Research Paper LAW

Right To Private Defence in Indian Penal Code- Statutory and Judicial Attitude

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KEYWORDS :

Introduction:-
In the state of nature it was the survival of the fittest, the principle of self preservation guiding much of human behavior. A man could kill another in self defence, this being an inherent natural right. This was almost an unrestricted right that the 'Law of Nature' gave to each individual. Today, the liberal democratic state still recognises this inalienable right of an individual to protect himself and his property himself and his property in the face of danger. This departs from the monopoly over violence which the state has retained in the sense that under every circumstance, it is the state alone that is justified in using force, or punishing the wrongdoer.

The law relating to self defence is thus a mere extension of the principle of necessity, the test or a reasonable exercise of self defence being a clear and present danger, the imminence of harm to either person or property, and the consequent necessity to protect the self or one's property. This is in consonance with a basic aim of criminal law which is to safeguard conduct that is without fault from condemnation as criminal. The right of private defence is one which has come down from the ancient law givers. Manu enjoined to resort to arms in self defence and the root of this concept may be found even in Anglo-American jurisprudence. the right of private defence bases itself on the principle that under certain circumstances the conduct of a person is justified although otherwise criminal, and homicide committed in such nature has been termed as "excusable homicide" the slayer having performed a task which the state would have normally carried out. Thus what the law requires the law permits. This is the reason why the right has been carefully restricted and also sacredly protected.

Statutory & Judicial Dimension:-
Sections 96-106 lay down the law relating to private defence. Self defence within well defined limitations is the natural and inalienable right of every human being. . it is the primary law of nature and is founded on necessity and is not superseded by the law of society although curtailed thereby. The right of private defence is a valuable right and it is basically preventive in nature and not punitive. Sections 96-104 lay down the general principles governing the right of private defence. Section 96, IPC , lays down threat nothing is an offence which is done in the exercise of the right of private defence and s. 97 proceeds to divide the right of private defence into two parts- the first part relating to private defence of his own body , and the body of any other person. against any offence affecting him; and the second part deals with the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass. We are concerned with the private defence of property. Sections 103, IPC states that the right to private defence can be exercised only as against certain criminal acts which are enumerated in that section. The right of private defence of property would extend to causing death only in the case of robbery, house-breaking by night; mischief by fire committed in any building, tent or vessel;, which building tent or vessel is used as a human dwelling or as place for the custody of property.

Right of self defense:
Availability or Non-availability of Private Defense - Factors to be kept in view:-

One has also to remember the following limitations on the right of private defense of person or property:

that if there is sufficient time for recourse to public authorities, the right is not available:

that more harm than that is necessary should not be caused;

That there must be a reasonable apprehension of death or grievous hurt or hurt to the person or damage to the property concerned

Who is aggressor:-
To determine who is the aggressor, nature and number of injuries caused to members of each of the two fighting parties is indicative as to which party was aggressor. There is no inflexible rule of law that the party which sustained smaller number of injuries is the aggressor and that which suffers a larger number of injuries is the victim of the aggression. However more than often it is found that the number of injuries is very significant circumstance for determining as to who is the aggressor. The rationale on which this principle is founded is that a party which goes to launch he assault would go well prepared and well armed in defense and would cause more injuries than it receives from the other side.

Right of private defense to aggressor:-
The right is available against an offence and so an aggressor cannot claim the right of self-defense. The right of private defense cannot be used as a shield to justify an act of aggression. If a person goes to kill another with a gun, the intended victim is entitled to exercise the right of private defense, and if he does so, there is no right of private defense in the former to kill the latter. No one is allowed to devise a mechanism whereby an attack may be provoked as pretence for killing. It is thus clear that when the accused is the aggressor he cannot any right of private defense. Reiterating the same view Supreme Court held that the right of private defense is a defensive right. It is neither a right of aggression, nor of reprisal. So, right of self-defense was not allowed to one who had fired the gun to the deceased who carried no arm at the relevant time.

CONCLUSION:-
The right to private defence is basic to any society. It is now well established as a justification for otherwise criminal conduct. Even the UN has recognized its importance as a universal human right. It is, however, as sensitive an area as it is important, the right of self defender has not been treated with due precision. In the case of self defence pardons must not become automatic because it will lead to an absurd interpretation of law and will abet and encourage homicide. The act done in self defence should be shown to be defensive and not offensive and there must be no flavors of revenge or retaliation in it, the act being of a purely instinctive nature.

The statutory provisions seem to be most suited to the Indian circumstances and are clearly drafted. Nonetheless, this statutory right is given life by the interpretation it receives. It is only through a comprehensive understanding of the jurisprudence behind the general exceptions as justifications and the concept of self defence in particular that a dynamic and meaningful interpretation will arise. Prof. Glanville Williams suggests, the force used in self defence should be termed as "protective force". Such force may6 be used to ward off unlawful detention and to escape from such detention.

With a changing society there always arises a need to adapt and modify the law to the circumstances. One of the innovative new approaches is of Richard Mahoney who believes that the important stets of self defence merits more seriousness. He believes that the defence is so basic to the element of any crime that the concept of presumption of innocence must prevail and the burden of proof should be shifted to the prosecution who would be required to prove beyond reasonable doubt that the accused committed murder that was not undertaken in self defence. This approach is able to strengthen the respect and sanctity that criminal law gives to the concept of self-defence.

The Model Penal code of USA suggests a new approach. If an accused acts under a mistaken belief that the action was justified in self-defense or defence of others but was negligent or reckless in forming this conclusion, the accused is liable for any applicable crimes for which negligence and recklessness is sufficient for liability. This introduces a new form of culpability which could well be recognized in India to constrain the reckless, yet not malicious exercise of private derfence. One other issue that needs further discussion with regard to of private defence is the 'Black or White but no shades of Grey' approach taken in Palmer v. The Queen. Therein, it was held that in any govern case an accused may either succeed or fail on the defence, there being no middle ground type of verdict. This is a most interesting approach which has not really got sufficient recognition. This is propounded by those who believe that the concept of excessive self defence should be done away with. The defence being in the; form of a right, it may either be exercised successfully or not.

Parliament has always been receptive to change. It has even recognized the liberal scope of self defence, wherein the right covers defence of all persons irrespective of their relationship. It includes anyone under a person's immediate protection it has restricted the right where necessary and expanded it where possible. as long as the legislator is able to judge the pulse and needs of the society he seeks to protect, and remain dynamic in his approach , the law will always be in touch with the people and lives will be in sage hands. A fair trial could be given to the Expanded Objective Test, in place of the Objective or "reasonable man" test, as it seems more just and keeps well within the framework of the jurisprudence behind the general defences.

The respect for human life is an index of evolution of society and a well formulated framework of law governing this life and giving it its sanctity say much for its forwardness. Thus, it is most important that a most basic right such as that of self defense is not neglected and that it is given its exalted and inalienable status that it has enjoyed down the ages.

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