Lawful Acts in the Context of Exercising of Legal Rights: A Critical Analysis

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**Introduction**

Torts as we can all define as a civil wrong or an injury that is independent of an implied contract. Tort is a French word that in English means wrong \(^1\). Its derivation is from the Latin word “tortum” \(^2\). It has been defined in several ways, by various jurists.

Sir Fredrick Pollock said, 'The law of torts in civil wrongs is a collective name for the rules governing many species of liability which, although their subject-matter is wide and varied, have certain broad features in common, are enforced by the same kind of legal process and are subject to similar exceptions.' \(^3\) It gained importance after the advent of British rule in India. Before this, it did not find much rise. Now as the topic suggests, for this research work, can be simply deduced to the general exceptions in torts or as we rightly call the justifications in tort. The defences distinctive are eight.

They are, namely, *Volenti non fit injuria*, popularly known as the defence of consent, Plaintiff, the wrong doer, Inevitable accidents, *Vis Major* or commonly known as Act of God, Private Defence, Mistake, Necessity and Statutory Authority. \(^4\) Therefore, at the point when the offended party brings an activity against the respondent for a specific misdeed, giving the existence of all basics of that misdeed, the litigant would be obligated for the equivalent.

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\(^1\) Dr. RK Bhagia, Law of Torts including compensation under the motor vehicle act and consumer protection laws, 3 Allahabad law agency, 25\(^{th}\) edition, 2020

\(^2\) Dr. RK Bhagia, Law of Torts including compensation under the motor vehicle act and consumer protection laws, 3 Allahabad law agency, 25\(^{th}\) edition, 2020

\(^3\) Pollock, Law of Torts, 11th Edn., p. 15

\(^4\) General Defences under tort, Law of torts, Manupatra
The litigant may, in any case, even in such a case keep away from his risk by taking a supplication of a portion of the referenced protections. In this paper the researcher is willing to identify why general defences in torts are needed and to critically analyse the reasonableness and amount of force used in Private defence.

**Research Questions**

1. Why are general defences in torts required?
2. Why is there a necessity to identify the reasonableness of the force in the private defence?
3. What can be devised to measure and determine the reasonableness of the force used under Private defence?
4. How will the new method useful in the Indian Judicial System?

**Literature Review**

1. ‘Law of torts including consumer protection, Universal Law Series, Manupatra’. This book suggested about the reasonableness of the force used to be directly depended on circumstances. It also suggested that the force may not be considered reasonable if it is not equal to the threat received or there was no immediate necessity to use the force.
2. ‘Law of Torts including compensation under the motor vehicle act and consumer protection laws’, Dr. RK Bhagia. This book also suggested that the defence used should be only used when a necessity arise and there should be an imminent threat to the person’s life or property.
3. ‘Continuities and Change: The Law Commission and Sexual Violence’. This article mentioned that with increasing cases of rape in the country requires some form of reforms and defence to the women to safeguard themselves. The committee on this referred to extend the right to private defence to causing death on the threat or apprehension on the grounds of molestation and rape.

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5 Manupatra, [http://elibrary.sish.edu.in:2057/pers/Personalized.aspx](http://elibrary.sish.edu.in:2057/pers/Personalized.aspx)  
6 Dr. RK Bhagia, Law of Torts including compensation under the motor vehicle act and consumer protection laws, 46 Allahabad law agency, 25th edition, 2020  
7 Geetanjali Gangoli and Martin Rew, Continuities and Change: The Law Commission and Sexual Violence, 6 (Monsoon) JILS (2014-15) 108
Also, further looking into the safety of the female accused or suspects, she should not be arrested after sunset and before sunrise.

4. ‘Two aspects of Private Defence by Lee Kiat Seng\(^8\)’. This article highlights the limitations placed on private defence and the reasons why private defence is required. It clearly stated that the right is a justificatory defence only when the force applied is justified. Also, it should be made sure that it is not used unlawfully as a result of aggression or for retributive and punitive reasons.

5. ‘Right to Private Defence: A Preventive Right or A Punitive Right\(^9\)’. In this research paper it clearly identified that the defence under private is simply an excuse for a bigger crime committed against a person or a property in any case. Also, it may be used to hide a culpable homicide on the face of private defence against innocents or mild aggressors. defence is allowed only when it is immediately necessary-against threatened violence\(^10\). A person who acts under a mistaken belief in the need for defence is protected, except that the mistake must be reasonable\(^11\).

6. ‘A STUDY ON PRIVATE DEFENCE IN INDIA: A LEGAL ANALYSIS\(^12\)’. In this research paper the researcher clearly shone the light on the fact that the private defence cannot be exercise when there is time to seek help and protection of the police authorities. The right, however, does not depend on the crime of the person held out against. Only this defence has to be exercised when the apprehension is real and reasonable\(^13\), also it does not make any difference if the right used was mistaken. This right has been given by the state to every citizen of the country to take law into his own hand for their safety\(^14\).

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\(^8\) Lee Kiat Seng, Two aspects of Private Defence, (1996) 8 SAcLJ 343

\(^9\) Alka Dahiya, Right to Private Defence: A Preventive Right or A Punitive Right, Volume-4, Issue-11, Nov-2015 • ISSN No 2277 - 8160

\(^10\) Alka Dahiya, Right to Private Defence: A Preventive Right or A Punitive Right, Volume-4, Issue-11, Nov-2015 • ISSN No 2277 - 8160

\(^11\) Alka Dahiya, Right to Private Defence: A Preventive Right or A Punitive Right, Volume-4, Issue-11, Nov-2015 • ISSN No 2277 - 8160

\(^12\) A. Gowtham, K. Roja, A STUDY ON PRIVATE DEFENCE IN INDIA: A LEGAL ANALYSIS, International Journal of Pure and Applied Mathematics Volume 120 No. 5 2018, 717-724


Relevant Case Laws:

The general defences under torts law provides the defence of an action done by the defendant in any case under tort that arises. This particular defence can be exercised for saving oneself or any person or property. But the reasonableness of the force used has to be equal to the threat possessed. Like in the case of *Bird v. Halbrook*\(^{15}\), Here, the defendant had kept a spring firearm in his nursery, since flowers were regularly stolen from his nursery. The plaintiff party, a kid whose fowl had wandered away, hopped into defendant's nursery to look through his missing fowl. He had no information about the wiring and he got harmed. The court saw here that the defendant was obligated since he had surpassed the privilege of private defence to his property, as there was hardly any intention and knowledge.

There are more cases regarding, the exceeding use of force in private defence to safeguard property. For example, in the case of *Ramanuja Mudali v. M. Gangan*\(^{16}\), In this case, the plaintiff was moving towards his own house at night and when he was passing through defendant's land he got electrocuted by a live wire, put up by the defendant to stop the trespasser\(^{17}\). Here, the defendant was held liable since he had exceeded the right of private defence to his property.\(^{18}\)

Apart, from the above-mentioned instances there has also been cases that denote that the use of reasonable force is justified on many grounds no wonder if there is authority over the property, but the case differs if it’s joint as in the cases of membership of a club. In the case of *Holmes v. Bagge*\(^{19}\), the plaintiff as well as the defendant, both were the members of a Cricket Club Committee. The defendant was a captain during a match and the plaintiff was a spectator. The

\(^{15}\) Bird v. Halbrook, (1828) 4 Bing 628.


\(^{17}\) Manupatra [http://elibrary.sls.in:2057/pers/Personalized.aspx](http://elibrary.sls.in:2057/pers/Personalized.aspx)

\(^{18}\) Manupatra [http://elibrary.sls.in:2057/pers/Personalized.aspx](http://elibrary.sls.in:2057/pers/Personalized.aspx)

\(^{19}\) Holmes v. Bagge, (1853) 1 E&B 782.
defendant asked the plaintiff to substitute one of the players and the latter agreed upon. But the defendant annoyed him by saying to put off his coat. The plaintiff neither removed the garment nor left the field. The defendant then directed to push him out forcibly from the field. The plaintiff filed a suit against the defendant for damages for assault. The defendant pleaded that since he was the captain of the match in the ground, he was currently in the possession of the ground but this plea was denied as the ground was the property of the committee. Thus, stating the defendant liable.

The court looks into the matter and analyse that whether the defendant party has taken all kinds of caution to the utmost to prevent from a final injury. If the court finds that the defendant has taken all kinds of caution and justified actions then the court finds the defendant not liable.

For instance, in the case of Turner v. Jagmohan Singh, the defendant was going somewhere in his carriage, driven by two horses, on road. A vicious dog started following the carriage and repeatedly attacked the horses and came into defendant's compound. The defendant tried to prevent the dog from harming further the horses but it was all in vain. Finally, when no options were left the defendant took out a spear and attacked the dog and the dog died due to very serious injury. It followed by a suit being filed by the plaintiff in this case the owner of the dog or any other concerned, related person (not mentioned clearly) but the court held the actions of the defendant was justified in all ways since he tried all action to his level best to scare off the dog but in spite of his attempts, there was no result and then finally did the final blow.

Further in the defence to property, the case of Creswell v. Sirl, where the plaintiff's dog was shot by the defendant because it was harming its pigs and sheep, The act of the defendant was held lawful by the court because it held it to be justified under the purview of defence to property.

In the case of Mahavir Choudhury vs State of Bihar, the court clearly stated that the right to private defence can be extended to death only when there is a solid apprehension of death and grievous hurt, unless these two the force used to cause death cannot be justified.

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20 Manupatra http://elibrary.slsh.edu.in:2057/pers/Personalized.aspx
22 Manupatra http://elibrary.slsh.edu.in:2057/pers/Personalized.aspx
23 Creswell v. Sirl (1948) 1 K.B. 241
24 Mahavir Choudhury vs State of Bihar (1996) 5 Supreme Court Cases 107
There are further cases where the fact about the reasonability of force is often misjudged. It is very important to understand whether the force that is used is equivalent to the threat possessed or not. For this instance, the case of **Munney Khan vs State of Madhya Pradesh**\(^{25}\), there was a fight between the plaintiff and one of his relative, who was the brother of the defendant. The plaintiff pushed his relative on the ground and sat on his chest. The defendant tried to rescue his brother first with some blows to the plaintiff but on failing, he took out a knife and stabbed the plaintiff on his back. The court held the defendant liable.

Another instance on the exceeding force in private defence for property is showcased in the case of **Kashi Ram and others vs. State of Rajasthan**\(^{26}\) the plaintiff party went to cultivate on the land of the defendant party, and on hearing this the defendant party came with sticks and attacked the plaintiff party who were completely unarmed. This led to the death of one the members of the plaintiff party. The court held it clear that there has been misuse and exceeding force in private defence as if the defendant party wanted then clearly could have requested the plaintiff party to leave, if that was declined then seek the help of police authorities but that was also not done.

In the case of **Raj Singh vs State of Haryana**\(^{27}\) the court clearly held that private defence is to be extended to death only if the attacker is about to cause death or grievous hurt but if there is just a mere assault or an attack for theft then it does not extend to causing death, the person threatened may run away or seek the help of respective authorities. The emphasis shall be clearly on running away if there is chance. Also, if the resources such as devices of fast communication then, the threatened party must approach the police authorities.

In the case of **Ranveer Singh vs. State of Madhya Pradesh**\(^{28}\), A had an altercation with B. When B went to answer the nature’s call, he was surrounded by A’s brother, who thrashed B to the ground. On seeing this, some relative of B bought an authorised gun and shot, which was directed

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\(^{25}\) Munney Khan vs State of Madhya Pradesh (1970) 2 Supreme Court Cases 480

\(^{26}\) Kashi Ram and others vs. State of Rajasthan (2008) 3 Supreme Court Cases 55

\(^{27}\) Raj Singh vs State of Haryana (2015) 6 Supreme Court Cases 268

\(^{28}\) Ranveer Singh vs. State of Madhya Pradesh (2009) 3 Supreme Court Cases 384
towards who ultimately succumbed to her injury. The court rightly held that there was no threat from A, also, she was unarmed and harmless.

The force was exceeded and there was no actual need to shoot A as she didn’t cause the apprehension of threat neither was, she in the commotion. Shooting her never constituted private defence and the court held the defendant party liable.

In all the above-mentioned cases, the force that was used by the parties were mostly unjustified. This defence, if thought from a different angle, clearly shows signs of being misused. The right to analyse the force lies sheerly within the hands of the court. The chances are highly likely to be such that cases such as grievous crimes like murder, the offenders plead for private defence. The court does rightly interpret the force and the reasonableness of the need for such a defence. As far as the interpretation is concerned, a method should be devised to calculate the reasonableness of the force. If thought from a mathematical perspective, it does not seem to be possible as of now, as if it taken into account there must be device that will do the said thing. But such device won’t be present in the crime scene every time. Therefore, this seems to be not possible in any case.

**Conclusions and Suggestions**

The general defences are required in torts as there are many instances where the defendant can be made liable without any actual mistake. They are required to escape liability. The conclusion that the researcher can draw from this research is that, there are many instances of the exceeding the reasonableness of the force used in the defence for life or property. The court every time interpret and it has been under its jurisdiction since the beginning of the justice system. The right, in certain conditions even stretches out to causing passing of the individual who possess such a danger. In any case, particularly right is dependent upon certain limitations and not accessible in all conditions. It is possibly permitted when the risk to life or property is quick and the defendant isn’t attacking. The privilege of private defence isn't accessible against government officials acting in exercise of their legitimate forces or under duty of state. An individual is permitted to utilize just reasonable power; a power that is proportionate to the approaching threat.
This proportion is decided by the court, which doesn’t fix it to be same in all cases. The possible suggestion to this system can be that if the force is pre-decided for every tort or crime as in place. When a person falls in danger, usually there is his natural reflex actions and instincts to safeguard himself. Thus, the fixation of the force should be done on the basis of a statistics as to how a reasonable man reacts and protects himself from the tort or crime that he feels to be threatened about.

Accordingly, if this statistic is formulated as per the senses of a reasonable man and the majority group that reacts to the particular tort or crime, shall give a fairer result. If the reasonableness of the force is fixed then the trial could be even fairer and also our justice system will be even quicker in giving decision. The justice system of India is seemed to be unrushed and the cases take time to be solved. The decision done by the court on the reasonableness of force is bound to take time. Various situations are compared and to deliver a fair judgement the court decides to interpret it properly, thus costing a lot of time. If the method given above is formulated then, the court will be quick to deliver its judgement without any hindrance and will be absolutely fair and just. This collection of the statistics will be taking time undoubtedly but it will be fruitful for all future cases that arises under private defence to person or property. The statistics, would be made subjected to change with the passing time and the changing society that is with the change of the behavioural patterns of the mankind and the change in lifestyles.