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SELF-DEFENCE IN INDIAN LEGAL FRAMEWORKS: EXAMINING ITS SCOPE, CONSTRAINTS, AND JUDICIAL APPROACHES

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Abstract

Self-defence is a fundamental legal principle that permits individuals to use reasonable force to protect themselves or others from imminent harm. Rooted in both moral and legal justifications, the right to self-defence serves as a crucial exception to the general prohibition against the use of force. This paper explores the historical evolution, legal framework, and philosophical underpinnings of self-defence across various legal systems, with a particular focus on Indian law and comparative perspectives from common law jurisdictions. It critically examines the essential elements required to invoke the right of private defence, including the notions of imminence, necessity, proportionality, and good faith. Furthermore, the paper analyzes landmark judicial pronouncements to understand how courts have interpreted and applied the doctrine in diverse factual contexts. The research highlights ambiguities and challenges in the practical enforcement of self-defence claims, especially in cases involving excessive or pre-emptive force. By evaluating both statutory provisions and case law, the study aims to provide recommendations for a more consistent and just application of self-defence in contemporary legal practice.

1. INTRODUCTION

The instinct of self-preservation is fundamental to all living beings and has long been recognized in the criminal laws of civilized societies. Virtually every democratic and lawful nation acknowledges the *Right of Private Defence*—albeit within clearly defined legal limits.

In cases where this right is exercised to the extent of causing death, the accused must establish that they reasonably feared death or serious bodily harm¹.

A person threatened with harm has the lawful right to defend themselves without having to escape first. However, this right arises only when there's an actual or perceived imminent threat. The perceived danger must be immediate and credible. The right to protect one's life and physical safety is considered essential—arguably more crucial than any other right—since survival is foundational to the enjoyment of all other rights. It is natural for a person to choose self-defence, even if it means using deadly force, rather than being a passive victim.

The concept of Private Defence dates back to ancient societies, where individuals defended their lives and possessions. History contains countless instances where communities collectively exercised this right to protect their territory, natural resources, and rights—sometimes even sparking wars. Today, this intrinsic right has been codified in various legal systems, such as the Indian Penal Code, 1860 (now renamed as *Bhartiya Nyaya Sahinta*, 2023)².

Legal theorist **Michael Gorr**, in his article "*Private Defense*", noted that aside from strict pacifists, most people agree that it is morally acceptable to inflict harm—even lethal harm—when necessary to protect oneself or others from serious danger³.

This right is not nullified merely because bystanders are present. The law encourages individuals to stand firm in the face of unlawful attacks, rather than flee or exhaust all possible alternatives before acting. It does not expect a person to act cowardly in such situations. The right of Private Defence is meant to empower law-abiding citizens to resist criminal aggression—but within boundaries. It must not be misused for revenge or with malice. The level of force used must be proportional to the threat posed.

It is not a crime to defend oneself or others from unlawful force, particularly when such force creates a reasonable fear of death or serious injury. When carried out without excess, the use of force in such situations is justified. As **Sir James Fitzjames Stephen** pointed out, self-preservation may justify even lethal action if that is the only way to protect one's life.

¹L.B. Curzon, *Dictionary of Law*, 6th ed., Pearson Education, 2002, p. 328

² Amended by *The Criminal Law (Amendment) Act, 2023*.

³Michael Gorr, "Private Defense", *Philosophy & Public Affairs*, Vol. 13, No. 4 (1984), pp. 241–262.

This right is not about retribution but about preventing imminent harm. People should not be expected to passively endure violence; that would only serve to embolden criminals. Recognizing the right to life but denying the means to protect it would be illogical. Self-defence is arguably one of the earliest forms of legal justification across legal systems.

This right extends not just to defending oneself but also to protecting one's family and, in some cases, even strangers, especially in situations involving felonious assaults. The law supports the idea that witnessing injustice can stir a noble impulse to protect the weak. Encouraging such acts promotes both courage and compassion, and society benefits when individuals are empowered to assist others in danger.

Although it is the government's duty to protect its citizens, it is not feasible for the state to provide immediate protection to every individual at all times. Therefore, the law allows individuals to take reasonable measures to protect themselves when state assistance is unavailable or impractical due to time constraints.

The *Chambers English Dictionary* defines Private Defence (more commonly referred to as Self-Defence) as defending oneself or one's rights. L.B. Curzon describes it as a legal situation where a person is not held liable for actions taken to defend themselves or their property, provided those actions are reasonable⁴. Similarly, *Osborn's Concise Law Dictionary* defines it as reasonable action taken to protect one's person or property, even allowing for defence of others from unlawful force⁵.

The right of Private Defence does not apply against acts that are not legally considered offences. It can be exercised against any aggressor, whether sane, insane, competent, or mistaken. The key criterion is whether there was an imminent threat, not the attacker's intent. In dire situations, even innocent persons may be harmed if it is the only way to prevent a greater injury or death. The critical legal question is whether the accused genuinely believed that immediate action was necessary and whether their chosen response was proportionate to the threat.

Courts are expected to assess such cases from the perspective of the person under threat, not from the detached viewpoint of an uninvolved observer. The law acknowledges that a person

⁴L.B. Curzon, *Dictionary of Law*, 6th ed., Pearson Education, 2002, p. 328

⁵Osborn, *Concise Law Dictionary*, 12th ed., Sweet & Maxwell, 2013, p. 466

fearing for their life is not expected to carefully calibrate their response. As observed in the U.S. Supreme Court case *Robert B. Brown v. United States (1921)*⁶, one cannot demand calm reasoning in the presence of an immediate threat, such as an attacker wielding a knife.

Over time, legal systems have evolved to recognize that individuals who use necessary force in self-defence—even if resulting in serious harm or death—should not be punished. Early English law even treated justified killings as non-criminal, with no penalty attached, since they were seen as acts sanctioned by the law. Today, while such acts are more strictly regulated, justification is still allowed under specific legal conditions.

The duty to protect its citizens lies with the state, but no state—regardless of its resources—can provide real-time protection to everyone. It cannot monitor every threat or criminal act. Therefore, individuals must be allowed to protect themselves and their property when state intervention is not immediately available. In such moments, the right of Private Defence allows a person to resist and repel aggression until help arrives.

This concept rests on the principle that necessity overrides other considerations, and that individuals must first safeguard themselves. However, while this right is inherent, it cannot be exercised in ways that infringe upon the rights of others.

1.1 SELF-DEFENCE AND PRIVATE DEFENCE

The expressions *Self-Defence* and *Private Defence* are essentially synonymous, both signifying the same legal principle. The Latin term *se defendendo* conveys this concept as well. In early times—before the evolution of organized societies—the prevailing notion was "might makes right." As civilizations progressed, states assumed responsibility for safeguarding individual life and property. However, it soon became apparent that the state alone could not always offer immediate protection. Therefore, individuals retained the right to defend themselves and their property when facing threats, within reasonable limits, including the use of force that may result in injury.

In this discussion, the terms *Private Defence* and *Self-Defence* are used interchangeably. Though the general public often prefers the term *Self-Defence*, legal scholars typically lean

⁶*Robert B. Brown v. United States*, 256 U.S. 335 (1921)

toward *Private Defence* as it more accurately encompasses the protection not only of oneself but also of others and of property.

1.2 THE CONCEPT OF SELF-DEFENCE

Self-defence is a flexible and evolving legal concept. Its scope varies by jurisdiction and may change over time depending on specific circumstances. Historically, before the Statute of Westminster in 1267, a person who killed in self-defence was treated as though he had committed a felony and was subject to capital punishment, with no right to be acquitted by a jury. A royal pardon was the only path to escape punishment.

Initially, English common law did not acknowledge that a homicide committed in defence of one's own life could be justified. The legal shift toward recognizing *Private Defence* arose from the need to weigh the rights of the aggressor and the defender—where the aggressor, being morally at fault, is given less consideration in legal analysis⁷.

However, any force used in defence must be both reasonable and proportionate to the threat faced. Lethal force cannot be justified in response to a minor provocation. The defender's actions, which might ordinarily constitute a criminal offence, may be excused if they are taken to ward off unlawful aggression. The law essentially chooses the lesser of two evils—permitting harm in order to prevent greater harm.

With the rise of the *Welfare State* and the philosophy of *laissez-faire*, the responsibility to ensure safety of individuals was formally adopted by the state. Modern legal systems and courts recognize the right to self-defence, and many countries have codified this principle within their criminal laws.

2. BASIS OF THE RIGHT OF SELF-DEFENCE

The urge to protect oneself is an instinct shared by all living beings. As B. Parke aptly stated, nature compels a person who is attacked to resist, and such resistance is lawful as long as it is proportional to prevent further aggression.

The extent to which this right is recognized often depends on the state's ability to maintain

⁷Joshua Dressler, "New Thoughts about the Concept of Justification in the Criminal Law: A Critique of Fletcher's Thinking and Rethinking", *UCLA Law Review*, Vol. 32 (1985), pp. 61–99.

order and protect its citizens. In regions where state intervention may not be swift or reliable, individuals may exercise this right more broadly. *Private Defence* is thus a highly valued legal entitlement allowing citizens to protect their person and property from unlawful acts when immediate help from authorities is unavailable.

The underlying rationale of this doctrine is that when a person faces imminent harm and cannot rely on state support, they are justified in defending themselves. The law expects individuals not to flee from criminals but to stand firm. While the law encourages the use of this right, it also limits it—it must not be exercised with malice, nor should it exceed what is necessary to counter the threat.

One is not expected to abandon their property when faced with a trespasser and wait for official intervention. The right to self-defence has a social function; it deters wrongdoers and encourages courage and responsibility among citizens. However, this right arises only when there is unlawful aggression. If the accused was not under attack or if they themselves provoked the incident, they cannot claim self-defence. The right is meant to neutralize unlawful threats—not to serve as an excuse for offensive or retaliatory actions.

Self-defence must also be distinguished from the broader doctrine of *necessity*. Although both involve acting under compelling circumstances, necessity as a defence covers a wider range of situations. Modern legal systems do not recognize the maxim “*necessity knows no law*” as a blanket excuse. Instead, necessity is only recognized in situations arising from external and involuntary compulsion—not self-created dangers.

While the state has the responsibility to protect life and property, there will inevitably be circumstances where an individual must act before authorities can intervene. In such instances, the law permits the use of reasonable force in self-defence. However, the force used must be necessary, proportionate, and never excessive. Moreover, this right does not apply when facing actions taken lawfully by public officials.

2.1 LEGAL CONCEPT OF SELF-DEFENCE

The use of force—even resulting in injury, damage to property, or death—may be legally justified when it is used to protect oneself or others from immediate harm. In legal systems, both public and private defence serve as general defences for crimes involving the use of force.

Whether or not a statute specifically uses the term “unlawfully,” courts will usually consider whether the force used was justified under the circumstances.

The legal burden to disprove a claim of self-defence rests on the prosecution. When someone is under attack, their instinctive reaction to resist is not considered criminal. It is not required that a person wait to be physically attacked before defending themselves. A raised hand or a threatening gesture can be sufficient to justify defensive action.

This right extends beyond personal protection—it includes the defence of others, even when the relationship is only moral, not legal. Historical examples include a husband defending his wife, a parent protecting a child, or a servant assisting their employer. Modern interpretations suggest an even broader duty for the strong to shield the vulnerable.

Earlier legal views referred to the killing of an attacker as *justifiable homicide*, but legal thinkers like Blackstone clarified that only fatal force used to prevent a serious felony could be deemed justifiable. Historically, such killings were merely *excusable* and required a royal pardon, reflecting the doctrine of strict liability. In Scotland, the judiciary has held that a killing can be excused as self-defence only when it was necessary to save one’s life.

Hawkins outlined scenarios where killing in defence is justifiable—such as stopping a highway robber or an intruder with violent intent—and extended this protection to family members or associates of the person under threat.

Hale echoed this sentiment, stating that when a person is faced with a life-threatening attack, or when a violent, unlawful assault is made on one’s property, lethal force may be warranted under the principle of self-defence. The law accepts that a person unable to rely on official protection has the right to reasonably defend themselves. As long as their response is proportionate to the danger, they are legally justified.

Importantly, any act of self-defence must remain defensive in nature. It should not become aggressive or go beyond what is required to neutralize the threat. If a person acts under the genuine and reasonable belief of imminent harm, their actions can be justified. For instance, if an individual is confronted with a firearm, the targeted person has the right to respond in self-defence. The initial attacker cannot then claim self-defence against the victim’s reaction.

Courts will examine the specific context of each case—such as the immediacy of the threat and the force used by the accused—to determine whether the right of self-defence was exercised appropriately. The onus is on the accused to prove the legitimacy of their actions, although the prosecution must still establish the accused guilt beyond reasonable doubt.

Laws inherently restrict individual freedom to ensure peace and protect the collective rights of society. Among the most critical restrictions is the prohibition of force used by one individual against another.

2.2 Difference between “Self-Defence” and “Under Provocation”

When provocation arises from a physical assault intense enough to evoke an immediate and overwhelming emotional response, it may lead to a retaliatory act under the pretext of Self-Defence. Historically, the line between homicide caused by provocation and that under Self-Defence was not always distinct, as both were once treated similarly in terms of legal consequences. However, in modern law, the distinction is critical: a killing in genuine Self-Defence, when reasonable and proportionate, does not lead to criminal liability, whereas a killing committed in the heat of provocation is typically treated as culpable homicide not amounting to murder, or manslaughter.

It is widely understood that even a minor physical provocation, when accompanied by offensive language or demeaning gestures, can stir intense emotions. In some cases, even words alone, depending on the context, can provoke a person to violent retaliation. Yet, legally, such situations are treated differently from lawful acts of Self-Defence, which are defensive and not emotionally charged reactions.

K.M. Nanavati v. State of Maharashtra,⁸ Supreme Court distinguished between acts done in self-defence and those done under grave and sudden provocation, holding that provocation reduces culpability but does not excuse the act entirely.

3. Private Defence in India (Under the Bhartiya Nyaya Sanhita, 2023)

Legislative Framework Transition from IPC to BNS: The legal provisions relating to the right of private defence, which were earlier codified under Sections 96 to 106 of the Indian Penal

⁸AIR 1962 SC 605.

Code, 1860, are now incorporated into the Bhartiya Nyaya Sanhita, 2023, specifically under Sections 35 to 44. This shift is part of a broader legislative reform aimed at modernizing India's criminal law framework, making the language clearer, reducing archaic expressions, and aligning legal provisions with contemporary needs and interpretations. While the underlying principles remain largely similar to the IPC, the BNS provisions provide a more structured articulation of the right, retaining the balance between empowering individuals to defend themselves and preventing the misuse of this right for aggression or vengeance.

3.1 Recognition of the Right as a Fundamental Human Impulse⁹

Section 35 of the BNS, 2023 affirms that any person has the right to defend the body and property:

1. Body – Protection extends to the defender's own body or the body of another person against offences affecting the human body.
2. Property – Protection covers both movable and immovable property, whether belonging to oneself or another, against offences such as theft, robbery, mischief, or criminal trespass, as well as attempts to commit such offences.

The section reflects the legal philosophy that self-preservation and the protection of one's possessions are natural instincts recognized by law, subject to restrictions specified in Section 37. This statutory recognition ensures that the right is available not only for self-defence but also for the defence of others and their property, thus broadening its social and protective function.

*Munshi Ram v. Delhi Administration*¹⁰, Recognised that the right of private defence of property extends to protecting it against unlawful aggression, including trespass and mischief.

3.2 Situations Where the Right is Not Available¹¹

Section 37 of BNS, 2023 imposes critical limitations to ensure that the right of private defence is not misused:

- No right exists against acts of public servants acting in good faith under the colour of their office, even if such acts are later found to be unlawful, provided they do not reasonably cause apprehension of death or grievous hurt.
- No right exists if there is sufficient time to seek protection from public authorities, thereby

⁹ Section 35, the BNS, 2023– Corresponding to Section 97 IPC, 1860.

¹⁰ AIR 1968 SC 702

¹¹ Section 37 of the BNS, 2023– Corresponding to Section 99 IPC, 1860.

encouraging reliance on lawful state intervention whenever feasible.

- The force used in exercise of the right must never be excessive or disproportionate to the nature of the threat; any act that exceeds this threshold loses the protection of private defence and may attract criminal liability.

This section strikes a balance between individual rights and the authority of the state, preventing the use of self-defence as a pretext for unlawful violence.

3.3 Permissible Use of Lethal Force in Defence of Body¹²

Section 38 of BNS, 2023 authorizes the use of force, even to the extent of causing death, when defending the body against certain grave offences, including:

- Assault causing a reasonable apprehension of death.
- Assault causing a reasonable apprehension of grievous hurt.
- Assault with the intention of committing rape or unnatural sexual assault.
- Assault with the intention of kidnapping or abducting.
- Wrongful confinement under circumstances that may cause apprehension of death or grievous hurt.
- Assault by throwing or attempting to throw acid, or by means that cause reasonable apprehension of grievous hurt.

This provision is grounded in the principle that the law must allow individuals to meet deadly force with deadly force when faced with imminent and severe threats to life or bodily integrity.

3.4 Non-Lethal Defence in Less Serious Situations¹³

Section 39 of BNS, 2023 provides for the right to defend the body without causing death, where the threat does not rise to the level of Section 38. In such cases, the defender may inflict any harm other than death to repel the attack, ensuring that the response remains proportionate to the level of danger perceived. This safeguard against the escalation of minor incidents into fatal encounters, reinforcing the proportionality principle in self-defence law.

3.5 Defence of Property Using Lethal Force¹⁴

Section 41 of BNS extends the right to cause death in defence of property under extreme circumstances, such as:

¹² Section 38 of the BNS, 2023– Corresponding to Section 103 IPC, 1860.

¹³ Section 39 of the BNS, 2023– Corresponding to Section 103 IPC, 1860.

¹⁴ Section 41 of the BNS, 2023– Corresponding to Section 103 IPC, 1860.

- Robbery.
- Night-time housebreaking.
- Mischief by fire or explosives against a dwelling or place used for custody of property.
- Theft, mischief, or criminal trespass committed in such a manner as to cause reasonable apprehension of death or grievous hurt.

This recognizes that certain crimes against property are so violent or dangerous that they pose direct threats to human life, thus warranting a stronger defensive response.

3.6 Permissible Non-Lethal Force in Protection of Property¹⁵

Section 42 of BNS limits the right of property defence to non-lethal harm when the circumstances do not justify causing death under Section 41. The harm caused must still be necessary and proportionate to prevent or terminate the offence.

3.7 Commencement and Duration of the Right¹⁶

The right of private defence commences as soon as a reasonable apprehension of danger arises from an attempt or threat to commit an offence, even if the offence has not yet been committed. It continues as long as the threat persists.

- For the defence of body: Until the danger of assault is over.
- For the defence of property: Until the offender has left the premises or the stolen property is recovered.

3.8 Risk to Innocent Persons¹⁷

Section 44 of BNS allows the use of the right of private defence even if, in the process of defending oneself against a deadly assault, there is a risk of causing harm to an innocent person, provided there is no safe alternative.

The law recognizes that in extreme situations, collateral harm may be unavoidable and should not be criminally penalized when the primary objective is lawful self-preservation.

¹⁵ Section 42 of the BNS, 2023– Corresponding to Section 104 IPC, 1860.

¹⁶ Section 40 & 43 of the BNS, 2023– Corresponding to Section 102 & 105 IPC, 1860.

¹⁷ Section 44 of the BNS, 2023– Corresponding to Section 106 IPC, 1860.

4. JUDICIAL INTERPRETATION AND KEY PRINCIPLES

Some key Indian Judgments on Self-Defence are as under:

- *State of U.P. v. Ram Swarup*¹⁸ affirmed that the right of private defence is available even if the accused could have escaped from the scene.
- In *Darshan Singh v. State of Punjab*,¹⁹ Supreme Court laid down comprehensive principles for determining the applicability of the right of private defence, emphasizing proportionality and imminence.
- *Butta Singh v. State of Punjab*,²⁰ Clarified that the right of private defence cannot be used as a shield for aggression or retaliation.
- *Jassa Singh v. State of Haryana*,²¹ held that the burden on the accused is only to show a preponderance of probability in favour of self-defence, not to prove it beyond reasonable doubt.
- *Bhanwar Singh v. State of M.P.*²² explained that exceeding the right of private defence may still result in culpable homicide not amounting to murder
- *Munshi Ram v. Delhi Administration*²³ recognized that the right can extend to the defence of property, including against acts of trespass accompanied by threat.
- Courts consistently hold that the right of private defence is defensive, not retaliatory (*Narain Singh v. State of Haryana*, 2008).

Judicial interpretations demonstrate that while the law grants individuals the right to meet unlawful force with force, it also demands a careful examination of the circumstances to ensure the defence is genuine and proportionate—i.e., there must be imminent unlawful aggression and the force used must be necessary and proportionate to the threat posed. Excessive use of force, even in genuine self-defence situations, may result in partial protection, reducing the gravity of the offence but not absolving liability entirely.

4.1 Practical Application & Legal Standards

Courts evaluate claims of private defence by assessing:

1. **Legitimacy of the threat**—whether the accused reasonably believed there was imminent danger justifying their response.

¹⁸ AIR 1974 SC 1570.

¹⁹ (2010) 2 SCC 333.

²⁰ AIR 1991 SC 1316.

²¹ (2002) 2 SCC 481.

²² (2008) 16 SCC 657.

²³ AIR 1968 SC 702.

2. Proportionality of the response—whether the force used matched the severity of the threat.

If the force is found to be excessive relative to the threat, the defence may be invalidated or limited to a partial defence, reducing the severity of the offence as per the applicable BNS provisions.

Conclusion

The right of self-defence remains one of the most fundamental and universally recognized legal principles, grounded in the innate human instinct for self-preservation. It serves as a vital exception to the general prohibition against the use of force, ensuring that individuals are not left defenceless in the face of imminent threats. Across legal systems—whether in India under the *Bhartiya Nyaya Sanhita, 2023* or in common law jurisdictions—the doctrine reflects a balance between individual autonomy and societal order. However, its scope is neither absolute nor unrestricted. The conditions of imminence, necessity, proportionality, and good faith operate as crucial safeguards to prevent the doctrine from being misused as a pretext for retaliation, aggression, or vigilantism.

Ambiguities persist, particularly regarding pre-emptive strikes, excessive force, and the subjective perception of threat. These grey areas underscore the importance of a consistent interpretative framework, grounded in both statutory clarity and judicial prudence. The state's inability to provide instantaneous protection to all citizens necessitates that this right be preserved, yet closely regulated, to maintain public trust in the justice system. Ultimately, self-defence must be seen not as a licence for violence, but as a legally sanctioned shield against unlawful aggression. It affirms the principle that the right to life includes the means to protect it and that the law must uphold this right without allowing it to devolve into a tool of oppression.