

Legal powers are entrusted to the citizen of India, and therefore to the security personnel. It is clear, that sufficient powers are already provided to prevent the commissions of offences and also to take follow up actions thereafter. Still, there may be situations where security personnel have to use some force in order to affect the provisions made by the law.

## LEGAL STANDING ON USE OF FORCE BY Private SECURITY PERSONNEL

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# Use of Force by Private Security Personnel



## USE OF FORCE in Private Security

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India, uniformed personnel are generally identified with the power and might of the authority i.e. Law and the Government. The Khaki color uniform has been subject of immense influence on the society either positive or negative. It has also been observed that the uniformed personnel basically (from para-military forces or the police) are often misusing their powers.

Fact, the police officers have only that much power, which law provides to the common citizen and by this extension anybody is as powerful as any police officer can be. Right to private defense is one such provision of Indian Penal Code, which gives common citizen same powers as those enjoyed by police officers. Personnel performing the security duties in any organization - government, public or private sector, do not have any special powers in the performance of their duty. They can exercise only those powers, which Indian Penal Code bestows on normal citizen. Security personnel perform certain functions such as frisking, searching, interrogation or detention, only as long other individuals co-operate. Generally, due to standing orders, employers-employees agreement or due to special law, these security duties are carried out and these are subject to mutual consent, in absence of which security personnel may find themselves helpless.

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1

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No Indian Law provides any special status to departmental security organization and in the eye of law security personnel are equal to any law-abiding citizens. Meaning there fore, that they, even while performing security duties and while putting on uniform, have no powers to use force in excess to that prescribed in Indian Penal Code under the heading 'Right of private Defense'.

### **Right of Private Defense: -**

.Generally, it is not known or confusing as to what right a citizen has under right of private defense. Industrial security and otherwise, there are enough provisions made to tackle the prevention, commission and follow up actions relating to crimes. Section wise comments are provided here under -

### **Sections 96 and 97 IPC: -**

**Nothing is an offence which is done in the exercise of private defense** [There are some restrictions in the Sec 99]. There is no provision in the Penal Code whereby accused personnel can be excused for insulting outburst of abuses in the exercise of alleged private defense. Similarly, where use of abusing language does not give rise to private defense.

[i] every person has a right to defend his own body and the body of any other person, against any offence affecting the human body.

[ii] Every person have a right to defend the property whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

### **Availability of private defense- factors to be kept in view**

In order to find whether right of private defense is available or not, the entire incident must be examined with care viewed in its proper setting. The injuries received by the accused, the imminence of threat to the safety, the injuries caused by the accused and the circumstances whether the accused have the time to report public authorities or relevant factors that has to be considered on a plea of private defense. Thus, running to house, fetching sword and assaulting deceased are by no means a matter of chance. These Acts bear stamp of a design to kill and take the case out of the purview of private defense. One has to remember following limitations on the right of private defense of persons or property.

- (i) That if there is sufficient time for reports to public authorities, the right is not available
- (ii) That more harms than that are necessary should not be caused.

- (iii) That there must be a reasonable apprehension of death or grievous hurt or hurt to the person or there is to property concerned. Where on account of incident, the accused was confronted by three persons, it was held that the superiority in numbers in itself could in all probabilities have been construed by the accused as an eminent danger to himself thus, giving him the signal to act in exercise of the Right of Private Defense.

### **Duty to retreat, if any:**

Under the common law, the doctrine of necessity permitted one to defend once person or property or the person or the property of other against an unjustified act by the use of reasonable force in determining what is reasonable force, which in Indian context means minimum force under Section 99 IPC, the common law codes always insisted if the accused could prevent the commission of crime against him by retreating. On this rule of retreat one would like to ask: if a person is attacked by an armed burglar in own room, is he expected to run away leaving burglar to act as he liked. In Jaidev's case [1963 (I) CRLJ495 (SC)] Justice Gajendragadkar specifically held that in India there is no rules which expect a man first to run away or try to do so before he can exercise his Right of Private Defense. Rather he has every right to stand his own ground and defend himself if there is no time of have recourse to official help. Law does not expect a citizen to be a rank coward!

### **No private defense in a free fight.**

When two parties are armed and engaged in a free fight, both the parties are the aggressors and have no right to private defense. In a free fight between two groups resulting the death of one and injuries to several others, both grievous and simple, all the accused participated in the fight. The plea of one of the accused that he joined the fight later and acted in self-defense or defense of other co-accused was not held to be tenable.

### **Aggressor has no right of private defense.**

Right of Private defense arises to those who in the face of eminent peril act on good faith and in no case can this Right be considered to a person who states manages a situation wherein the Right can be used as a shield to justify an act of aggression. If a person goes with a gun to kill another, the intended victim is entitled to act in self-defense and if he so acts, there is no right in the former to kill him in order to prevent him from action in self-defense.

### **Sections 98 IPC: -**

When an Act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reasons of any misconception of that person, every person has the same right of private defense against that act which he would have if the act were that offence.

Right of private defense against the act of a person of unsound mind will be treated as an offence always, but by reasons of want of maturity, unsoundness of mind or intoxication. If due to misconception on the part of the person the act is committed then by law that person has not committed the offence. But the person on whom the act was committed has the right of private defense.

*Example:* - 'A' under the influence of madness attempts to kill 'B'. He is guilty of no offence. But 'B' has the right of private defense. If by saving himself he kills or bodily injures 'A' then 'B' has committed no offence.

*Example:* - 'A' enters at in his own house. 'B' in good faith taking 'A' as an intruder for burglary attacks 'A'. Here 'B' by attacking in misconception commits no crime. But 'A' has the same right of private defense.

3. Above two examples, can easily be put in the Industrial security scenario and it Would be clear that security personnel would also be put in similar situations.

### **Section 99 IPC: -**

There is no right of private defense against an act, which does not reasonably cause the apprehension of death or grievous hurt. If done, or attempted to be done by a public servant in good faith under color of his office, though that act may not be strictly justifiable by law.

There is no right of private defense against an act which does not reasonable cause the apprehension of death or grievous hurt. if done, or attempted to be done, by the direction of a public servant in good faith under color of his office, though that direction may not be strictly justifiable by law.

There is no right of private defense in cases in which there is time to have recourse to the protection of the public authorities.

The right of private defense in no case exceeds to the inflicting of more harms than it is necessary for the purpose of defense.

Explanation: 1

A person is not deprived of private defense against an act done, attempted to be done, by a public servant, as such unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation: 2

A person is not deprived of private defense against an act done or attempted to be done, by the direction of a public servant, unless he knows, or has reasons to believe, that the person doing the act is acting by such direction, or unless such person states that authority under which he acts, or if he has authority in writing, unless he produces such authority if demanded.

### **Section 100 IPC: -**

The right of private defense of the body extends under the restriction mentioned in Section 99, to the voluntary causing of death or any other harm to the assailant, if the offense which occasions the exercise of the right be of any of the descriptions hereinafter enumerated viz.

- I. Such an assault that may reasonably cause the apprehension that death will otherwise be the consequence of such assault.
- II. Same as above except that grievous hurt.
- III. An assault with the intention of committing rape.
- IV. An assault with the intention of gratifying unnatural lust.
- V. An assault with the intention of kidnapping or abducting.
- VI. 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.

### **Section 101 IPC:-**

If the offense be not be of any description enumerated in the last preceding section (Section 100), the right of private defense of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restriction mentioned in Section 99 to the voluntary causing to the assailant of any harm other than death.

### **Section 102 IPC:-**

The Right of Private Defense of the body commences as soon as a reasonable apprehension danger to the body arises from an attempt or threat to commence the offense though the offense may not have been committed; and it continues as long as such apprehension of danger to the body continues.

### **Section 103 IPC:-**

The Right of Private Defense of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong doer, if the offense, committing of which, or the attempt or attempting to commit which, occasions the exercise of the right be an offense of any of the description hereinafter enumerated.

- I. Robbery

- II. House breaking by night
- III. Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property.
- IV. 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 defense is not exercised.

### Section 106 IPC:-

If in the exercise of private defense against an assault which reasonably causes apprehension of death, the defender be so situated that he cannot effectually exercise that Right without the risk of harm to an innocent person, his Right of Private Defense extends to the running of that risk.



## Use of force by Security Personnel



As brought out above enough - legal powers are entrusted to the citizen of India, and therefore to the security personnel. It is clear, that sufficient powers are already provided to prevent the commissions of offences and also to take follow up actions thereafter. Still, there may be situations where security personnel have to use some force in order to affect the provisions made by the law. Here, as elsewhere, reasonableness is the key. If excessive and unreasonable force is used, not only there is liability and the culpability for the same on concerned person, but also, the original privilege, which justified the use of reasonable force, is lost.

Generalization about the amount of force permitted in making an arrest, detaining a wrongdoer, preventing a crime, protecting property or maintaining law-and-order are not easy to make but certain guidelines usually apply.

As a general, rule, the use of force in the performance of a security officer's duty is not a license but limited privileges to be used sparingly by him. Where property rights are involved, a request for voluntary co-operation must usually precede the use of force and in any incident involving property the use of deadly force is never justified unless incident involving property entails a threats to life.

As a rule, deadly force cannot be used to prevent, or arrest for petty crimes or misdemeanor but it may be used to prevent or arrest for a crime, which threatens the life or safety of human being.

## Arrest and Detention



During the course of security duty, security professional face a situation they have to either detain a person or confine him for the purpose of either the interrogation or for preventing him to create public/private nuisance or offenses which are generally prevalent in industries. Demonstrations / strikes / Dharnas / Gheraos are such situations where employees not only turn hostile towards the management in general and aggressive towards security personnel in particular. To deal effectively in such situation not only security professional apply reasonable force as discussed before, they also may have to detain some person.



The role of a security guard and a police officer differ significantly. A security guard is paid only to protect property and people of the business that employs him/ her, whereas, a police officer is duty-bound to protect all people and property, and is also authorized to enforce the laws of the land. Security guards are trained to operate and repair security systems, communicate with law enforcement agencies, and monitor and watch locations and property for threats.

Law provides certain powers to the Indian citizens which include Right to arrest or detain anybody who has committed an offence or who is attempting to commit an offence or who is believed to commit an offence. This Right is extended to security personnel also.

Security personnel can affect the arrest of the offender to prevent the crime or after commission of the crime. Here arrest may not be in the form and fashion of the one done by a police officer. But by simply making situations where offender may not escape, an arrest is considered to be

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effected. But as soon as possible and latest by the time limit provided in IPC, arrested person has to be handed over to the police. In fact, in the eye of law, above arrest by security personnel is only detention pending handing over to the police.

## **Arrest**

An arrest is made in connection with an offence - either civil or criminal. An arrest is an act of depriving people of their liberty, usually, in relation to an investigation or prevention of a crime. Arrest is purely a police matter. Section 41 of the Criminal Procedure Code (CrPC) gives a constable in uniform the power to arrest a person without a warrant, if s/he reasonably suspects that the person has committed a 'cognizable offence'. A private security guard or a common citizen does not enjoy such power. In a cognizable offence, the police can take cognizance of the offence on their own, i.e., they need not wait for the court orders to arrest a person. In a 'non-cognizable offence', the police cannot arrest a person without the court orders, i.e., a warrant. However, the India law provided for Citizen's Arrest.

## **Arrest by Private Person**

Any citizen may also arrest any person under the circumstances listed in section 43 of the code of Criminal Procedure. According to this section;

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer take such person or cause him to be taken in the custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of Section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of Police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of Section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

## **Rules to be followed by security staff during arrest or detention**

- (i) A male security guard must never be alone with a female prisoner
- (ii) A female security guard must stay with the female prisoner.
- (iii) Similarly, a male prisoner must never be left alone with a female security guard.

- (iv) A security guard does not have the right to search a person or the baggage of someone detained unless there is reasonable ground to believe that the detainee has a weapon, which s/he may use to injure self or others.

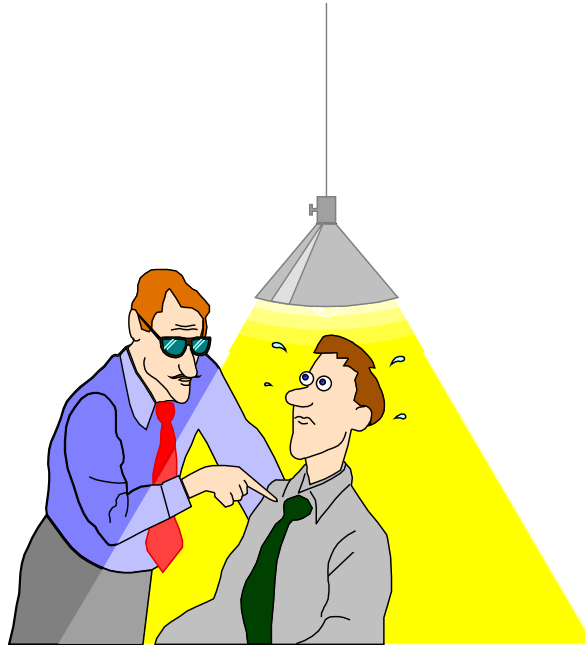
### **Arrest by private person (Section 43 of CrPC)**

Any private person may arrest or cause the arrest of a person, who in her/his presence commits a non-bailable cognizable offence, or any proclaimed offender, and may hand her/him over to the police at the earliest for reasons given as follows:

- I. Such a person comes under the provision of Section 41 (when the police may arrest without a warrant).
- II. Such a person has committed a non-cognizable offence and refuses to give her/his name and residence or provides false information.

This provision can be invoked only if the police are convinced that the person was acting with a criminal intent. An arrest may be carried out as per the guidelines mentioned in Section 43 of the CrPC. As far as possible, private security staff must facilitate the arrests to be made by the police. In an event where they themselves have to do this, it must be done tactfully and with caution, ensuring that the evidence is meticulously collected, preserved and handed over to the police.

# Interrogation



Security personnel can also interrogate the person who committed or is suspected to have committed any or all the crime mentioned above. Many a times, detention may be needed for the purpose of the interrogation. The need for interrogation may arise due to tip-off concerning the suspicious activity of an employee or because of information from a witness of commission of crime by the suspect or when the activities of the person are objectionable and cause serious doubts to the security personnel mind of that individual's involvement in a crime. As a precaution interrogation is carried out in privacy and necessitates confinement also.

This is not to say that suspect/offender is obliged to answer any question. He may remain silent, and threats or physical force to press a reply are prohibited. Any confession, release, and threats or agreements signed under duress or coercion are invalid. The acceptability of any interrogation turns on the legality of the detention and the manner in which in interrogation is conducted. Guiding principle here also is reasonableness.

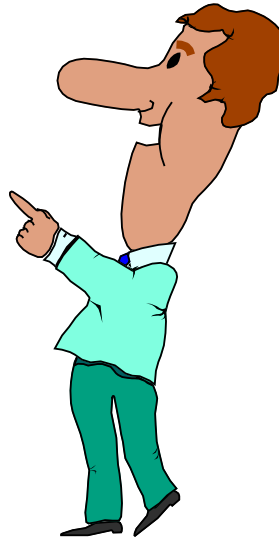
# Searching



Security personnel, similarly can search the person or belongings of the suspect / offender. Here also as in the case of interrogation, the legality of search is dependent on the legality of detention in which the search originates. If the detention is illegal so is the search thereafter.

A word of caution here, that, security personnel can not behave like police officer as they do not and can not have their power. Therefore they can not arrest, detain, interrogate or search out side their premises and also they have to inform police once crime has taken place, though they are free to carry out their own investigation. Searching as a routine matter at the exit/entry point of plant/factory by the security personals a matter, which is dealt also where in detail and for which there has to be agreement between the management and the employees.

## General Power of Security Personnel



It has been thus far seen that security personnel are limited to the exercise of powers possessed by every citizen. There is no legal area where the position of security officer per se, confers any greater rights, powers or privileges than those possessed by any other citizen. In fact if putting an uniform, security officer will certainly find out that generally people comply with his those directions, instructions and requests which some times he is no empowered to, and if not illegal, certainly beyond power under his command. Many people are not aware of security personals' powers, privileges and rights. Some people get overly impressed by security officer's status and uniform and in most of the cases people are afraid for no reasons and to top-it-up, they are also not aware of the limitation of security officer, thus they comply with his instructions. This situation is harmless enough, but in those cases where a security officer has taken liberties with his authorities, he and his employer will be subject to the legal actions.

The litigation's of civil nature may take long time, conduct being slow and expensive. The poor and those unfamiliar with their rights may not resort to such actions. But still such cases may prove to be having sobering effect on wrong doer.

Criminal cases also serve to regulate the excess by the security personnel. Major crimes such as murder, kidnapping, burglary, theft robbery etc. any of which might be confronted in the course of security duties are substantially deterred by the criminal sanction in effect.

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