

If harm than it is  
necessary to



**ASSIGN  
BUSTER**

If the offence committing of which, or 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 Section 103 that right does not extend, to the voluntary causing of death but does extend to the voluntary causing to the wrongdoer of any harm other than death (Section 104). This section is not applicable to a case where death has been caused in exercise of the supposed right of defence. This section has also no application by way of defence to a charge under Section 504 dealing with intentional insult with intent to provoke breach of the peace.

Private defence of property —Harm caused not to be excessive: The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence (Section 99). The amount of force necessarily depends on the circumstances of the case, and no protection can be sought if the harm is caused by excessive violence quite unnecessary to the case. The measure of self-defence must always be proportionate to the quantum of force used by the attacker and which it is necessary to repel. In considering what was the harm necessary to inflict for the purpose of defence, regard must be had to the position and circumstances of the parties, their comparative strength and the force and violence of the attack, and the consequent angry feelings aroused, the danger apprehended and the difficulty of adjusting harm caused to the danger threatened. Again the extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger. But a man who is assaulted is not

bound to modulate his defence step by step, according to the attack, before there is reason to believe the attack to be over.

He is entitled to secure his victory as long as the contest is continued. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if in a conflict between them, he happens to kill such killing is justifiable. And, of course, where the assault has once assumed a dangerous form every allowance should be made for one, who, with the instinct of self-preservation strong upon him, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. The question in such cases will be, whether or not there was an actually continuing danger, and whether there was a reasonable apprehension of such danger. In the exercise of the right of private defence a person is not called upon to weigh the amount of force in golden scales so as to keep within the limits of the right allowed to him by law. The deceased had stolen the goat from the cattle shed of the accused who chased him to recover his property and in the process of recovering it, assaulted the deceased without knowing that the deceased had been hit on the vital parts.

It was held that accused had exceeded the private defence and was held responsible for culpable homicide. As regards the exercise of the right of private defence, “ the general rule is that the right of private defence must not be exercised excessively. If the limit allowed by law is exceeded it would be as if no right of private defence at all existed and the person who in the so-called exercise of the right of private defence inflicted excess harm, would be liable for the harm, inflicted on his aggressor, only thing is, the court may take a lenient view of the harm inflicted and award a lesser

sentence. That initially a right of private defence existed, is certainly a circumstance which will go to determine the intention with which the harm was inflicted on the aggressor and when his intention is elucidated, a lesser offence alone may have been made out in the circumstances of the case.