



**RAMA
UNIVERSITY**

www.ramauniversity.ac.in

**FACULTY OF JURIDICAL
SCIENCES**

NAME OF THE FACULTY- Ms NEHA KHANNA

SUBJECT NAME- LAW OF CRIMES

COURSE NAME- LLB, Ist Sem

SUBJECT CODE-LLB-103

LECTURE-23

Section 103: When the right of private defence of property extends to causing death.

1. Robbery;
 2. House-breaking by night;
 3. Mischief by fire committed on any building, tent or vessel, building, tent or vessel used as a human dwelling, or a place for the custody of property;
 4. Theft, mischief, or house-trespass, under such circumstances, as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.
- Example: C Attempts to stab D maliciously while committing burglary in D's house. There is a reasonable apprehension in the mind of D that C will hurt him grievously, so in order to save himself and property, C throttled D with a knife in his chest, causing Death. C will not be liable.

Case law for Section 103

In *Mohinder Pal Jolly v. State*, the deceased worker and some of his colleagues were shouting slogans for demands outside the factory. Some brickbats were also thrown by them which damaged the property of the owner who fired two shots from outside his office room, one of which killed the deceased worker. The court held that it was a case of mischief and the accused will not get the defence of this section.

Section 104: When such right extends to causing harm other than death.

If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

- Example: If A has committed criminal trespass in order to annoy B or hurt him, then B will have the right to harm A in proportional manner, not causing death of the person.

Case law for Section 104

In *V.C Cheriyan v. State*, the three deceased along with other persons had illegally laid a road through private property of the church. A criminal case was pending against them. The three accused belonging to church put up barricades across this road. The deceased was stabbed by accused and Kerala HC held that private defence does not extend to causing the death of a person in this case.

Section 105: Commencement and continuance of the right of private defence of property.

The right of private defence of the property commences when:

- A reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues until the offender has effected his retreat with the property
- Or, either the assistance of the public authorities is obtained,
- Or, the property has been recovered.
- The right of private defence of property against robbery continues as long as the,
- Offender causes or attempts to cause to any person death or hurt
- Or, wrongful restraint
- As long as the fear of instant death or
- Instant hurt or
- Instant personal restraint continues.
- The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

- Example: Suppose a thief into the house of an individual, and attempts to hurt him instantly with a knife, then that individual has the right to act in private defence and harm that thief to save life and property.

Case law for Section 105

In *Nga Pu Ke v. Emp*, paddy sheaves belonging to the accused were removed illegally by a person. Accused attacked the cartmen and that cartmen jumped off the carts and ran away leaving sheaves. The accused still chased him and attacked him leading to death. The court held him as guilty of offence.

Section 106: Right of private defence against deadly assault when there is a risk of harm to innocent person.

If in the exercise of private defence against an assault, a person causes apprehension of death, in which defender has no choice but harming an innocent person, his right will extend to that running of risk. 4

- Example: C is attacked by a mob who attempts to murder him. He cannot exercise his right to private defence without firing on the mob. In order to save himself, he is compelled to hurt innocent children while firing so C committed no offence as he exercised his right.

Conclusion

So these were the general exceptions which are available to the accused to escape liability or save himself from the offence committed. It may extend to even causing the death of a person or harm an innocent person too depending upon the circumstances. The accused should also have the right to be heard, keeping in view the democratic character of our nation. That's why these exceptions are provided so as to represent oneself in the court of law.

MCQs-

i. Section 83 of IPC lays down:

- A. a presumption of fact
- B. an inconclusive or rebuttable presumption of law
- C. conclusive or irrebuttable presumption of law
- D. irrebuttable presumption of fact.

ii. Section 82 of IPC lays down the rule of:

- A. wholly incapax
- B. partially incapax
- C. both (a) & (b)
- D. either (a) or (b).

iii. Under section 82 & section 83 of IPC an offence is punishable if it is done by a child:

- A. of below seven years of age
- B. of above seven years of age but below twelve years if he has not attained sufficient maturity and understanding
- C. of above seven years of age but below twelve years having attained sufficient maturity and understanding
- D. all the above.

iv. Which of the following pair is not correctly matched:

- A. Mens Rea – R. v. Prince
- B. Necessity – D.P.P. v. Beard
- C. Insanity – Mc'Naughten case
- D. Intoxication – Basudeo v. State of Pepsu.

v. The maxim 'actus non facit rea nisi mens sit rea' means:

- A. crime has to be coupled with guilty mind

- B. there can be no crime without a guilty mind
- C. crime is the result of guilty mind
- D. criminal mind leads to crime.