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Right of Self Defense in Pakistan

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ABSTRACT

Pakistan has a common law system. According to this type of administration of justice, accused is presumed to be innocent till proved guilty. In such circumstances, it is burden upon prosecution to prove its case against the accused. But in certain situations, the burden of proving guilt of the accused shift towards accused and the law makes the accused responsible to prove his innocence.

This type of situation arises when accused after commission of offence taken a ground as a defense for the unlawful act done. It is called plea of defense. There are various grounds available to the accused in Pakistani Statutory law i.e Pakistan Penal Code, 1860.

The Pakistani Apex Courts while recognizing the plea of Self Defense provided certain guide lines for the trial courts so as to avoid any mistake of judgments since it is the core principle of administration of justice that accused should not be convicted if there is a minute doubt on part of the prosecution. In this research paper we will come across the various well celebrated judgments of the superior courts so as to reach on a final conclusion that how accused can take benefit of the plea of self-defense and in what circumstances the option of self-defense cannot be look into consideration.

KEY WORDS: Pakistan Penal Code, Burden of Proof, Prosecution, Defense, Criminal Law, Onus of Proof, Statute, Plea, Supreme Court of Pakistan, High Court, Trial Court, complainant, Evidence Act

INTRODUCTION

Right of self defense would arise where danger to person or property is imminent and would remain available as long as such danger exist[1].Right of self-defense can be used as a shield to ward off an unwarranted attack to person or property but it cannot be used as a vehicle for provoking the attack, meaning thereby that it is to be exercised as preventive measure and not for launching attack[1].When specific plea of self-defense is raised, the onus to prove the same lay upon the party claiming the same. (Please see Citation 2002 SCMR Page-1425).

Such right would extend only when a clear danger to person or property become imminent, and the moment he exceeds such right then that act become the act of aggression[1].According to codified law a person right under this heading continues unless the threat or apprehension of being in danger continuous[2].

STATUTORY LAWS

PAKISTAN PENAL CODE, 1860 [2]

"If a person while defending his person or property commits a murder or grievous hurt, the law shall not hold him liable or guilty unless it is proved that the person while defending himself used excessive power. It means that while defending one own self or property, force used may appeal to a prudent mind. The defence of property arises in cases of theft, extortion, dacoity, house breaking etc"

EXCEPTIONS TO THE RIGHT OF PRIVATE DEFENCE (STATUTORY PROVISIONS)

(A) ACTS AGAINST WHICH THERE IS NO RIGHT OF PRIVATE DEFENCE[2]

"It is provided by the law that when a civil servant under command of authority or in good faith did an act where that act itself is not illegal then in such like circumstances, any person against whom the public servant use force shall not be allowed to react and use force against the Authority under the umbrella of self defence provided that if the public servant inflict harm necessary in the circumstances."

(B)WHEN RIGHT OF PRIVATE DEFENCE OF BODY EXTEND TO CAUSE DEATH [3]

" The right of body extends, under the restrictions mentioned in the statute, to voluntary causing death or any other harm to assailant provided if, there is apprehension of death from assault. Apprehension of grievous hurt. Intention of committing rape. Intention of committing un-natural lust. Intention of kidnapping or abducting.

[1] 2002SCMR Page-1607
[2] Section 99 of Pakistan Penal Code,1860

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Intention of wrongfully confining a person, when he apprehends that he is unable to recourse to public authorities for his release"

(C)WHEN RIGHT OF PRIVATE DEFENCE OF PROPERTY EXTEND TO CAUSING DEATH

"The right of private defence extends under restriction mentioned in section 99, to voluntary causing death or any other harm provided if, there is apprehension of robbery. Apprehension of house-breaking by night. Mischief by fire committed on any dwelling place. Theft, mischief or house trespass and danger of death or grievous hurt."

The Sections of the Indian Penal Code, 1860 (IPC) are also of relevance in the matter of self-defense.

APPLICATION OF RIGHT OF SELF DEFENCE:

Self-defense or **private defense** is a Countermeasure that involves defending oneself, one's Property, or the well-being of another from Harm. The use of the Right of self-defense as a legal justification for the use of Force in times of danger is available in many Jurisdictions, but the interpretation varies widely.

Such right was granted by almost all nations of the worlds in same way as embodied in PPC, to protect and promoted equality and justice in the society, with consideration to strengthen the wellbeing of the people to apply rational mind in difficult situation to protect their life and property form assault of the transgressor subject to some restriction that the law imposes [3].

RESTRICTION ON RIGHT OF SELF DEFENCE:

Limitation, the right of self defence of body or property is subject to restrictions contained in section .99 of Pakistan Penal Code,1860[3],therefore, accused in the existing circumstances exceeding his right of defence[3].

OBJECT OF SELF-DEFENSES:

- To restraint the aggressor forms exercise of undue wrong.
- To protect oneself from the threat or wrongful act.
- To apply reasonable precaution measures etc.
- To enjoy rights available to oneself under law.
- To ensure equity and peace and tranquility.
- To retain and protect one person and property.
- To eradicate wrongs or offender.

JUDGEMENTS OF HIGH COURTS

GENERAL LIMITATIONS ON RIGHT OF SELF DEFENCE[3]
BAKSHOO VS STATE

Right of self-defence was always open to general limitations imposed by S.99, P.P.C. No right of private defence was available if the public servant had acted in good faith and under colour of his office. Right of self-defence was to be used as a shield to ward off on warranted attack to person or property, but it could not be used as vehicle for provoking an attack. Right of self-defence was to be exercised as a preventive measure and not for launching an attack for retaliatory purpose. Court would have to examine such question with reference to the facts of each case and keeping in view the state of mind of the person placed in the position of the person attacked who exercised the right of private defence. Encounter would not entitle a Police party to kill indiscriminately the persons who were allegedly involved in the encounter as the basic requirement provided in S.99, P.P.C. and in view of the importance and magnitude of Art.9 of the Constitution.

RIGHT OF SELF DEFENCE EXTENDING TO CAUSING DEATH[4]
THE STATE Vs BAHAWAL

Right of self- defence extending to causing death. Applicability, Contention of the prosecution was that even if it was admitted that the accused and co-accused had acted in self-defence, it was evident on record that they had exceeded such defence by taking the life of the deceased. Validity, Defence side had categorically contended that the deceased and the injured prosecution witness were armed, therefore, despite disarming of the said injured witness by the co-accused, there still remained an apprehension of imminent danger of death or grievous hurt from the armed-deceased to the accused and co- accused, Concluding that the accused and co-accused had exceeded the right of self-defence, in circumstances, would not be fair. Medico-legal report of the accused stated that he had sustained five firearm injuries, but said report had been willfully suppressed by the prosecution in the F.I.R. Which cast serious doubt in the prosecution story and rendered the testimony of the complainant devoid of intrinsic value and inherent worth? Presence of the accused at the time and place of occurrence, in circumstances, became highly doubtful; therefore he could not be safely relied upon. Co-accused was admittedly seventy (70) years of age at the time of the alleged

[3] 2012 PCrLJ -1342 KARACHI-HIGH-COURT-SINDH
[4] 2012 YLR - 2498 LAHORE-HIGH-COURT-LAHORE

occurrence and no overt act had been' attributed to him except his mere presence at the time and place of occurrence, therefore, his false implication could not be ruled out. No motive was alleged against the deceased and the injured prosecution witness. No production of the material witness against whom the motive was particularly alleged by the complainant also made the prosecution version doubtful. Trial Court had rightly concluded that the defence plea appeared to be plausible and convincing in all fairness of the facts and circumstances of the case and that the prosecution had failed to bring the guilt of the accused and co-accused home beyond any reasonable doubt. Appeal against acquittal was dismissed, in circumstances.

EXERCISE AND EXTENT OF RIGHT OF SELF DEFENCE[5]
SARWAR KHAN VS MUHAMMAD AYUB

Once an occasion of the exercise of the right of private defence has arisen, the accused cannot be expected to regulate the extent of force to be used by him to keep his act within the limits prescribed by the law and therefore, the law gives some marginal latitude to the accused. Where the force used is grossly out of proportion to the danger precipitated by the assailant or the force used after the danger is over that the law considers such force to be in excess of the right of self-defence and imposes punishment.

RIGHT OF PRIVATE DEFENCE NEEDS APPRECIATION OF EVIDENCE
MIRDAD AND OTHER Vs THE STATE [7]

Right of Private defence to be considered by Court on material before it even though not specifically pleaded-Evidence failing to satisfy Court affirmatively of existence of circumstances establishing right--Held, accused, nevertheless, entitled to acquittal if, upon consideration of evidence as a whole, reasonable doubt is created in mind of Court.

EXCEPTIONS TO RIGHT OF PRIVATE DEFENCE[6]
SHAMUS GUL Vs THE STATE

Exceptions (sections 11, 96, 99 & 100 of Pakistan Penal Code, 1860) Murder, Extent Right of Private defence. Person Acting under apprehension of death or grievous hurt-Cannot be expected to judge situation too nicely and modulate his defence step by step-Question to be determined is whether there was reasonable apprehension of danger. Death if caused in exercise of right of private defence, held, no offence and question of application of Exception II to S. 300 arises in such case, evidence on record raising some doubt as to whether accused exceeded his right of private defence-Held, entitles him to acquittal.

JUDGEMENTS OF APEX COURT OF PAKISTAN

CONTRADICTIRY PLEAS OF ACCUSED[7]
MUSHTAQ HUSSAIN VS STATE

Contradictory pleas (Alibi and self defence). When accused admits that he was not present at the place of occurrence by taking the plea of alibi then he cannot claim right of private defence, as it is self-destructive. Plea of right of private defence can be taken by a person who admits the act charged against him but pleads an excuse. If a person states that he did not do the act at all, it is difficult to see how at the same time the question of right of private defence would arise. Such fact by itself is sufficient to discard the plea of right of private defence.

REAPPRAISAL OF EVIDENCE [7]
MUSHTAQ HUSSAIN VS STATE

Qatl-e-amd(Intentional Homicide).Re-appraisal of evidence. Accused were convicted and sentenced to imprisonment by Trial Court, which was maintained by High Court. Trial Court acquitted the complainant party and instead of holding any party as aggressor, declared the incident as of free fight. Accused raised the plea of self defence which resulted into causing injuries to prosecution witnesses. Burden was upon accused to prove that their case had come within the general exceptions of Penal Code, 1860 but no evidence was led or through cross examination any fact had been brought on the record to create a reasonable doubt upon prosecution story, therefore, accused failed to prove their plea. High Court had rightly appreciated the evidence and arrived at a right conclusion that accused party was aggressor. Accused had no right of private defence and they failed to prove their plea of alibi, therefore, conviction and sentence awarded to accused were maintained.

CROSS VERSION OF CASE: RIGHT OF SELF DEFENCE[7]
MUSHTAQ HUSSAIN VS STATE

Cross version case in right of self defence. Non-raising of such plea. Duty of Court. Accused were convicted and sentenced to imprisonment by Trial Court, which was maintained by High Court. Trial Court acquitted

[5] 2009 YLR - 1938 LAHORE-HIGH-COURT-LAHORE
[6] 1983 PLD - 48 PESHAWAR-HIGH-COURT-NWFP

complainant party and instead of holding any party as aggressor, declared the incident as of free fight.(Validity) Accused if not had raised the plea of self-defence during trial either in his statement under S. 342 CrPC or at the time of cross-examination of prosecution witnesses, Court however, could infer the same from the evidence led during trial if it was tenable. As benefit of cross-version was given to accused of cross-case, same would be extendable to both the accused particularly when two eyewitnesses were injured but had charged the acquitted co- accused as well for causing injuries to them. Both the Courts below had found that there was a cross-case and no definite finding could be given about aggression made by both the accused, therefore, they were entitled to benefit of doubt. Convictions and sentences awarded to both the accused were set aside and they were acquitted of the charges.

PRECONDITIONS FOR RIGHT OF DEFENCE[7]
MUSHTAQ HUSSAIN VS STATE

Such right can be extended not only to defence of one's own body against any offence affecting human body but can also be extended defending body of any other person. If accused wants to take benefit of exception of right of private defence, then he is required to show that he was not responsible or at fault or on account of his act the occurrence took place; that honestly believed that his life was under immediate danger; that also believed that there was no reasonable cause available to escape or avoid necessity; and that had no intention to cause more harm than necessary for the purpose. Whenever there is fight between parties, it is essential to determine as to which party was aggressor. Once it is clearly established that one of the parties started the attack, the other party would have a right to private defence.

DUTY OF PROSECUTION IN CASES WHERE ACCUSED TAKE PLEA OF DEFENCE[7]
MUSHTAQ HUSSAIN VS STATE

Duty of Prosecution, Prosecution has to prove the case and then if Court finds that prosecution has proved the case, the defence plea taken by accused is to be examined and both versions are to be examined in juxtaposition so as to arrive at a proper conclusion.

BURDEN OF PROOF IN CASES OF SELF DEFNCE[7]
MUSHTAQ HUSSAIN VS STATE

Principle of onus to prove. Before invoking the right of private defence, burden of proof is always on prosecution and it is only when a good prima facie case has been made out against accused sufficient to justify his conviction for that offence, then burden shifts upon the accused to prove that he is not guilty of any offence. For that accused must set forth the exact circumstances in which he acted that he was justified in what he did. Such shift of burden upon accused is not analogous to that of prosecution to establish the case beyond reasonable doubt but the test as to whether accused was entitled to the benefit of right of private defence is not whether he has proved the case beyond a reasonable doubt but whether in setting up any defence he has created a reasonable doubt in the case of prosecution and thereby earned his right of acquittal that can be done either leading evidence or through cross- examination of witnesses or from the prosecution evidence itself. Even then entire evidence is to be looked into and upon consideration of such evidence it is to be seen as to whether or not a reasonable doubt is created in the mind of the Court that accused is entitled to the benefit of private defence; upon answer of such question, plea of accused should be decided.

CONDUCT OF THE ACCUSED IN SUCH CASES[7]
GHULAM FARID VS STATE

Principles are that conduct of the accused during the whole transaction and his presence at the spot should be bona fide, faultless and devoid of elements of mens rea or actus reus; that there should be a danger to the life of the accused or of grievous bodily hurt or a genuine apprehension to that effect, that the situation should be such that the accused is left with no option of a safe exit; and that the force used by the accused is proportionate to the apprehended danger. Credible evidence or circumstances to indicate that causing of death was necessary to save the life of the accused are to be present in case of murder.

PLEA OF SELF DEFENCE HAS TO BE TAKEN AT EARLY STAGE OF CASE[7]
ABDUL Vs STATE

Both sides of the case suppressing actual facts. Indication present that accused suffered firearm injuries in course of occurrence but prosecution conveniently omitting to explain same. Accused, likewise, failing to account for fire-arm injuries and stab wounds on person of deceased. Defence failing to fully establish from its evidence its plea of self-defence as required under section 105 Evidence Act.

The court thus held that accused can still claim benefit of omissions and doubts appearing in prosecution evidence such as raise a presumption of existence of a right of private defence. Failure of prosecution to explain fire-arm injuries found on person of accused casting serious doubts on veracity of its version. Manner as to how occurrence started and who first opened attack not ascertainable.

CONCLUSION:

To sum up the above discussion ,it is crystal clear that the right embodied in private defence is a sine qua non with rationality , reasonability and utilizations of ordinary level of prudence to curtail the aggressive acts of others that a person realize to inflicted upon him. The courts at the time of decision may take into consideration the circumstances of the case, the eminent danger to life or property apprehended by the person who takes the plea of right of self-defense and the gravity of the force used by the accused. Therefore, the burden to prove exercise of this right is upon the accused to prove his innocence. Prosecution will not be barred to prove case against the accused. The investigation of such cases shall be obtained with due care and diligence so as to maintain the administration of justice. In most of the circumstances, this right is exercised by the local police. The law provides that when an accused is charge with an offence carries capital punishment i.e death punishment or life imprisonment and the accused resist his lawful arrest or there is apprehension that he will escape from the lawful custody, the local police can use force for his arrest and they can use it as a valid ground for their exemption if the accused met death during the course of his arrest. However, in most of the time it is termed as extra judicial killings.

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