The right to defend oneself from any threat to life and property is recognized by the law and is known as “private defence”. The foremost responsibility to defend oneself is one’s own and it may not be prudent to rely on the law for defence as it kicks in only after a crime has been committed.

The right to defence does not stop with the body but extends to property as well - both movable and immovable. It is, however, is defined very narrowly and a large number of caveats have been added to ensure that it does not get misused.

**Q. How is “private defence” defined?**

The Indian Penal Code recognizes a person’s right to defend:

- his own body or the body of another person against an offence that affects the human body

- property; both movable and immovable. A person can defend either his or another’s property against theft, robbery, mischief or criminal trespass or even an attempt to commit any of the above offences.

The IPC says: “Nothing is an offence which is done in the exercise of the right of private defence.”

These rights are not unrestricted and must be exercised within the framework of laws laid down from section 96 to 106 of the IPC.

**Q. When is “private defence” of the body not available?**

Private defence cannot be claimed against an act that does not cause any reasonable apprehension of death or of grievous hurt when committed by:

- A public servant who is on duty and acts in “good faith”

- A person who is acting under the orders of a public servant who is carrying out the duties of his office and acting in “good faith”

The right to private defence is not available even if the actions of the public servants are not “strictly” justifiable under the law.

However, a person has the right to demand information from the public servant the authority under which such orders are being executed.

- The right to private defence does not extend to cases where there is time for recourse to protection of public authorities.

- The right is also valid only as long as the harm inflicted on the assailant is not more than necessary for the purpose of defence.

**Q. Under what conditions is it justified to kill a person in private defence of the body?**

The right to private defence of the body is available to an individual even if it causes death of the assailant. However, the courts will recognize the individual’s right to private defence leading to the assailant’s death only in the following cases:

- There was reason to believe that the assault would lead to death

- There was reason to believe that the assault would cause grievous injury

- An assault with the intention to commit rape

- An assault with the intention of gratifying unnatural lust

- An assault with the intention of kidnapping or abducting

- An assault with the intention of wrongfully confining a person

In all cases that do not fit the above description, the right to kill the assailant is not available. However, a person may cause any harm other than death to the assailant.

**Q. In all other cases, how much force can be used to defend oneself?**

The force used to defend oneself cannot be greater than that used to cause harm in the first place.

**Q. Can one retaliate to an act of private defence and claim private defence?**

No. If A attacks B and B acts in self-defence, A cannot attack B again and claim private defence.

**Q. When does the right to private defence of the body begin?**

A person has the right to defend himself/herself as soon as there is reason to believe that an offence causing that person bodily harm has been committed or about to be committed. The person reserves the right to defend himself/herself as long as such danger continues.

**Q. Does the right of private defence extend against persons of unsound mind etc?**

Yes. The right of private defence extends to acts committed by:

- persons of unsound mind

- immature youth

- intoxicated persons

- because of misconception on the part of that person

As long as there is reason to believe that such acts would cause death or grievous hurt, the right to private defence is available.

**Q. Is my right to defend myself valid if the exercise of the right harms innocents?**

Yes. A person, if defending himself against a threat that may cause death, puts innocents at risk, then such risk is justified. An illustration from the IPC:

“A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.”

The following sections deal with the right to private defence of property.

**Q. Can an assailant be killed in defending property? Does the right to private defence extend there?**

Yes. The right to private defence of property may be extended if an assailant commits or attempts to commit any of the following offences:

- Robbery

- House breaking by night

- Mischief by fire committed on any human dwelling

- Theft, mischief or house-trespass under circumstances that can cause death or grievous hurt.

In all other circumstances, harm other than death can be caused to the assailant.

**Q. When does the right to private defence of property begin?**

A person becomes invested with the right to defend one’s own property when a reasonable apprehension of danger to the property commences and exist until the offender has retreated or assistance of law enforcement authorities has been obtained.

--Ends