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IMPORTANT DECISIONS

▣ **Postponement of issue of process** — Examination of all the witnesses cited in the complaint is not a condition precedent for taking cognizance and issue of process against the persons named as accused in the complaint **3827 (SC)**

▣ **Rustic witness** — Discrepancies noticed in the evidence of a rustic witness who is subjected to grueling cross-examination should not be blown out of proportion **3889 (SC)**

▣ **Right to Information** — Information furnished by Public Information Officer in response to "request" made to him can be treated as an "order". Replies (orders) to applications filed by complainant under Right to Information Act are immune to challenge either before Civil Court or before Criminal Court except by way of appeal under S. 19 of the Act **4117 (Ker)**

Chief Editor

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issue is also addressed in the Rome Statute, but in addition to question of liability, the statute considers also the question of jurisdiction.

Conclusions

The possibilities to prosecute diplomats or other State officials who have committed serious crimes but enjoy personal inviolability and diplomatic immunity are very much limited, both in number and effectiveness. As amendments to the Vienna Convention are unlikely to be achieved either through treaties or custom, so far we have to hope for greater readiness of sending States, in co-operation with receiving States, to ensure prosecution of serious criminals. Hopefully, we can in the future also rely on proceedings before the ICC, which should be the least

biased and restricted. The problem is that the principle of reciprocity prevents States from introducing, through practice, perhaps desirable changes to diplomatic law by establishing a hierarchy between diplomatic laws on the one hand and human rights and international humanitarian law on the other. But besides ensuring prosecution, receiving States should also attribute more importance to the prevention of such crimes by asking sending States to provide general and possible criminal background information on the diplomat and explanations about why the person left prior postings and also by contacting those countries where the diplomat in question has served prior terms and inquire as to whether any problems arose involving that person.

RIGHT OF PRIVATE DEFENCE — ANALYSIS OF SUPREME COURT RULING IN RIGHT OF PRIVATE DEFENCE CASES (A STUDY IN THE LIGHT OF DARSHAN SINGH v. STATE OF PUNJAB, 2010 Cri LJ 1393 (SC))

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1. The law relating to the Right of Private Defence extending up to causing death of the assailant has been clearly stated in Sec. 100 of Indian Penal Code. Justification of killing of the assailant finds enumeration in the following six clauses of Sec. 100¹

First - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.

Secondly - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly - An assault with the intention of committing rape;

Fourthly - An assault with the intention of gratifying unnatural lust.

Fifthly - An assault with the intention of kidnapping or abducting.

Sixthly - An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

The accused is required to satisfy the Court that he was subject to an assault which caused a reasonable apprehension of death

or grievous hurt. Whether there was reasonable apprehension or not depends upon the facts and circumstances of the case, to be determined on the basis of weapon used, manner and nature of the assault and other surrounding circumstances, to be evaluated by the factors outlined.

2. Any person confronted with an imminent unlawful aggression is required to act in self defence and to protect his life. To run away in face of danger would be an act of cowardice² and degrades the human spirit. The right of self defence serves a social purpose and therefore an individual, who has to exercise it, has to encourage by law to exercise it, subject to limits imposed by law.

3. Hari Singh Gour considers that self help as the "first rule of criminal law"³. Bentham considers the right of defence as 'absolutely necessary', as it is based on "Cardinal principle that it is the duty of a man to help himself"⁴. In many legal systems, killing in defence is either considered as 'justifiable' or

2. In *Re Ranganadham Perayya*, (1967) Andhra Weekly Reporter P. 181

3. Hari Singh Gour, "Penal Law of India" (1998) P. 99

4. Bentham, "Principles of Penal Laws"

1. Sec. 100 IPC Enumerates the six cases

excusable homicide. The duty of retreating, as one finds in English law, has no application in India, in cases where there is a real need for defending one self against deadly assaults. Rights of self defence come into operation the moment there is a 'reasonable apprehension' of death or grievous hurt will otherwise be the consequence of such assault.

4. The Supreme Court reviewed the law relating to the right of self defence extending to cause death and clearly enunciated as follows :—

(i) It is not a right to take revenge. It is a right to defend and not to retaliate.

(ii) It can be exercised only where the immediate aid from the State machinery is not available⁵.

(iii) It is available not only to protect one-self but also some innocent third party.

(iv) It should not be an act of self-creation⁶ but an act of necessity to avert an impending danger and should not exceed its legitimate purpose⁷. One may cause such injury as may be necessary to ward off the apprehended danger or threat⁸.

(v) Where the person is exercising the right of self-defence, it is not possible to weigh the force with which the right is exercised nor to weigh in golden scale. He need not prove the existence of a right of private defence beyond reasonable doubt⁹.

(vi) The right of private defence is recognized within certain reasonable limits¹⁰.

5. State of Orissa v. Rabindranath Dalai & another, (1973) Cri LJ 1686 (Ori)
6. Laxman Sahu v. State of Orissa AIR 1988 SC P. 83 : 1988 Cri LJ 188.
7. Puran Singh v. State of Punjab, 1975 Cri LJ 1479 : AIR 1975 SC 1674
8. Kashmiri Lal v. State of Punjab, 1996 Cri LJ 4452 : AIR 1997 SC 393
9. James Martin v. State of Kerala (2004) 2 SCC 203
10. Gotipulla Venkata Subramanyam v. State

(vii) Even if the accused does not plead self-defence, it is open to the Court to consider such a plea, if the same arises from the material on record¹¹.

(viii) The right of self-defence commences as soon as reasonable apprehension arises, and is co-terminus with the duration of such apprehension¹².

(ix) There is nothing which lays down in absolute terms that in all situations injuries on the person of the accused have to be explained¹³.

(x) Once the reasonable apprehension disappears, there is no occasion to exercise the right of self defence¹⁴.

(xi) The plea of reasonable apprehension is essentially a question of fact¹⁵.

(xii) It is unrealistic to expect a person under assault to modulate his defence, step by step, with any arithmetical exactitude¹⁶.

It is hoped that the ruling of the Supreme Court analyzing the various points of law, relating to the right of private defence will serve as very useful guideline for everyone, who is concerned with the right of private defence, extending up to the causing of death of the assailant.

of Andhra Pradesh, AIR 1970 SC 1079 : 1970 Cri LJ 1004

11. Munshi Ram & others v. Delhi Administration, 1968 Cri LJ 806 : AIR 1968 SC 702
12. State of Madhya Pradesh v. Ramesh, AIR 2005 SC 1186 : 2005 Cri LJ 652.
13. Triloki Nath & others v. State of Uttar Pradesh, AIR 2006 SC 321.
14. Jai Dev v. State of Punjab, AIR 1963 SC 612 : 1963 (1) Cri LJ 495.
15. Buta Singh v. State of Punjab, AIR 1991 SC 1316 : 1991 Cri LJ 1464.
16. Vidya Singh v. State of Madhya Pradesh, AIR 1971 SC 1857 : 1971 Cri LJ 1296.