restraint or wrongful confinement.

Wrongful Restraint means voluntarily obstructing any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed. Wrongful confinement means wrongfully restraining any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits. The court held that the intention was more of wrongful confinement to let him move only within the limits of the place of arrest. It was also held that that the circumstances were not such that any reasonable person would have apprehended that he would not be able to secure the help of the public authorities in obtaining his release. There was no right of Private Defence of person given in this case. Also, the court observed that in no case can a person inflict more harm than is necessary to ward off the danger. In this case, it cannot be said that the appellant had exceeded the right because he had no right of Private Defence in the first place.

SUGGESTION:

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

CONCLUSION:

Self preservation is a principle of Criminal law and therefore the state provides individuals the right to protect themselves. The right of Private Defence of body comes under the justifiable defence where the focus is more on the act of the individual. The benefit out of the conduct outweighs the evil of the offence. However, the Courts while providing the defence under S.100 have been very careful. The burden is on the accused to prove that he had exercised his right of private defence. He need not prove it beyond reasonable doubt but on the preponderance of probability. The circumstances that force the individuals to commit the offence are seen. State has given us some rights to protect ourselves and our property from impending danger when the state is not available to do the same. This right is also available to protect the body or property of any other person. It extends to causing of death of the assailant in certain circumstances. However, there has to be reasonable apprehension of real or imminent threat to avail this right.

Section 100 is a very crucial provision under the Indian Penal Code. It gives the right to kill an individual. However, it also puts down several thresholds that need to be followed to avail this right. The force used must not only be necessary for the purpose of avoiding the attack but also proportionate to the harm threatened. However, there can be no set test to measure the appropriateness of the force used. It is subjectively seen on the basis of facts and circumstances of each case. There must be real and imminent threat and not illusory. Regarding the seventhly clause, though it is added to provide a specific heading to offences relating to acid attacks, still after analyzing the provisions, it seems to be a bit redundant in the sense that seventhly clause is already covered under the secondly clause under the context of grievous hurt. As no explanation has been given on the addition of this seventhly clause, there is a need for the legislature to reconsider its addition under S.100 and provide sufficient and reasonable reasons for such redundancy.

Thus, this right of Private defence is a wonderful weapon in the hands of the people that permits them to protect themselves and others against any threat under a legal justification. But, a cautious attitude must be there so that no person misuses this right for his own purpose. It is only to be seen as a self protecting right and not a right to retaliate.