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**PRIVATE DEFENSE: A FUNDAMENTAL RIGHT**

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***Abstract***

To protect oneself or another or even the properties of the same is the Constitutional Right given to the Citizen of India. That is called as a fundamental right in legal terms. Moreover Article 21 of Indian Constitutions advocates same with the heading of “Right to Life and Personal Liberty”. Other than this legal theorem, Article 51 A (d) also advocates the same but on national level crisis. In which it is fundamental duty of people to render national services when asked for (mostly in war time). Earlier the Indian Penal Code (IPC) briefly discuss this concept but, today we have Bartiya Nyaya Sanhita, 2023 discuss the same concept in clauses – 34 - 44 mentioned in Chapter 3<sup>rd</sup>. Indian Judiciary too in various cases had interpreted its importance and definitions. Keeping same in view this article analyze all the National Statutes and International Statutes and various landmark cases that undermine the same, this article basically interpret the clauses of Bhartiya Nyaya Sanhita, 2023 and announces the changes made in comparison to Indian Penal Code (IPC) if any. Moreover this article focuses on highlighting constitutional and legal scope of this concept covering all the related areas. The main and basic aim of this research is to convey suggestions build up in the course of research.

***Introduction***

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Self – help is the first rule of criminal law. The right of private defense is absolutely necessary for the protection of ones life, liberty and property. No doubt it is the primary duty of the State to protect life and the property of the individuals, but no State, no matters how large its resources might be? The State appointed police to watch the activities of each and every individual and protect them against the mischievous acts of criminals. There are maximum chances the a situation might arise where the State authorities cannot be obtained in order to repel an unlawful aggression, either because there is no time to ask for help, or any other reason. To meet such in competencies the law laid down the right to private defense of body and property to every individual of the State<sup>4</sup>.

While laying down this right the lawmakers had introduced directly in criminal statute of the State which is Indian Penal Code, 1860 (IPC) currently, Bhartiya Nyaya Sanhita, (BNS) 2023 as it is the law or right that gives the power to use reasonable force in self-defense while protecting oneself from external criminal aggression. But after enforcement of Indian Constitution Article 21 was set up which declare “right to life and personal liberty” as a fundamental right. With the passage of time when cases started to reach the court of law related to the concept of private defense the court of law started to co-relate Article 21 with Right to private defense and slowly and steadily a final and major interpretation in a case that considered and declared right to private defense itself as a fundamental right under Article 21 because this article has very wide and vast scope.

### ***History of Right to Private Defense***

The right to private defense was directly introduced in the IPC 1860 by first law commission of India chaired by Lord Macaulay. As it is clearly understood that the Indian Penal Code reflects the influence of English Common Law, and the framers of this law directly introduced this legal postulate directly to the criminal law thinking a thought of future. In this thought process the framers gives following reasons to answer why it was directly introduced to the criminal law?

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<sup>4</sup> Bentham’s Principle of Penal Law, p 269; Bentham said:

*The vigilance magistrate can never make up for the vigilance of each individual on his own behalf. The fear of the law can never restrain bad men as the fear of some total of individual resistance. Take away this right and you can become in so doing the accomplice, of all bad men.*

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- **Codification of Common Law Principle**

The IPC was heavily influenced by English law, which already recognized self defense as a natural and legal right. Lord Macaulay and his Committee codified these principles into clear statutory provisions to provide legal clarity.

- **Natural Law Doctrine**

The Framers of this statute acknowledged the self-defense is a fundamental inherent right necessary for justice and societal orders. This belief made the inclusion of such provision a logical step.

- **Practical Necessity in Colonial India**

In a vast country like India, where law enforcement was limited during colonial times, it was necessary to empower individual to protect themselves and their property.

- **Comprehensive Framework**

The IPC includes a detailed framework for the right to private defense under section 96 to 106 addressing various scenarios, such as defending body or property, the extent of permissible harm, and exceptions.

With this initial framework of Private defense IPC entered in the Independent India and governed country in criminal matters for long term of 76 years over all of around 160 years and now which is replaced by Bhartiya Nyaya Sanhita, 2023 after independence a number of rulings were laid and interpretations were done in same aspect.

### ***Object of Private Defense***

Section 34 to 44 of Bhartiya Nyaya Sanhita, 2023 deals with the law relating to the right to private defense of person and property. The provision contained in these sections give authority to a man to use necessary force against an assailant or wrong doer for the purpose of protecting ones own body and property as of another's body or property when immediate aid from State machinery is not readily available and in so doing he is not answerable in law for his deeds.

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**Right to Private defense is based on 2 cardinal principles -**

- a) Everyone has right to defend his own body and property, as also another's body and property.
- b) The right cannot be applied as a pretence for justifying aggression for causing harm to another person, nor for causing more harm than in necessary to inflict for the purpose of defense<sup>5</sup>

The Right is essentially of defense not of retribution. As pointed out by Russell in *Law of Crimes*

*"....A man is justified in resisting anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended if in a conflict between them he happens to kill his attacker, such a killing is justifiable<sup>6</sup>."*

**Scope**

**Section 34 of BNS** – State the general proposition, that “Nothing is an offence which is done in the exercise of right to private defense” However, this right is not absolute and is subject to restrictions. The section 35 to 43 state the limits within which the right can be exercised, the extent of injury that can be inflicted and against whom these rights can be exercised. The right to private defense is a high prized gift granted to the citizens to protect themselves by effective self-resistance against unlawful aggression. No man is expected to fly away when he is attacked. He could fight back and when he apprehends death or grievous hurt he could see that his adversary is vanquished without modulating his defense step by step. Faced with a dangerous adversary, no man can possibly act with a detached reflection and under such circumstances if he travels a little beyond the limit, the law protects him and hence courts should not place more restrictions on him than the law demands<sup>7</sup>.

The right of private defense will completely absolve a person from all guilt even when he causes the death of another person in the following situations-

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<sup>5</sup> Hari Singh Gour, Penal Law of India (11<sup>th</sup> Edn, vol II, 2000), p 797.

<sup>6</sup> Russell on Crimes (11<sup>th</sup> Edn by JWC Turner 1958, vol I) p 491

<sup>7</sup> Chacko Mathai v. State of Kerala AIR 1964 Ker 222 (225).

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- a) If the deceased was the actual assailant, and
- b) If the offence committed by the deceased which occasioned the cause of the exercise of right of private defense of body and property falls within anyone of the six or four categories enumerated in section 38 and 41 of the Nyaya Sanhita respectively, or was assault reasonably causing the apprehension of his death, as explained in section 44 of sanhita.

The right to private defense has been elaborately discussed in section 35 to 44 from two aspects, namely, defense of the body and defense of property. Section 35, 36 and 37 are of general nature and deal with both aspects of the right to defense of body and property and second, section 41, 42 and 43 with the defense of property.

### ***Section – 34 to 44 Explanation***

**Section 34 – Nothing is an offense which is done in the exercise of the right of private defense.**

### **Comparative Study of Provisions of BNS, 2023 and IPC 1860**

Section 34 of BNS corresponds to Section 96 of IPC, this section provides the exception as regards things done in exercise of right of private defense. But it does not define the scope of this right. The scope and other codifications are done in the further sections.

**Section 35 - Right of Private defense of the body and of property Every person has a right, subject to restrictions contained in section 37, to defend –**

**(a) his own body, and the body of any other person, against any offense affecting the human body;**

**(b) the property, whether moveable or immoveable, of himself or of any other person, against any act which is an offense falling under the definition of theft, robbery, mischief or criminal trespass.**

Section 35 of Bhartiya Nyaya Sanhita, 2023 Corresponds to section 97 of IPC. This section remains unaltered except for the first and second clause being rephrased as (a) and (b) and

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referral sections changed. These changes do not alter the essence of the provision. Therefore, for the sake of convenience certain judicial pronouncements on the fundamentals of IPC, 1860 are retained and referred herein.

### **Defense of Body and Property – Scope**

Section 35 provides that subject to the restrictions contained in section 37, every man has a right to defend his own and the body of any other person, against any offense affecting the human body, and to defend his property, and the property of any other person, whether moveable or immoveable against theft, robbery, mischief, or criminal trespass or an attempt to commit any one of these offenses. This section divides the right of private defense into two parts with the right of private defense of property.

To invoke the plea of right to private defense, there must be an offense committed or attempted to be committed against the person himself exercising such a right, or any other person. The question of the accrual of the right of private defense, however, does not depend upon an injury being caused to the man in question. The right could be exercised if a reasonable apprehension of causing grievous injury can be established. If the threat to person or property is real and immediate, he is not required to weigh in a golden scale the kind of instrument and the force which he exerts on the spur of the moment.

In order to ascertain whether the right of private defense is available to a person, the entire incident must be examined with care and viewed in its proper setting. The injuries received by the person, the imminence of threat to his safety, the injuries caused by the accused and the circumstances of whether the person had to have recourse to public authorities are all the relevant factors to be considered on a plea of private defense.

In the case of *Biran Singh v. State of Bihar*<sup>8</sup>, two of the accused, having received simple injuries, ran back to their house, fetched a sword and inflicted fatal blows on the head of the deceased with that sword. The court held that even assuming that the deceased had inflicted simple injuries

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<sup>8</sup> *Biran Singh v. State of Bihar*, 1975 SCC (Cri) 454; AIR 1975 SC 87 : (1975) 4 SCC 161 : 1975 CrLj 44.

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could not be said either to have been a matter of chance. Their acts bore a stamp of design. The right of private defense, therefore, could not be availed by the accused.

### **Defense of body and property of others**

The right of private defense extends not only to the defense of one's own body and property, as under the English Law, but also extends to defending the body and property of other person. Thus under section 35 even a stranger can defend the person or property of another person and *vice versa*, whereas under the English Law there must be kind of relationship existing, such as father and son, husband and wife, guardian and ward, master and servant, etc., before this right could be successfully exercised.

In *Reg. v Rose*<sup>9</sup>, the accused a boy of 21 years who was charged of committing murder of his father, was held entitled to the right to private defense. The accused was living with his mother and father. The relations between father and mother were strained, and his father frequently used to quarrel with his mother, whom he believed to be unfaithful. On the night of the fatal incident there was a quarrel between the accused's father and mother. The accused's mother called out "murder" – "murder" as the father forced her to the top of the stairs and threatened to knife her. The accused shot and killed his father. There was no evidence that the father had a knife. The jury gave a verdict of not guilty. Lopes J, summed up the law in following words:

"...if you think, having regard to the evidence, ...that the prisoner... acted without vindictive feeling towards his father when he fired the shot, if you think that at the time he fired the shot he honestly believed, and had reasonable grounds for the belief, that his mother's life was in imminent peril, and that the fatal shot which he fired was absolutely necessary for the preservation of her life, then ought to be excused, and the law will excuse him, from the consequences of homicide...."

**Section 36 Right of private defense against act of a person of unsound mind, etc - 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**

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<sup>9</sup> Reg v Rose, (1884) 15 Cox CC 540.

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person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

### **Illustrations**

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offense. But A has the same right of private defense which he would have if Z were sane.

(b) A enters by night a house which he legally entitled to enter Z, in a good faith, taking A for a house-breaker, attacks A. here Z, by attacking A under his misconception, commits no offense. But A has the same right of private defense against Z, which he would have if Z were acting under that misconception.

Section 36 of Bhartiya Nyaya Sanhita, 2023 correspond to section 98 of the old IPC, 1860. This provision is retained as it is. Therefore the sake of convenience certain judicial pronouncements on the fundamentals of IPC, 1860 are retained and referred herein.

This section assumes that the right to private defense from its very nature admits of no exceptions since it is the right of preservations of one's life and property as also of another's life and property against the world at large this section extends the the scope of defense even against offenses committed by the person of unsound mind.

In this section major key point is that the power to use this legal provision remains the same at all but there will be no offense considered on the end of wrong doer because our law does not make a person of an unsound mind criminally liable.

**Section 37 Acts against which there is no right of private defense – (1) There is no right to private defense, -**

**(a) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the public servant acting in good faith under color of his office, through that act, may not be strictly justifiable by law;**

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**(b) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting may not be strictly justifiable by law;**

**(c) in case in which there is time to have recourse to the protection of the public authorities.**

**(2) The right of private defense is no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defense.**

**Explanation 1.** – A person is not deprived of the private defense against an act or attempt 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 the private defense against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has an authority in writing, unless he produce such authority, if demanded.

Section 37 of Bhartiya Nyaya Sanhita, 2023 correspond to section 99 of the IPC, 1860. There is no material change in the language of provision except the section has been rearranged with sub clauses. For the sake of convenience certain judicial pronouncements on the fundamentals of IPC 1860 are retained and referred herein.

### **Governing Principle**

The right of private defense of a person and property is recognized in all free, civilized democratic, societies within certain reasonable limits. Those limits are dictated by two considerations –

(1) that the same right is claimed by all other members of the society; and

(2) that it is the State which generally undertake the responsibility for the maintenance of law and order.

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The citizens, as a general rule, are neither expected to run away for safety when face with grave and imminent danger to their person or property as a result of unlawful aggression, now are they expected, by use of force, to right the wrongs done to them or to punish the wrong doer for commission of offense. Right to private defense serves a social purpose and as observed by the courts more than once there is nothing more degrading the human spirit then to run away in the face of peril. But right is basically preventive not punitive.

Section 37 lays down the conditions and limits within which the right of private defense can be exercised. The section gives a defensive right to a man and not an offensive right. That is to say, it does not arm a man with fire and ammunition, but encourages him to help himself and others, if there is a reasonable apprehension of danger to life and property. The first two clauses provides that the right of private defense cannot be evoked against a public servant or a person acting in good faith in the exercise of his legal duty provided that the act is not illegal. Similarly, clause three restricts the right of private defense, if there is time to seek help of public authorities. And the right must be exercised in proportion to the harm to be inflicted. In other words, there is no right of private defense;

- (i) Against the acts of a public servant acting in good faith; and
- (ii) Against the acts of those acting under their authority or direction;
- (iii) Where there is sufficient time for recourse to public authorities; and
- (iv) The quantum of harm that may be caused shall in no case be in excess of harm that may be necessary for the purpose of defense.

Good faith plays a vital role here under this section. Good faith does not require logical infallibility (accuracy) but due care and caution as defined under section 2(11) of the sanhita. Thus, a police officer acting *Bona fide* under the color of his office, should he arrest a person even though he has no authority to arrest under the particular circumstances of the case, the person so arrested has no right of private defense.

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However, the act of the servant is *ultra vires*, the right of private defense can be exercised against him. For an instance, the act of an officer of the court who acts under a time-expired warrant and attaches the property, cannot be said to have done according to law and in good faith.<sup>10</sup> Similarly, search made in violation of the mandatory provisions of law for the purpose of making an investigation into an offense as laid down in section 165, Crpc, 1973 cannot be said to be done in good faith and with the due care and attention.<sup>11</sup>

**Section 38 When the right of private defense of the body extend to causing death. – The right of private defense of the body extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the assailant, if the offense which occasions the exercise of the right be of a any of the descriptions hereinafter enumerated, namely:-**

- (a) such an assault as any reasonably cause the apprehension that death will otherwise be the consequence of such assault;
- (b) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
- (c) an assault with the intention of committing rape;
- (d) an assault with the intention of gratifying unnatural lust;
- (e) an assault with the intention of kidnapping or abducting ;
- (f) an assault with the intention of wrongfully confining the 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;

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<sup>10</sup> Shiblal, (1933) ILR 55 All 617.

<sup>11</sup> Mithu Khan v. State of Rajasthan, AIR 121. A search party consisting of a narcotic Inspector, an informer and policemen attempted to enter the house of accused for the recovery of contraband opium. The inspector did not specify the grounds which had led him to believe that the contraband was stored at that place. The appellant resisted the entry and stuck the members of the party when they attempted to enter the house. Held, section 99 IPC will not apply.

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(g) an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

Section 38 of the Bhartiya Nyaya Sanhita, 2023 correspond to section 100 of the Indian Penal Code, 1860. This provision had been rearranged with clauses.

The words 'mentioned in the last preceding section' is substituted with 'specified in section 37'.

To invoke section 38, four conditions must exist,

*Firstly*, that the person exercising the right of private defense must be free from the fault in bringing about the encounter,

*Secondly*, there must be present an impending peril to life or of great bodily harm, either real or so apparent as to create an honest belief of exceeding (great) necessity;

*Thirdly*, there must be no safe or reasonable mode of escape by retreat; and

*Fourthly*, there must have been a necessity for taking the life.

**Section 39 - When such right extends to causing any harm other than death. – if the offense be not of any of the descriptions enumerated in the last preceding section, the right of private defense of the body does not extend to voluntary causing of death to the assailant, but does not extend, under the restrictions specified in section 37, to the voluntary causing to the assailant of any harm other than death.**

Section 39 of BNS, 2023 correspond to section 101 of the old IPC, 1860, here the words 'mentioned' is substituted with word 'specified'. 'section 99' is substituted with 'section 37' these changes to not hamper with the essence and operation of the provision as it stood.

Section 39 provides that, if the offense which is entitles a man to exercise the right of private defense does not extend to voluntary causing of death. That is to say, under this section any harm short of death can be successfully inflicted in exercising the right of private defense subject to the restrictions mentioned in section 99 of IPC, 1860 now in 'section 37' of the BNS 2023

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**Section 40 – Commencement and continuance of the right of private defense of the body – The right of private defense of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit 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 40 of BNS, 2023 correspond to section 102 of IPC, 1860, the provision is retained as it is.

Section 40 and 43, fixes the time when the right of private defense commences and the time during which it continues. According to section 40, the right of private defense of the body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit an offense, albeit the offense might not be committed, and such right continues so long as such apprehension of danger to the body continues. The threat however, must reasonably give rise to a present and imminent, and not remote or distant danger.

*Deo Narain v State of UP*,<sup>12</sup> The Supreme court held that the right of private defense is a “preventive and not a punitive right”. If after sustaining serious injuries there is no apprehension of further danger to the body, obviously the right of private defense would not be available. But, to say that “appellant could only claim the right to use force after he had sustained assault is a complete misunderstanding of the law embodied in section 102 of IPC. It depends on the circumstances of the case.

**Section 41 – When the right to private defense of property extends to causing death. – The right to private defense of property extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the wrong-doer, if the offense, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offense of any of the descriptions hereinafter enumerated, namely:-**

(a) robbery;

(b) house-breaking after sunset and before sunrise;

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<sup>12</sup> *Deo Narain v State of UP* AIR 1973 SC 473

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(c) mischief by fire or any explosive substance 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;

(d) 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 41 of Bhartiya Nyaya Sanhita, 2023 correspond to section 103 of IPC, 1860. The section has been arranged differently with intersection of sub-clause. Reference to section 99 of the IPC, 1860 is substituted the corresponding section of BNS, 2023 – section 37

Section 41, 42, and 43 of BNS, 2023 provides provisions for right to private defense for the protection of one's property as also of another's property. Under section 41 and the right of private defense of property extends, subject to the restrictions mentioned in section 37, to voluntary causing of death, in case of robbery, house-breaking after sunset and before sunrise, theft or mischief, when such theft or mischief is committed in such circumstances as may reasonably cause an apprehension that death or grievous hurt will result, if such circumstances as may reasonably cause an apprehension that the death or grievous hurt will result, is such right of private defense is not exercised. This means that if one is not able to establish that the offense was one of the descriptions enumerated in section 41, the accused have no right of private defense extending to causing of death.

**Section 42 – When such right extends to causing any harm other than death. - If the offense, the committing of which, or the attempting to commit which occasions the exercise of the right of private defense, be theft, mischief, or criminal trespass, not of any of the descriptions specified in section 41, that right does not extends to voluntary causing of death, but does extend, subject to the restrictions specified in section 37, to the voluntary causing to the wrong-doer of any harm other than death.**

Section 42 of BNS, 2023 corresponds to section 104 of IPC, 1860. The provision have been carried forward unaltered except that section 99 and 103 IPC have been substituted by section 37 and 41 in the BNS, 2023. These changes do not effect the operations and exercise and essence of

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the provision as it then stood. Therefore, for the sake of convenience certain judicial pronouncements on the fundamentals of erstwhile IPC, 1860 are retained and referred herein.

Section 42 restricts the right of private defense of property, as section 39 puts a check on right to private defense of the body, to causing any harm short of death in the exercise of the right of private defense. Section 42 accordingly provides that if the offense which occasions the exercise of the right of private defense, be theft, mischief or criminal trespass, and not of any conditions enumerated in section 103, the right of defense extends only to the voluntary causing of any harm other than death.

**Section – 43 Commencement and continuance of the right of private defense of property. –  
The right of private defense of property, -**

- (a) commences when a reasonable apprehension of danger to the property commences;
- (b) against theft continues till 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;
- (c) against robbery continues as long as the offender causes or attempt to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues;
- (d) against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief;
- (e) against the house-breaking after sunset and before sunrise continues as long as the house trespass which has been begun by such housebreaking continues.

Section 43 of BNS, 2023 corresponds to section 105 of IPC, 1860. The section has been reorganized with sub clauses. In section 43(e) the words ‘by night’ is substituted with ‘after sunset and before sunrise’ the ingredients of the provision remain the same. Therefore, for the sake of convenience certain judicial pronouncements on fundamentals of erstwhile IPC, 1860 are retained and referred herein.

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Section 43 like section 40, fixes the time when the right to private defense of property commences and when it comes to an end. The right of defense of property commences as soon as reasonable apprehension of danger to the property commences. The continuance depends upon the nature of offense. In case of theft, it continues till the offender has affected his retreat with the property, or the assistance of public authorities is received, or the property has been recovered. In case of robbery it continues as long as the offender causes or attempts to cause any person death or hurt, or as long as the instant personal restraint continues. In case of criminal trespass or mischief the right continues so long as the offender continues in the commission of criminal trespass or mischief.

**Section 44 – Right of private defense against deadly assault when there is risk of harm to innocent person – If in exercising the right of private defense against the assault which reasonably causes the apprehension of death, the defender be so situated that he cannot eventually exercise that the right without risk of harm to an innocent person, his right of private defense extends to the running of that risk.**

Section 44 of the BNS, 2023 corresponds to section 106 of IPC, 1860. The provision is retained as it is. Therefore, for the sake of convenience certain judicial pronouncements on the fundamentals of erstwhile IPC, 1860 are retained and referred herein.

Section 44 deals with the a situation of extreme necessity, in which a person is authorized by law to run the risk of harming even innocent persons in order to protect himself from mortal injury. The section provides that whenever an apprehension of death exist and the person is so situated that he cannot effectively exercise the right of private defense without the possibility of doing harm to an innocent person, he may take the risk of such harm resulting.

### ***Findings***

In the brief, detailed and comprehensive analyze of Part II of Chapter III of Bhartiya Nyaya Sanhita, 2023 of Right to Private defense it was commonly seen that whole of the concept of private defense is truly organized in a systematic manner in which all the definitions, meanings and restrictions are given simultaneously as the provision goes each one of the another section

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keeps check on one another. In the newly introduced criminal law these provisions are more efficiently explained and arranged and till date no as such change is required to introduce as this chapter is self sufficient to answer the cases that comes up.

### *Conclusion*

The right to private defense, codified in Sections 96 to 106 of the Indian Penal Code, and now in Section 34 to 44 of Bhartiya Nyaya Sanhita embodies the principle that individuals have a right to protect their person and property when threatened unlawfully. This right is not absolute but is subject to reasonable restrictions to prevent misuse.

Section 34 establishes that acts done in private defense are not offenses. Sections 35 and 36 define the scope, extending the right to protect oneself and others against offenses affecting the body and property, even against individuals incapable of committing an offense due to reasons like insanity. Section 37 imposes limitations, ensuring this right is not exercised disproportionately or against public servants performing lawful duties. Sections 38 and 39 detail the extent of force permissible in defense of the body, including the right to cause death in grave circumstances. Sections 40 and 41 specify the commencement and continuance of this right, emphasizing its applicability during immediate threats. Section 104 addresses property defense when not causing death, while Section 44 allows actions even at the risk of harming innocent persons, provided it's unavoidable. In essence, the right to private defense balances individual safety with societal interests, empowering individuals to act against immediate threats while curbing potential abuse. It upholds justice by legitimizing self-defense in genuine situations of necessity.

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