

Doctrine of self-preservation

The doctrine of self-preservation under Indian criminal law, specifically in the context of self-defence, is a fundamental principle that allows individuals to protect themselves from harm. Rooted in Section 96 to 106 of the Indian Penal Code (IPC), 1860, this doctrine serves as a legal justification for actions taken in response to threats or actual attacks, underpinning the right to defend one's self, others, and property.

Understanding Self-Defense under IPC

Section 96 of the IPC states, "Nothing is an offence which is done in the exercise of the right of private defence." This provision establishes that actions taken in self-defence are not considered offences if they meet certain criteria outlined in subsequent sections. Section 97 further expands this right, granting individuals the liberty to defend their own bodies and the bodies of others, as well as property—whether movable or immovable—against certain offences such as theft, robbery, mischief, or criminal trespass.

The right to private defence is not absolute. Sections 99 and 100 outline the limitations and the extent to which this right can be exercised. The use of force in self-defence is permissible only when the threat is immediate and unavoidable, and the force used is proportional to the threat faced. Critically, the IPC forbids inflicting more harm than necessary for protection, and it does not allow for the right of private defence against acts that do not reasonably cause the apprehension of death or grievous hurt.

Section 100 specifies situations where the use of lethal force is justified, which includes instances of assault with the risk of rape, kidnapping, acid attacks, or robbery—all scenarios where the individual perceives an imminent threat to life or severe bodily harm.

Judicial Interpretations

The courts in India have played a crucial role in interpreting and defining the contours of the doctrine of self-preservation. Landmark

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Scope and Limitations

judgments have emphasised the need for reasonableness and immediacy in the use of force for self-defence. The judiciary has consistently held that the burden of proof lies

on the person asserting the right of private defence to show that their actions were necessary and proportionate to the threat faced.

The Tale of Dudley & Stephens

Regina v. Dudley & Stephens involved a harrowing scenario wherein two sailors, stranded at sea and driven by starvation, made the fateful decision to kill and eat a younger crew member to survive. Upon their rescue and subsequent trial, they argued the defence of necessity—that killing the boy was essential for their survival. The court, however, convicted them, ruling that necessity does not justify taking another's life.

Note: The doctrine of self-preservation in Indian law primarily protects actions taken against threats to body and property. In contrast, the defence of necessity encompasses a broader spectrum of scenarios where the actions, although illegal, are taken to avoid a greater evil. In both defences, the key elements are immediacy and proportionality. However, unlike the structured limitations in self-defence (as outlined in Sections 96 to 106 of the IPC), the necessity might involve more subjective judgement about 'lesser harm.'

