VOLUME 5 | ISSUE 4

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

THE SCOPE AND LIMITATIONS OF THE RIGHT TO PRIVATE DEFENCE: A CRITICAL ANALYSIS UNDER CRIMINAL JURISPRUDENCE

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ABSTRACT

The right to private defence is a fundamental exception to criminal liability, rooted in the universal principle of self-preservation and natural justice. This paper critically examines the scope, nature, and limitations of this right, particularly within the framework of Indian criminal law as codified under Sections 35 to 44 of the Bhartiya Nayay Sanhita, 2023 (BNS). It explores how the law permits individuals to use necessary and proportional force to protect themselves, others, or their property in situations where state protection is unavailable or delayed. Drawing on historical philosophical foundations, statutory provisions, and key judicial precedents, the study highlights that the right is inherently defensive—not retaliatory—and must be exercised only under specific conditions, such as reasonable apprehension of harm and absence of lawful alternatives. The paper also compares the Indian legal position with international and common law perspectives, thereby providing a broader contextual understanding. While acknowledging the importance of this right in safeguarding civil liberties, the research also underscores the need for robust legal safeguards to prevent its misuse, particularly in the context of mob violence and communal tensions. The conclusion advocates for legal reforms, clearer guidelines, and increased public awareness to ensure the responsible exercise of this essential right, thereby maintaining a just balance between individual freedom and public order.

INTRODUCTION

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The right to private defence stands as one of the most crucial and universally accepted exceptions to criminal liability, rooted in the fundamental principle of self-preservation. At its core, this right enables individuals to lawfully protect themselves, others, and their property from imminent harm when the intervention of lawful authority is either unavailable or delayed. While the modern state holds a monopoly over the use of force through its law enforcement agencies, the law nevertheless recognizes that there may be situations where immediate defensive action becomes necessary and justified[3]. In such circumstances, the right to private defence acts as a legal safeguard against penal consequences.Historically, the concept of private defence finds its origins in natural law theories that emphasize the instinct of self-preservation as a basic human right. Thinkers like John Locke and Thomas Hobbes have long maintained that individuals possess an inherent right to defend themselves against aggression, even in the absence of formal legal systems. In the context of modern legal systems, including the Bhartiya Nayay Sanhita, 2023 (BNS), this principle has been codified to maintain a delicate balance between enabling self-protection and preventing its misuse as a license for retaliation or violence. Sections 35 to 44 of the BNS form the statutory foundation of this right in India, laying out both its scope and limitations in a comprehensive manner.

Despite its significance, the right to private defence remains a complex and often controversial area within criminal jurisprudence. It raises fundamental questions regarding the use of force, proportionality, and the threshold of "reasonable apprehension" of danger. Misinterpretations of this right, both by individuals and law enforcement agencies, have sometimes led to misuse, raising concerns about vigilantism and excessive force. In recent years, public discourse around self-defence has intensified, particularly in cases involving mob violence, communal tensions, or alleged police inaction.[4]This research paper aims to critically examine the scope and limitations of the right to private defence, with a particular focus on Indian criminal law, while drawing comparisons with other legal systems. It seeks to explore the legal boundaries within which this right operates, the extent to which it is protected, and the circumstances under which it may be restricted. Through an analysis of statutory provisions, judicial interpretations, and real-world applications, this paper will attempt to provide a nuanced understanding of this essential yet contentious legal defence.

[3]James Q. Whitman, Between Self-Defense and Vengeance/between Social Contract and Monopoly of Violence, 39 TULSA L. REV. 901, 902 (2004)

[4]George P. Fletcher, Self-Defense as a Justification for Punishment, 12 CARDOZO L. REV. 859, 865 (1991).

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PRIVATE DEFENCE: MEANING AND TYPES

The articulation 'private guard' that has been utilized in the Bhartiya Nayay Sanhita, 2023, has not been characterized in that. Consequently, it has been the privilege of the legal executive to develop a useful system for the activity of the right. Accordingly in India, the right of private guard is the option to protect the individual or property of himself or of some other individual against a demonstration of another, which on the off chance that the private safeguard isn't argued would have added up to a wrongdoing. This right hence makes an exemption for criminal risk. A portion of the parts of the right of private protection under the IPC are that no right of self-preservation can exist against an unarmed and unoffending individual, the right is accessible against the assailant just and it is just the individual who is in impending peril of individual or property and just when no state help is free[5]. The right of private guard is a characteristic right which is displayed from specific conditions rather than being in the idea of an honor. Notwithstanding, the main standard is that the right of private protection expects that the power utilized in the guard should be vital and sensible in the conditions. Yet, at the times of upset state of mind, this can't be estimated in brilliant scales. Regardless of whether the instance of need exists not acommodated when the right can't be truly practiced and furthermore the arrangement indicates obviously the cases in which the right can reach out to the causing of death of the attacker. The sensible anxiety must be defended assuming the denounced had a genuine conviction that there is risk and that such conviction is sensibly justified by the lead of the attacker and the encompassing conditions. This acquires a bit of a genuine measure for laying out 'sensibility.' The approach of risk is additionally a significant essential for the legitimate exercise self-protection.

NATURE OF RIGHT OF PRIVATE DEFENCE

The right to private defence, also known as the right of self-defence, is a foundational principle within criminal jurisprudence that recognizes an individual's right to protect their life, body, or property from unlawful harm. It represents one of the few legal exceptions to the general prohibition on the use of force and, in certain circumstances, even lethal force.

1. Inherent and Natural Right: The right to private defence is widely acknowledged as an **inherent and natural right**, rooted in the instinct of self-preservation. It exists independently

[5]Mondal, M., 2019. A Detailed Study of Right to Private Defence under IPC. LexForti Legal J., 1, p.1.

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of any codified law and is often considered part of customary and moral frameworks of justice. The idea is that every individual, when confronted with an imminent threat, possesses the right to resist aggression—even without the intervention of the state.Philosophers like **John Locke** and **Thomas Hobbes** have emphasized that in a "state of nature," self-defence is a fundamental right necessary to ensure survival. [6]Locke, in particular, argued that no one should harm another in their life, health, liberty, or possessions, and if such harm is attempted, the person affected has the right to retaliate to prevent further injustice.

2. Legal Recognition

While the origin of the right is natural, modern legal systems have codified this right, providing clear parameters to govern its exercise. For example:

- **India**: The right is codified in Sections 35-44 of the Bhartiya Nayay Sanhita, 2023. It permits a person to use reasonable force to protect themselves or others against certain offences affecting the human body or property.
- United Kingdom: Recognized under common law principles, particularly focusing on the "reasonable force" standard, and under statutory laws such as the Criminal Law Act 1967.
- United States: Self-defence is a constitutional and statutory right, interpreted under doctrines like the "Stand Your Ground" law and "Castle Doctrine".
- International Law: The right is indirectly recognized in instruments such as the Universal Declaration of Human Rights, emphasizing the right to life and security.

3. Defensive, Not Punitive: A key aspect of the nature of private defence is that it is defensive and preventive—not punitive. The right does not authorize retaliation or revenge after the threat has passed. The force used must be strictly for repelling the unlawful aggression and not for punishing the aggressor.This has been emphasized in several judicial interpretations. For instance, the Supreme Court of India has held that private defence must be exercised only inreal-time when the threat is ongoing or imminent, not after the danger has ceased [7](*State of U.P. v. Ram Swarup*).

[6]Ashworth, A.J., 1975. Self-defence and the Right to Life. The Cambridge Law Journal, 34(2), pp.282-307.
[7](State of U.P. v Ram Swarup)AIR1988SC1028

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4. Conditional and Limited: Though natural, this right is not absolute. It is subject to several conditions, There must be a reasonable apprehension of danger, The force used must be proportional to the threat, The right cannot be invoked against lawful actions (e.g., actions of police officers performing their duty unless they act unlawfully), Once the threat subsides, the right to use force ends.

5. Individual and Social Balance: The nature of the right to private defence also lies in its **dual purpose**:

- **Protective**: It safeguards individuals from harm when state protection is not immediately available.
- **Regulatory**: It maintains social order by allowing controlled use of force, rather than encouraging lawlessness or vigilante justice.

SCOPE AND APPLICABILITY OF RIGHT OF PRIVATE DEFENCE

In order to ascertain whether the right to privacy is available to the accused, it is necessary to carefully examine the entire incident and consider it in its entirety and in its proper setting. The injuries sustained by the defendant, the imminent threat to his safety, the injuries sustained by the defendant, and the circumstances in which the defendant applied to the public authorities are all factors to be taken into account when applying for private defense. It should be especially noted that the right to private defense is available only to one who is suddenly confronted with an aversive danger not created by himself. Supreme Court further opined in ***Laxman v. State of Orissa***, that necessity must be present, real and apparent. The basis of the right to private defense is based on the following provisions:

- The state is obliged to protect people from illegal encroachments on their person and property;
- If in case help cannot be obtained, one should always resort to someone who is at risk and can do whatever is necessary to protect themselves.
- Violence must be strictly proportionate to the damage to be prevented and must not be used to satisfy revenge and malice towards the aggressor. [8]

[8]Lakshman v. State of Orissa(AIR 1968 Ori 108).

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The counterattack could in no sense be an attack in exercise of the right of private defensive. The right to private defense is preventive, not punitive, and harm cannot be prevented or retaliated against. A free fight is a fight where both sides intend to fight from the start, so it is also exempt from the provisions of sections 96-106.

GENISIS AND APPLICABILITY OF RIGHT TO PRIVATE DEFENCE

Chapter III of the Bhartiya Nayay Sanhita concerning the right to private defense; In the words of Lord Macaulay, the creator of the code, "this is an attempt to define the limits of the right to private protection." The right to private defense under section 35-44 of the BNS is based on the theory of protecting oneself from harm caused by another person. When there is a danger to the body and/or property, the prudent citizen has the right to return in defense of the same, keeping the land, from harm that may be caused. The sections must be read together to establish whether the defendants, in the facts and circumstances of the case, were entitled to a defense or whether they exceeded it. Only then one can get a Comprehensive view of the scope and limitations of the right. [9] The gist of these sections, when read together, gives us the real essence it holds; that is, if there is a fear of danger to life, body or property (real and justified), the harm thus caused must not be greater or greater than is necessary for the specific danger. When applying the exception, and rather the act of self-defense itself, one should always take into account the urgency of the situation, which matters most when it is applied in real situations.

In the case of ***Jagdish Chandra v. State of Rajasthan*** , the scope of understanding any private defense case is very well described and explained by the venerable judges in their verdict: “When circumstances are assessed and the background is analyzed, it is recommended that you put yourself in your place when deciding the fate of the situation.” in the chair of the accused and evaluate how he would behave in a given situation at the very moment when a person is in danger. Therefore, it is recommended to observe the situation from the point of view of the accused, and not from the point of view of a calm outside observer.” [10]Under common law, there are many circumstances in which one person may, in

[9]GEORGE P. FLETCHER, RETHINKING CRIMINAL LAW 69 (Little, Brown and Company 1978).

[10]Jagdish Chandra V State of Rajasthan ((2004) 03 RAJ CK 0022

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good faith and reasonably, use violence against another in a predetermined place where, in his opinion, the right to private defense is exercised.[11]

PRIVATE DEFENCE UNDER BHARTIYA NAYAY SANHITA,2023

Sections 35 to 44 of Bhartiya Nayay Sanhita,2023 constitute the legal framework governing the right of private defence concerning both individuals and their property. These provisions empower individuals to employ necessary force against assailants or wrongdoers in defence of their own person or possessions, as well as to protect others' bodies and properties when immediate assistance from law enforcement is unavailable.

Under these sections, individuals are shielded from legal liability for their actions taken in the exercise of private defence:

1. **Section 34:** Defines the general right to private defence, stating that everyone has the right to defend themselves or others against any act that causes a reasonable fear of death or serious bodily harm.
2. **Section 35:** It says that the right includes the use of action that is proportionate to the harm feared to repel the assault.
3. **Section 36:** Addresses the right to private defence against the actions of a person who is insane, intoxicated, or in any other comparable state.
4. **Section 37:** Defines actions that are not subject to private defence.
5. **Section 38:** Addresses circumstances in which the right to private bodily defence goes to inflicting death.
6. **Section 39:** This section addresses circumstances in which the right to private bodily defence stretches to inflicting harm other than death. It says that such action may be used when there is a reasonable fear of grave harm and the individual exercising the right of private defence has no other way of escaping.
7. **Section 40:** Provides for the establishment and maintenance of the right to private property defence.
8. **Section 41:** Lays down circumstances in which the right to private property defence stretches to inflicting death.

[11]Ibid

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9. **Section 42:** Addresses circumstances in which the right to private property defence stretches to inflicting harm other than death.
10. **Section 43:** This section addresses the establishment and maintenance of the right to private defence of one's person and property.
11. **Section 44:** Deals with the right of private defence against a deadly assault when there is a risk of harm to an innocent person.

LIMITATIONS TO THE RIGHT OF PRIVATE DEFENCE UNDER IPC

1. **Proportional Force**: Any force used in self-defence must be appropriate and proportional to the level of threat faced. Using excessive force beyond what is necessary is not considered justifiable under the law.
2. **Time-Bound**: The right to private defence is applicable only during the continuation of the danger. Once the danger subsides or the threat is no longer imminent, the right to defend oneself or property ceases to exist.
3. **Reasonable Belief:** Individuals invoking the right of private defence must have a genuine and reasonable belief that using force is essential to prevent harm. Mere suspicion or unfounded assumptions do not validate the use of force in self-defence.
4. **Use of Deadly Force**: The use of lethal or deadly force is justified only when there is an immediate threat of death or serious bodily harm. Using lethal force in situations where non-lethal means could suffice is not permissible under the law.
5. **Avoiding Unnecessary Harm**: Defenders must take measures to minimize harm and injury, ensuring that their actions are not excessively harmful or cruel beyond what is necessary to repel the attack or threat.
6. **No Pre-emptive Strikes:** The right to private defence cannot be preemptively invoked to justify offensive actions, revenge, or retaliation. It is specifically limited to defending against ongoing threats or attacks and does not extend to proactive or retaliatory measures.

LANDMARK CASE LAWS

1. **Darshan Singh vs. State of Punjab (2010):** The Supreme Court established guidelines concerning citizens' right to self-defence, emphasizing that individuals

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facing an imminent threat to life are not expected to act in a cowardly manner and have the right to use lethal force against the aggressor if necessary. However, the court also cautioned against using self-defence as a pretext for endangering others' lives or seeking personal vengeance. It outlined ten specific situations where the right to self-defence applies:

a. Self-preservation is a basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
b. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
c. A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
d. The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
e. It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
f. In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
g. It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
h. The accused need not prove the existence of the right of private defence beyond reasonable doubt.
i. The Indian Penal Code confers the right of private defence only when the unlawful or wrongful act is an offence.

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j. A person who is in imminent and reasonable danger of losing his life or limb may, in exercise of self defence, inflict any harm (even extending to death) on his assailant either when the assault is attempted or directly threatened.[12]

2. **Jassa Singh vs. State of Haryana (2002):** The Supreme Court clarified that the right of private defence concerning property does not include the right to cause the death of a person who commits acts of trespass on open land. According to the court, only house trespass committed under circumstances that could reasonably lead to death or grievous harm is specifically listed as an offense under Section 103 regarding the right of private defence.[13]
3. **Nand Kishore Lal v. Emperor (1924):** Accused Sikhs abducted a Muslim woman and converted her to Sikhism, a situation arose where the woman's relatives demanded her return almost a year later. Despite the woman's express unwillingness to rejoin her Muslim husband, her relatives attempted to take her by force. In response, the accused resisted and one of them caused the death of the woman's assailants while defending her. The court held that the accused had the right to defend the woman against her assailants, and this right extended to causing death under relevant legal provisions. The actions of the accused in causing the death of the assailants were deemed lawful, and they were not held to have committed any offence in this context.[14]
4. **Mohinder Pal Jolly v. State of Punjab (1979):** In a scenario where workers of a factory were throwing brickbats from outside the gates, prompting the factory owner to use his revolver and cause the death of a worker, the court ruled that the relevant legal provision did not protect the factory owner in this instance. Therefore, the factory owner was not shielded by the law in this situation.[15]
5. **Puran Singh and Ors vs. The State of Punjab (1975):** The court observed that in the following circumstances right of private defence can be exercised :-

[12]Darshan Singh v. State of Punjab (2010) 2 SCC 333
[13]Jassa Singh v. State of Haryana (AIR 2002 SC 520)
[14]Nand Kishore Lal v. Emperor, (AIR 1924 Patna 789).
[15]Mohinder Pal Jolly v. State of Punjab (AIR 1979 SC 577)

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- There is no sufficient time for recourse to the public authorities ii. There must be a reasonable apprehension of death or grievous hurt to the person or danger to the property concerned.
- More harm than necessary should not have been caused.[16]

CONCLUSION

The right to private defence occupies a unique and vital space within criminal jurisprudence, serving as both a shield for individual liberty and a safeguard against the overreach of unlawful aggression. It underscores the legal and moral recognition that individuals should not be penalized for protecting their life, body, or property when immediate help from lawful authorities is unavailable. As codified in Sections 96 to 106 of the Indian Penal Code, this right provides a structured legal framework that authorizes the use of necessary force in self-defence, subject to clear statutory and judicial constraints. This research has critically examined the contours of this right—highlighting its broad scope in defending both person and property, as well as its carefully designed limitations to prevent misuse. While the law permits even the use of deadly force in certain grave situations, it is simultaneously careful to restrict such force through doctrines of necessity, proportionality, and reasonable apprehension of harm. These restrictions are essential in preserving the line between lawful defence and unlawful aggression.

Judicial interpretations have played a crucial role in refining the application of this right, but inconsistencies and ambiguities remain. Cases involving false claims of self-defence, misuse in communal or mob-related violence, and unclear evidentiary standards expose vulnerabilities in the legal system. This underscores the need for continued legal reform, including clearer statutory language, judicial guidelines, and public awareness campaigns to ensure the right is neither misunderstood nor abused.Ultimately, the right to private defence must be preserved as a core tenet of justice, but with adequate safeguards to ensure it is exercised responsibly. In a legal system that seeks to balance individual freedoms with collective security, the right to private defence must evolve in a manner that both empowers citizens and upholds the rule of law.

[16]Puran Singh and Ors. v. State of PunjabAIR 1975 SC 1674

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