
WHEN SELF-DEFENCE BECOMES REVENGE: WHERE SHOULD THE LAW DRAW THE LINE?

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ABSTRACT

The right of private defence is an important part of criminal law because it allows individuals to protect themselves and others against unlawful aggression when public assistance may not be immediately available. However, defensive force may cross into retaliation when it continues after the danger has ended or is used to punish a past wrong. This paper examines that boundary under the Bharatiya Nyaya Sanhita, 2023 (BNS), particularly Sections 34–44, and considers the Supreme Court’s reasoning in *Darshan Singh v. State of Punjab*. Using doctrinal legal research, it analyses statutory rules and judicial principles to identify factors that distinguish protection from revenge. It argues that courts should not expect a person facing an imminent attack to calculate force with mathematical precision. At the same time, the plea of private defence should not excuse retaliatory violence. A contextual assessment of reasonable apprehension, defensive purpose, timing, and the nature of force can protect genuine defenders while preventing the misuse of self-defence as a justification for vengeance.

Keywords: Private defence; self-defence; Bharatiya Nyaya Sanhita, 2023; proportionality; imminence; criminal law; revenge.

1. Introduction

The law recognises that the state cannot be physically present whenever a person faces violence. In an emergency, a person may need to protect themselves, another person, or property before the police can intervene. The right of private defence reflects this practical necessity. It does not require a person to submit passively to unlawful aggression. However, the right is limited: its purpose is to avert danger, not to authorise private punishment.

The distinction becomes difficult when an incident includes both defensive and retaliatory conduct. A person may initially use force to repel an attack, then continue striking after the attacker has fallen or withdrawn. Another person may return later with a weapon to settle a dispute. In the first situation, the question is whether defensive force continued after the need for it ended; in the second, the delay and preparation may indicate revenge rather than immediate protection. The label used by an accused person cannot decide the matter. Courts must examine the facts, sequence, and purpose of the conduct.

This paper addresses three questions: what are the statutory limits of private defence under Indian criminal law; how have courts distinguished defensive action from retaliation; and what contextual approach can help courts apply the distinction fairly? It uses doctrinal legal research, analysing legislation and reported judgments. It argues that the central inquiry is whether the force used remained reasonably connected to averting an imminent danger.

2. Research Methodology

This paper adopts a doctrinal methodology based on primary legal sources, including the Bharatiya Nyaya Sanhita, 2023 and Supreme Court decisions concerning private defence. It also considers selected comparative legal materials to illustrate how other jurisdictions address defensive force. The research is qualitative and analytical; it does not rely on interviews, surveys, or statistical data. The comparative discussion is intended as context and does not suggest that foreign rules govern the interpretation of Indian law.

3. Statutory Framework under the Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 came into force on 1 July 2024. Sections 34–44 contain the general provisions governing the right of private defence. Section 34 provides that an act done in the exercise of this right is not an offence. Section 35 recognises the right to defend

one's own body and the body of another person against offences affecting the human body, and to defend property against specified offences. The succeeding provisions address the circumstances, limits, and situations in which the right may extend to causing death.¹²

Section 37 is especially important because it sets out restrictions on the right of private defence, including the principle that the right does not extend to inflicting more harm than is necessary for the purpose of defence. The statutory framework balances two interests: allowing an effective response to unlawful aggression and preventing excessive private violence. Private defence is not a general permission to retaliate against anyone who has committed a wrong.³

A reasonable apprehension of danger may be sufficient to activate the right; a person need not always wait until an injury is inflicted. However, the apprehension must be grounded in the circumstances, and the force used must be connected to the danger apprehended. Anger about an old insult or a desire to punish an earlier assault is not equivalent to an imminent threat.

The right also has a temporal dimension. It arises when circumstances create a reasonable need for defence and ordinarily ends when that need ceases. If an assailant retreats, is disarmed, is incapacitated, or otherwise no longer presents the feared danger, continued violence may lose its defensive character. Courts must still consider the whole situation: a brief pause does not necessarily mean that the threat has ended, but an earlier attack cannot provide a permanent licence to use force.

4. Judicial Principles: Darshan Singh v. State of Punjab

In *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333, the Supreme Court discussed the principles governing private defence. It recognised self-preservation as a basic human instinct and observed that a person facing imminent danger cannot be expected to calculate the exact amount of force required with mathematical precision. Courts must consider the pressure and confusion of an encounter rather than judge every movement with the calmness available after the event.⁴

1 Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 34–44 (India); Ministry of Home Affairs, Government of India, New Criminal Laws, <https://www.mha.gov.in/en/commoncontent/new-criminal-laws> (last visited Oct. 19, 2026).

2 Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 34–44 (India).

3 Bharatiya Nyaya Sanhita, No. 45 of 2023, § 37 (India).

4 *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333, ¶¶ 30–35 (India).

The judgment also makes clear that private defence is a right to defend, not a right to retaliate or take revenge. The force used must be assessed in light of the threat and the surrounding circumstances. The right cannot justify conduct that is wholly disproportionate or substantially beyond what the situation reasonably requires. The decision therefore recognises both the practical limits of human judgment during an attack and the legal limits of defensive force.⁵

Proportionality should not become a mechanical comparison of injuries. A person threatened with a weapon may reasonably fear serious harm even if the attacker ultimately causes only a minor injury. Conversely, the seriousness of an injury caused by a defender does not automatically establish that the right was exceeded. The threat, sequence of events, weapons involved, and whether danger continued must be considered together.

Earlier decisions such as *Buta Singh v. State of Punjab*, (1991) 2 SCC 612, also contribute to the jurisprudence of private defence. Older judgments were decided under the Indian Penal Code, 1860. Their principles should be applied with care alongside the corresponding provisions of the BNS, rather than assuming that every earlier statutory reference remains current.⁶

5. When Does Self-Defence Become Revenge?

First, courts should consider whether there was a reasonable apprehension of imminent unlawful harm. A person need not wait to be injured, but the apprehension must be supported by the circumstances. The presence of a weapon, the aggressor's actions, threats accompanied by conduct, the parties' positions, and the immediate history of the encounter may all be relevant. A past grievance can provide context, but it does not by itself create an unlimited right to use force.

Second, the purpose of the conduct matters. Defensive action aims to prevent, repel, or escape unlawful harm. Retaliatory action aims to punish, frighten, humiliate, or settle a score. Purpose is rarely established by a statement alone; it is inferred from conduct and surrounding evidence. Pushing away an attacker or preventing the use of a weapon may be consistent with defence. Pursuing an attacker after they have fled, returning later with a weapon, or announcing an intention to teach the person a lesson may support an inference of revenge. These examples are

⁵ Id. ¶¶ 30–35.

⁶ *Buta Singh v. State of Punjab*, (1991) 2 SCC 612 (India).

illustrative and do not determine the legal outcome automatically.

Third, timing is important. A close connection between the threat and the force may support the claim that the act was defensive, although it is not conclusive. Delay, pursuit, preparation, or a renewed confrontation after the original danger has passed may suggest retaliation. Yet time alone should not decide the matter: a threat can continue during a brief pause, and a person may need to act after a short interval to protect another person. The court must determine whether the danger remained live.

Fourth, courts should assess the nature and degree of force. The law should not demand exact equivalence between the harm threatened and the force used. In a rapidly developing encounter, a person may not know the attacker's true capacity or intentions. Nevertheless, force that is clearly excessive in the circumstances may fall outside the right. Relevant evidence can include weapons, number of attackers, physical disparity, injuries, location, available alternatives, and whether the defender continued after the threat was neutralised.

Finally, conduct before and after the incident may help explain the sequence. Whether a person tried to disengage, pursued the other party, called for help, or continued violence after separation may be relevant. Such evidence should be evaluated carefully and in context; no single indicator should automatically decide the case.

6. Proportionality, Fear, and Hindsight

Proportionality must be interpreted realistically. A person who is suddenly attacked may have only seconds to respond. It would be unfair to demand the same level of deliberation available to a judge reviewing witness testimony, medical reports, and video footage. A defender may not know whether an assailant is armed, whether another attacker is approaching, or whether an apparent retreat is genuine. The law's recognition of reasonable apprehension addresses this uncertainty.

However, contextual assessment is not unrestricted discretion. If any force is accepted merely because an accused person says they felt threatened, the right could become a cover for private vengeance. The proper question is objective but situational: considering the circumstances as they reasonably appeared at the time, was the force plausibly necessary to avert the perceived danger?

A confrontation can also change character. A person may initially act defensively and then become angry as the immediate threat recedes. Where evidence permits, courts should distinguish these stages rather than treating every act in the incident as having a single purpose. This approach can prevent both the over-criminalisation of genuine defence and the over-protection of retaliatory conduct.

7. Comparative Perspective

Other legal systems also attempt to balance effective self-protection with limits on unnecessary force. In England and Wales, section 76 of the Criminal Justice and Immigration Act 2008 addresses the determination of whether force used for a recognised purpose was reasonable, alongside common-law principles. The United States Model Penal Code, particularly section 3.04, provides a framework for the use of force in self-protection, while section 3.09 addresses culpability where a belief or use of force is reckless or negligent.⁷

These frameworks are not identical to Indian law, and foreign rules cannot simply be imported into the BNS. Their comparative value lies in the shared problem they address: the law must make room for decisions taken under pressure while maintaining a boundary against unnecessary or retaliatory violence. A careful comparative analysis should consult the exact statutory text and relevant jurisdiction-specific cases before drawing stronger conclusions.

8. Recommendations

First, courts should expressly identify the threat that the accused reasonably apprehended and the evidence supporting that apprehension. This can prevent general fear or resentment from being treated as sufficient by itself.

Second, judgments should examine the sequence of force, particularly where the confrontation appears to have changed character. Where the evidence permits, defensive acts during an emergency should be distinguished from any later retaliatory conduct.

Third, proportionality should be assessed contextually rather than through a rigid comparison of injuries. Courts should consider the speed of events, weapons, number of assailants, relative

⁷ Criminal Justice and Immigration Act 2008, c. 4, § 76 (UK); Model Penal Code §§ 3.04, 3.09 (Am. L. Inst. 1962).

physical strength, and the defender's reasonable perception of danger.

Fourth, courts should take sustained domestic abuse and trauma seriously when evaluating the circumstances in which a person perceived danger. However, trauma should not automatically establish a legal defence. Its relevance must be assessed on the evidence and within the requirements of Indian criminal law. Any proposal for statutory reform should be developed through further doctrinal research and careful consideration of victim safety, fair-trial rights, and existing defences.

9. Conclusion

The right of private defence protects life, bodily integrity, and personal security when unlawful aggression creates immediate danger. The law does not require a person to wait helplessly for public assistance or calculate defensive force with mathematical precision. But the right is justified by necessity, not by a desire to punish.

Under the BNS, read alongside the Supreme Court's principles in *Darshan Singh* and related cases, the boundary between self-defence and revenge depends on the circumstances at the time force was used. Reasonable apprehension, defensive purpose, timing, and the nature of force should be assessed together. Where a person continues violence after the threat has clearly ended, or later returns to settle a score, the claim of self-defence becomes substantially weaker.

The law should draw the line when force ceases to be reasonably directed at preventing or stopping danger and becomes an instrument of retaliation. A contextual, evidence-based approach best protects genuine defenders while preserving the rule of law against private punishment.

References:

1. The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 34–44 (India).
2. Darshan Singh v. State of Punjab, (2010) 2 SCC 333; AIR 2010 SC 1212.
3. Buta Singh v. State of Punjab, (1991) 2 SCC 612.
4. Criminal Justice and Immigration Act 2008, c. 4, § 76 (UK).
5. Model Penal Code §§ 3.04, 3.09 (Am. L. Inst. 1962).