

Analytical Study of the Right of Private Defence under Indian Criminal Law

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Abstract: *The right of private defence serves as a vital general exception in Indian criminal law, empowering individuals to protect their body or property (or that of others) from imminent unlawful aggression when immediate state assistance is unavailable. Codified in Sections 96-106 of the Indian Penal Code, 1860, and substantially retained with restructured and clarified language in Sections 34-44 of the Bharatiya Nyaya Sanhita, 2023 (BNS), it promotes self-reliance while imposing strict limits of necessity, proportionality, and good faith. This short critical paper, adopting a doctrinal methodology based on statutes, judicial precedents, and secondary sources, examines the legal framework, key principles, and persistent gaps such as subjectivity in “reasonable apprehension,” risks of misuse, evidentiary burdens, and enforcement challenges. Drawing structural parallels to the Code on Social Security, 2020—which recognizes gig and platform workers yet provides limited enforceable protections—this study highlights how the BNS offers progressive recognition without fully resolving practical ambiguities. While judicial interpretations have filled some voids, clearer guidelines and public awareness are essential to curb overreach and strengthen genuine self-defence claims.*

Keywords: Right of Private Defence, BNS Sections 34-44, Self-Defence, Proportionality, Reasonable Apprehension, General Exceptions, Bharatiya Nyaya Sanhita 2023.

I. INTRODUCTION

The right of private defence embodies the natural instinct of self-preservation, allowing citizens to resist criminal aggression without awaiting public authorities. Section 34 BNS (formerly Section 96 IPC) declares that nothing is an offence done in its exercise. Section 35 BNS grants every person the right to defend their own or another’s body against offences affecting the human body, and property against theft, robbery, mischief, or criminal trespass, subject to restrictions under Section 37 BNS.

Similar to critiques of the gig economy under the Code on Social Security, 2020, where platform workers gain recognition but lack comprehensive rights, private defence balances individual autonomy with societal order yet reveals structural gaps in application and enforcement.

II. METHODOLOGY

This research adopts a doctrinal method, relying on primary sources (BNS 2023 and erstwhile IPC), landmark Supreme Court and High Court judgments, academic literature, and policy documents. Comparative reference to the gig workers’ paper underscores analogous issues of legal recognition versus practical protection.

III. LITERATURE REVIEW

Scholarly works view private defence as preventive rather than punitive, available only against imminent unlawful aggression in good faith. Indian literature critiques its flexible, judge-dependent boundaries and the absence of a strict duty to retreat. Gaps mirror those in platform worker protections: subjective assessments, reliance on case-by-case judicial discretion, and risks of inconsistent outcomes or misuse. Post-BNS analyses note streamlined language and



minor clarifications (e.g., rephrased clauses) but continuity in core principles with persistent ambiguities in proportionality and evidence.

IV. RESULTS AND DISCUSSION

Legal Framework and Scope

Sections 34-44 BNS preserve the essence of IPC 96-106 with improved structure:

- Body Defence: Extends to causing death under Section 38 BNS in cases of reasonable apprehension of death, grievous hurt, rape, acid attack, etc.
- Property Defence: Death permissible only in aggravated scenarios (Section 41 BNS); otherwise, harm short of death.
- Restrictions (Section 37 BNS): No right if time exists for public authorities; no more harm than necessary; inapplicable against good-faith public servants.

Judicial Interpretation

The Supreme Court in *Darshan Singh v. State of Punjab* (2010) and recent rulings such as *Rakesh Dutt Sharma v. State of Uttarakhand* (2025) have clarified key principles:

- The right arises from reasonable apprehension of danger, not actual harm.
- Force need not be weighed “in golden scales” in the heat of the moment but must remain necessary and proportionate.
- No duty to retreat in genuine threats; prosecution must disprove the plea when facts reasonably suggest it.
- Misuse through retaliation or staged aggression voids the claim. Courts construe the right liberally to serve its social purpose of self-preservation.

Gaps and Challenges

1. Subjectivity: “Reasonable apprehension” leads to inconsistent lower-court decisions.
2. Proportionality and Excessive Force: Difficult calibration in dynamic situations risks convictions for overreaction.
3. Evidentiary and Implementation Issues: Practical burdens on the accused, low awareness, and enforcement gaps parallel the scheme-based limitations in social security for gig workers.
4. BNS Transition: Core framework remains intact with better organization; ongoing monitoring is needed for integration with new criminal laws.

V. CONCLUSION

The right of private defence under BNS 2023 remains a progressive safeguard promoting citizen self-reliance, yet—like the Code on Social Security, 2020’s approach to gig workers—it suffers from structural ambiguities, heavy reliance on judicial discretion, and enforcement weaknesses. While rejecting a rigid duty to retreat and recognizing reasonable apprehension, it requires clearer statutory guidelines on proportionality, enhanced public education, and targeted reforms to deter misuse without diluting protection. A more robust, rights-based framework would better balance individual autonomy and public order in contemporary India.

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