

# THE "RECOURSE" RESTRICTION IN THE MODERN ERA: EVALUATING THE RIGHT OF PRIVATE DEFENCE AGAINST UNLAWFUL ARRESTS AND SYSTEMIC FAILURES

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## **ABSTRACT**

*This paper provides an exhaustive doctrinal and socio-legal analysis of the right of private defence in India, examining the transition of its foundational statutory framework from Section 99 of the Indian Penal Code, 1860 (IPC) to Section 37 of the Bharatiya Nyaya Sanhita, 2023 (BNS). It critically explores the tripartite statutory restrictions governing this right: the conditional immunity of public servants acting in good faith, the necessity of recourse to public authorities, and the doctrine of proportionality. Through an analysis of landmark judicial pronouncements spanning over a century and culminating in judgments from 2024 and 2025, the study highlights the judiciary's evolution in rejecting a mathematical "golden scale" approach to proportionality, instead favoring a realistic assessment of the accused's instinct for self-preservation during an imminent threat.*

*Furthermore, the paper investigates the essential preconditions that trigger the right namely, reasonable apprehension and imminence while emphasizing the strict jurisprudential boundary that separates lawful private defence from unlawful retaliation. Moving beyond the "black letter law," the research presents a profound socio-legal critique, arguing that the supposedly neutral standard of "objective reasonableness" often fails marginalized communities. It reveals how systemic biases weaponize these statutory limitations against Dalits resisting caste atrocities and women suffering from Battered Woman Syndrome (BWS), while simultaneously highlighting the misuse of the defense in staged police encounters. Ultimately, the paper advocates for integrating the sociological realities of caste and gender into the judicial adjudication of self-defense to ensure the right protects the vulnerable without distinction.*

**Keywords:** Right of Private Defence Bharatiya Nyaya Sanhita (BNS) Proportionality Reasonable Apprehension Socio-Legal Critique

### **1.1. Introduction: The Jurisprudential Boundaries of Self-Help**

The right of private defence, enshrined in the penal laws of civilised nations, operates as a necessary concession to the instinct of self-

preservation. It is the jurisprudential acknowledgement that the state, despite its monopoly on the use of force, cannot be omnipresent. However, this right is legally conceived not as a privilege of aggression but

as a shield of protection. It is circumscribed by a rigorous framework of statutory limitations, judicial restrictions, and common law preconditions designed to prevent the conversion of this protective right into a mechanism for vigilante justice or retributive violence. In the Indian context, this delicate balance is codified primarily under Section 99 of the *Indian Penal Code, 1860* (IPC), and its successor, Section 37 of the *Bharatiya Nyaya Sanhita, 2023* (BNS).

This chapter provides an exhaustive, critical analysis of the limitations and preconditions governing the right of private defence in India. It moves beyond a mere doctrinal exposition to examine the "living law", the judicial interpretation of these restrictions by the Supreme Court of India and various High Courts over the last century, culminating in the landmark judgments of 2024 and 2025. The analysis is structured to cover the governing statutory restrictions (immunity of public servants, recourse to public authorities, and proportionality), the essential preconditions (reasonable apprehension, imminence, and non-retaliation), and the evidentiary burdens placed on the accused.

Furthermore, this chapter engages in a socio-legal critique of these limitations. It argues that while the "black letter law" appears neutral, its application through the standard of "objective reasonableness" often fails marginalised communities, particularly Dalits and women. By analysing recent empirical data on judicial bias, case law on caste atrocities, and the judicial treatment of Battered Women Syndrome (BWS), the report highlights how the statutory limitations are often weaponised against the very victims they are meant to protect.<sup>450</sup>

## 1.2. Statutory Framework: The Transition from IPC to BNS

<sup>450</sup> T. Sanjutha & A. Harsha, "Casteism in the Indian Criminal Justice System", 3(4) *International Journal of Legal Science and Innovation* 12 (2021); See also Navin Kumar, "Caste and Crime in India: The Influence of Social Hierarchy on Justice", 5(1) *International Journal of Social Science and Literature* 1 (2025).

The foundational legal text governing the restrictions on private defence has undergone a transition with the enactment of the *Bharatiya Nyaya Sanhita, 2023*. However, a comparative analysis reveals a profound continuity in the legislative intent to restrict self-help.

### 1.2.1. Textual Continuity and Structural Changes

Section 99 of the IPC has been reenacted as Section 37 of the BNS. The text remains identical mainly, preserving the tripartite structure of restrictions that have governed Indian criminal law for over 160 years.<sup>451</sup>

Feature	Section 99 (IPC)	Section 37 (BNS)	Legal Implication
Placement	Chapter IV: General Exceptions	Chapter III: General Exceptions	Retains status as a fundamental defence.
Public Servant Immunity	Denial of right against acts by public servants acting in good faith under colour of office.	Identical provision retained.	Continued protection for state officials acting irregularly but not illegally.
Recourse to Authorities	Denial of the right if there is time to have recourse to the protection of	Identical provision retained.	Emphasises the primacy of the state protection mechanism

<sup>451</sup> The *Indian Penal Code, 1860*, Section 99; The *Bharatiya Nyaya Sanhita, 2023*, Section 37.

	public authorities.		m.
<b>Proportionality</b>	Right extends only to inflicting harm necessarily for defence.	Identical provision retained.	Reaffirms the rejection of excessive force.
<b>Explanation Clauses</b>	Two explanations regarding the public servant's status.	Retained as Explanation 1 and 2.	Knowledge of the official's status remains a prerequisite for the restriction to apply.

The retention of the exact wording in Section 37 BNS suggests that the vast body of jurisprudence developed under Section 99 IPC, interpreting "good faith," "reasonable apprehension," and "necessity", remains binding and relevant.<sup>452</sup> The legislative decision not to expand the statutory definition of "necessary force" leaves the task of defining proportionality squarely within the judiciary's domain.

### 1.3. Governing Restrictions: The Tripartite Fetters

The right of private defence is not absolute. It is subject to the restrictions contained in Section 99 IPC (Section 37 BNS). These restrictions are not merely procedural; they are substantive limiters that determine the very existence of the right.

#### 1.3.1. Restriction I: Acts of Public Servants

The first and second clauses of Section 99 IPC (Section 37 BNS) stipulate that there is no right of private defence against an act which does not reasonably cause the apprehension of

death or grievous hurt, if done, or attempted to be done, by a public servant (or under their direction) acting in **good faith** under **color of his office**, even though that act may not be **strictly justifiable by law**.<sup>453</sup>

This provision provides a protective shield for state officials, ensuring that public administration is not paralysed by citizens' resistance to every irregular official act. However, this restriction is complex and heavily litigated.

#### The Doctrine of "Good Faith"

The statutory protection is conditional. It applies only when the public servant acts in "good faith." Under Section 52 IPC (Section 2(11) BNS), "good faith" is defined as an act done with "due care and attention".<sup>454</sup> This definition is critical. A public servant acting with malice, gross negligence, or without any semblance of authority cannot claim the benefit of this section.

- **Judicial Interpretation:** The Courts have consistently held that if an officer acts wholly without jurisdiction or in a patently illegal manner (as opposed to merely irregular), the citizen retains the right of private defence. For instance, in cases of custodial torture or illicit detention where the officer abuses their authority, the "good faith" requirement is negated.

#### "Colour of Office" vs. Strict Justifiability

The section distinguishes between acts that are "not strictly justifiable by law" and acts that are wholly illegal.

- **Irregularity vs. Illegality:** If a police officer executes a warrant that has a technical defect (e.g., a missing signature but valid authorisation), the act is "not strictly justifiable," yet the

<sup>452</sup> Stanley Yeo, "Staying True to the Indian Penal Code: A Case Study on Judicial Laxity", *NUJS Law Review* (2011) (Critiquing judicial departure from IPC text).

<sup>453</sup> The *Bharatiya Nyaya Sanhita*, 2023, Section 37; The *Indian Penal Code*, 1860, Section 99.

<sup>454</sup> The *Indian Penal Code*, 1860, Section 52; The *Bharatiya Nyaya Sanhita*, 2023, Section 2(11)

citizen cannot resist. The officer is acting under the "colour of office."

- **Ultra Vires Acts:** However, if a police officer attempts to arrest a person for a non-cognizable offence without a warrant and without disclosing their identity, the act may fall outside the "colour of office." In *Puran Singh v. State of Punjab*, the Supreme Court emphasised that the protection does not extend to acts that are fundamentally illegal or outside the scope of the officer's duties. The citizen is not expected to submit to patent illegality that threatens their liberty.<sup>455</sup>

### The Exception to the Exception: Apprehension of Death/Grievous Hurt

Crucially, the restriction in Section 99/37 has an overriding exception: the right of private defence is available against a public servant if their act causes a **reasonable apprehension of death or grievous hurt**.

- **Analysis:** This proviso acknowledges that the right to life (Article 21) supersedes the authority of the state. Even a uniformed officer cannot be permitted to kill or maim a citizen under the guise of duty. If a police officer opens fire without justification or subjects a detainee to life-threatening torture, the victim has the right to defend themselves, extending even to causing the death of the officer if necessary. This principle was reinforced in *Rizan v. State of Chhattisgarh*, where the Court clarified that the immunity of public servants acts as a check only on the defence against lesser offences, not against life-threatening assaults.<sup>456</sup>

### 1.3.2. Restriction II: Necessity of Recourse to Public Authorities

The third clause of Section 99 IPC (Section 37 BNS) imposes a temporal and logistical

restriction: "There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities".<sup>457</sup> This restriction embodies the principle that private defence is an emergency mechanism, not a substitute for the state's police power.

### The Interpretation of "Time"

The "time" referred to in the statute is not merely the time to contact the police, but the time to obtain *adequate* protection.

- **Effectiveness Test:** The Supreme Court has repeatedly held that the availability of recourse must be confirmed, not theoretical. In *Jai Dev v. State of Punjab* and subsequent judgments, the Court clarified that a person facing an imminent attack is not expected to run to a police station if doing so would leave them or their property vulnerable in the interim. The law does not require a citizen to retreat or abandon their property to an aggressor merely to seek police aid.<sup>458</sup>
- **Situational Analysis:** In *Mamta v. State of Rajasthan*, the Rajasthan High Court dealt with a petition for police protection by a couple facing threats. The Court noted that while citizens can seek protection (recourse to authorities), the mere existence of this legal avenue does not negate the right to self-defence if an attack occurs before the state can intervene. The "time" to have recourse is extinguished the moment the threat becomes imminent.<sup>459</sup>

### The "Recourse" in the Digital Age: A Paradox

In the modern era, the ubiquity of mobile phones has complicated the interpretation of this restriction. Does the ability to dial "100" or "112" immediately negate the right of private defence?

<sup>457</sup> The *Bharatiya Nyaya Sanhita*, 2023, Section 37(3).

<sup>458</sup> *Jai Dev v. State of Punjab*, AIR 1963 SC 612.

<sup>459</sup> *Mamta v. State of Rajasthan*, S.B. Criminal Writ Petition No. 827/2024 (Raj. H.C.).

<sup>455</sup> *Puran Singh v. State of Punjab*, (1975) 4 SCC 518.

<sup>456</sup> *Rizan v. State of Chhattisgarh*, AIR 2003 SC 976.

- **The Mobile Connectivity Argument:** Prosecutors frequently argue that because the accused had a mobile phone, they should have called the police instead of using force. However, judicial trends suggest that police response time is the critical variable. A phone call does not stop a blow. As noted in *Manohar Lal Sharma v. Union of India* (the Pegasus case), although the focus was on surveillance, the judgment implicitly recognised the limitations of the state apparatus. If the state infrastructure is such that police cannot arrive instantly, the "recourse" is illusory.<sup>460</sup>
- **Systemic Failure:** In rural areas or cases involving marginalised communities (discussed later), the "public authority" may be distant, unresponsive, or hostile. In *Sukumaran v. State Rep. by the Inspector of Police*, the Supreme Court acquitted a forest ranger who shot a smuggler, implicitly recognising that in a remote forest, "recourse to public authorities" was impossible despite the official status of the accused.<sup>461</sup>

### 1.3.3. Restriction III: Proportionality and the "Golden Scale"

The final restriction in Section 99/37 is that the right "in no case extends to the inflicting of more harm than it is necessary to inflict for defence".<sup>462</sup> This introduces the doctrine of proportionality.

#### The Rejection of Pedantic Proportionality

While the statute demands "necessity," the Supreme Court has consistently rejected a mathematical or "golden scale" approach to measuring force.

- **Rakesh Dutt Sharma v. State of Uttarakhand (2025):** In a seminal

judgment delivered in late 2025, the Supreme Court acquitted a medical practitioner who, after being shot at in his clinic, snatched the aggressor's pistol and killed him. The prosecution argued that once the gun was seized, the threat ended, and the killing was disproportionate. The Court rejected this, holding that:

"The right of private defence cannot be weighed in a golden scale... In situations involving imminent threat, there is no way the accused person would apply his rational mind in exercising his right of private defence... [It] must be seen from the perspective of a common and reasonable person."<sup>463</sup>

This judgment reinforces the principle that the instinct of self-preservation overrides technical audits of the force used during the "excitement and confusion" of an attack.

- **Darshan Singh v. State of Punjab (2010):** This Constitution Bench judgment remains the bedrock of modern private defence jurisprudence. It set out ten guidelines, explicitly stating that a person under assault is not expected to modulate their defence "step by step." If the accused, in the heat of the moment, inflicts slightly more harm than strictly necessary, the law will not penalise them. The Court recognised that "detached reflection cannot be demanded in the presence of an uplifted knife".<sup>464</sup>
- **James Martin v. State of Kerala (2004):** The Court articulated the "Subjective Viewpoint" test. The proportionality of the force must be judged from the perspective of the accused *at the time of the incident*, not from the cool objectivity of the courtroom. The "surrounding excitement and confusion"

<sup>460</sup> *Manohar Lal Sharma v. Union of India*, (2021) SCC OnLine SC 985 (Implicit recognition of limitations in state machinery).

<sup>461</sup> *Sukumaran v. State Rep. by the Inspector of Police*, AIR 2019 SC.

<sup>462</sup> *The Bharatiya Nyaya Sanhita, 2023*, Section 37; *The Indian Penal Code, 1860*, Section 99.

<sup>463</sup> *Rakesh Dutt Sharma v. State of Uttarakhand*, 2025 INSC (citing *Darshan Singh v. State of Punjab*).

<sup>464</sup> *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333 (Constitution Bench).

are integral to determining what force appeared necessary to the accused.<sup>465</sup>

**Comparative Table: Judicial Evolution of Proportionality**

Case	Year	Key Principle on Proportionality
<b>Deo Narain v. State of UP</b>	1973	A blow to the head justifies lethal force; apprehension need not be of certain death, but likely death. <sup>466</sup>
<b>Buta Singh v. State of Punjab</b>	1991	Accused cannot be expected to weigh the force of his blows in "golden scales." <sup>467</sup>
<b>James Martin v. State of Kerala</b>	2004	"Step-by-step" modulation of defence is impossible; the court must view the matter from the accused's mental state. <sup>468</sup>
<b>Darshan Singh v. State of Punjab</b>	2010	Mere reasonable apprehension is enough; force need not be strictly proportional, only reasonable. <sup>469</sup>
<b>Rakesh Dutt Sharma v. State of Uttarakhand</b>	2025	Reaffirmed "No Golden Scale"; complete acquittal even when the aggressor was disarmed. <sup>470</sup>

**1.4. Preconditions: The Triggers of the Right**

Beyond the negative restrictions of Section 99, the common law and judicial interpretation have established favourable preconditions that must exist for the right to crystallise.

<sup>465</sup> *ames Martin v. State of Kerala*, (2004) 2 SCC 203.  
<sup>466</sup> *Deo Narain v. State of U.P.*, (1973) 1 SCC 347.  
<sup>467</sup> *Buta Singh v. State of Punjab*, AIR 1991 SC 1316.  
<sup>468</sup> *James Martin v. State of Kerala*, (2004) 2 SCC 203.  
<sup>469</sup> *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333.  
<sup>470</sup> *Rakesh Dutt Sharma v. State of Uttarakhand*, 2025 INSC.

**1.4.1. Reasonable Apprehension of Danger**

The right of private defence is preventive, not punitive. It commences not when the injury is actually inflicted, but when there is a **reasonable apprehension** of danger.

**The "Expanded Objective" Test**

The test for reasonable apprehension is complex. It is neither purely subjective (what the accused *thought*) nor purely objective (what a *perfect person* would think). It is an "expanded objective" test: *Would a reasonable person, placed in the same situation as the accused, facing the same perils and mental state, have apprehended danger?*<sup>471</sup>

- **Deo Narain v. State of UP (1973):** The Supreme Court scrutinised a case where the accused used a spear against an aggressor wielding a lathi. The High Court had convicted the accused, arguing that a spear was disproportionate to a lathi. The Supreme Court reversed this, holding that a lathi blow to a vulnerable part like the head creates a reasonable apprehension of death or grievous hurt. The accused was not required to wait until he was struck to determine the severity of the blow. The apprehension itself justified the use of the spear.<sup>472</sup>
- **Mistake of Fact:** Under Section 98 IPC (Section 36 BNS), the right of private defence exists even against persons who are legally incapable of committing an offence (e.g., a person of unsound mind, a child, or a person acting under intoxication). Furthermore, a person acting under a *bona fide* mistake of fact (e.g., mistaking a prankster with a toy gun for an armed robber in a dark alley) is protected if the apprehension was reasonable under the circumstances.<sup>473</sup>

**1.4.2. Imminence and Continuity**

<sup>471</sup> Stanley Yeo, *supra* note 3.  
<sup>472</sup> *Deo Narain v. State of U.P.*, (1973) 1 SCC 347.  
<sup>473</sup> *The Indian Penal Code, 1860*, Section 98; *The Bharatiya Nyaya Samhita, 2023*, Section 36.

The duration of the apprehension defines the temporal scope of the right.

- **Commencement:** The right commences "as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed" (Section 102 IPC / Section 40 BNS).
- **Continuance:** The right continues as long as such apprehension of danger continues.
- **Termination:** The right extinguishes the moment the threat ceases.
- **Case Analysis – Sukumaran v. State (2019):** The Supreme Court acquitted a forest ranger who shot a sandalwood smuggler. The Court held that the "suspicious movements" of the deceased in a forest area were sufficient to create a reasonable apprehension of imminent danger, justifying the commencement of the right even before an actual attack was launched. This establishes that "imminence" does not require the assailant to strike the first blow.<sup>474</sup>
- **Case Analysis – Samayal Ravi v. State:** Conversely, where the accused drove a vehicle into the victims *after* the initial altercation had ended and the victims were retreating, the Court held that the apprehension had ceased. The act was characterised as vengeance rather than defence.<sup>475</sup>

#### 1.4.3. The Prohibition of Retaliation

The distinction between **private defence** and **retaliation** is the jurisprudential bedrock of this chapter. Private defence is a right of *protection*; retaliation is an act of *punishment*. The law allows citizens to defend themselves but reserves the right to punish for the state.

<sup>474</sup> *Sukumaran v. State Rep. by the Inspector of Police*, AIR 2019 SC.

<sup>475</sup> *Samayal Ravi v. State* (Reaffirming limits in retaliatory murder cases).

#### The "Vengeance" Trap

Courts strictly scrutinise cases where the accused claims self-defence but evidence suggests a motive of revenge.

- **Mamta v. State of Rajasthan (2021/2024):** In cases involving inter-caste or inter-personal disputes, the High Court emphasised that protection orders and self-defence pleas cannot be used to validate acts of aggression or settle scores. The distinction is often observed in cases of injury: defence typically results in injuries to the aggressor's front (i.e., stopping an attack). At the same time, retaliation often involves injuries to the back (chasing a fleeing aggressor) or excessive cruelty.<sup>476</sup>
- **State of UP v. Ram Swarup (1974):** The Supreme Court rejected the plea of private defence where the accused shot the deceased in a market following a dispute. The Court found that the accused had gone to the market armed, anticipating a fight. The nature of the encounter was retributive rather than defensive. The Court held that the right is designed to serve a social purpose, protecting the innocent, and cannot be used as a pretext for vindictive aggression.<sup>477</sup>

#### The "Free Fight" Doctrine

In a "free fight" in which both parties come armed and prepared for battle, neither side can claim the right of private defence by voluntarily engaging in combat. The Supreme Court, in *Gajanand v. State of UP* (1954) and later in *Darshan Singh*, clarified that in a free fight, the question of "who attacked first" is irrelevant because both parties are aggressors. Private

<sup>476</sup> *Mamta v. State of Rajasthan*, S.B. Criminal Writ Petition No. 827/2024 (Raj. H.C.).

<sup>477</sup> *State of U.P. v. Ram Swarup*, 1974 AIR 1570.

defence requires that the accused was *not* the instigator.<sup>478</sup>

### 1.5. Burden of Proof: The Evidentiary Hurdle

A critical limitation on the right is the burden of proof placed on the accused. Unlike the general burden on the prosecution to prove guilt beyond a reasonable doubt, the burden to prove the existence of circumstances bringing the case within the General Exceptions (including private defence) lies on the accused.

#### 1.5.1. Statutory Mandate: Section 105 Evidence Act

Under **Section 105 of the Indian Evidence Act, 1872** (retained in the *Bharatiya Sakshya Adhinyam, 2023*), the Court "shall presume the absence of such circumstances" unless the accused proves otherwise.<sup>479</sup> This creates a reverse onus, requiring the accused to rebut the presumption of criminality.

#### 1.5.2. Standard of Proof: Preponderance of Probabilities

However, the standard required of the accused is not the criminal standard of "beyond a reasonable doubt" but the lower civil standard of "preponderance of probabilities."

- **Rizan v. State of Chhattisgarh (2003):**

The Supreme Court provided a definitive interpretation of this burden. The Court held that the accused need not necessarily call defence witnesses to prove their plea. They can discharge their burden by:

1. Eliciting admissions from prosecution witnesses during cross-examination.
2. Relying on the surrounding circumstances and probabilities of the case.
3. Pointing to the injuries sustained by the accused (which the prosecution often fails to explain).

If the defence version appears "probable" or "plausible" based on the material on record, the accused is entitled to the benefit of the exception, even if they haven't proved it "beyond a doubt".<sup>480</sup>

#### 1.5.3. The "Suo Motu" Consideration

A nuanced aspect of this limitation is that the accused need not specifically plead "I acted in self-defence" in their Section 313 CrPC statement. As held in *James Martin and Rizan*, the court *must* consider the plea *suo motu* if the material on record supports it. This is a crucial safeguard for unrepresented or poorly represented defendants who may not articulate the legal terminology of Section 99 but whose factual narrative supports a defence plea.<sup>481</sup>

### 1.6. Common Misuses and Judicial Corrections

Despite the strict limitations, the provision is susceptible to misuse, primarily by aggressors seeking to cloak criminality in the guise of defence.

#### 1.6.1. Overstepping into Vengeance

A common misuse involves utilising a minor provocation to inflict disproportionate harm.

- **Darshan Singh (2010):** The case itself involved a dispute between families where the accused fired shots. While the Supreme Court ultimately upheld the acquittal based on the specific threat to the accused's father (who had suffered a grievous head injury), the judgment serves as a warning against using the plea for family feuds. The Court emphasised that the right is not a license to "settle scores".<sup>482</sup>
- **Samayal Ravi Case:** The misuse was evident where the accused used a vehicle as a weapon. The Court distinguished this from *Darshan Singh*, noting that in *Samayal Ravi*, the

<sup>478</sup> *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333 (citing *Gajanan v. State of U.P.*, AIR 1954 SC 695).

<sup>479</sup> The *Indian Evidence Act, 1872*, Section 105.

<sup>480</sup> *Rizan v. State of Chhattisgarh*, AIR 2003 SC 976.

<sup>481</sup> *James Martin v. State of Kerala*, (2004) 2 SCC 203.

<sup>482</sup> *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333.

"imminence" was manufactured by the accused to justify a retaliatory strike.<sup>483</sup>

### 1.6.2. Staged Encounters: The "Police Defence."

A systemic misuse of the right occurs within law enforcement. Police officers involved in "encounters" (extrajudicial killings) routinely claim private defence under Section 99/37, alleging that the accused "snatched a weapon" or "fired first."

- **Critique:** While *Rakesh Dutt Sharma* (2025) acquitted a doctor for snatching a pistol and shooting an aggressor, this same narrative is often used by police in custodial settings. The difference lies in the requirements of "good faith" and "colour of office". However, the limitation of "no right against public servants" often creates a paradox where citizens cannot defend themselves against illegal police violence. In contrast, police use the "private defence" plea to justify state violence. The Supreme Court's guidelines in *PUCL v. State of Maharashtra* (2014) attempt to curb this by mandating independent inquiries. Still, the statutory text of Section 99 remains a powerful shield for the police.<sup>484</sup>

### 1.7. Policy Critiques: Structural Gaps and Marginalised Communities

While the statutory framework of Section 99/37 appears robust and neutral, its application reveals deep fissures along lines of caste, gender, and class. The "Reasonable Man" standard often defaults to a dominant-caste, male perspective, disadvantaging marginalised groups.

#### 1.7.1. Caste Bias and the "Aggressor" Narrative

For Dalit and Adivasi communities, the right of private defence is frequently nullified by systemic bias in the justice system.

- **The Inversion of Defence:** In cases of caste atrocities, when Dalit victims resist upper-caste aggression, their resistance is often framed by police and lower judiciary as "aggression" or participation in a "free fight," denying them the protection of private defence. The *State of UP v. Ram Swarup* case illustrates how the judiciary scrutinises the accused's "armed" status. In many agrarian disputes, Dalits carrying tools or lathis for protection are labelled as "armed aggressors" when they resist upper-caste mobs.<sup>485</sup>
- **Enforcement Gaps:** The *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, was enacted to address this violence, but conviction rates remain low. Research indicates that when Dalits use force to defend their land or dignity, the "proportionality" requirement is applied strictly against them. Conversely, upper-caste aggressors who claim a defence are often afforded the benefit of the "golden scale" of doubt.<sup>486</sup>
- **Empirical Evidence:** A 2025 analysis of criminal cases in India found that while there is no explicit *in-group* bias in acquittals based on religion/caste by judges, the *procedural* hurdles, such as the burden of proof under Section 105, disproportionately affect those who cannot afford competent legal representation to articulate a sophisticated self-defence plea.<sup>487</sup>
- **The Sukanya Shantha Judgment (2024/2025):** The Supreme Court's landmark ruling in *Sukanya Shantha v. Union of India*, which struck down caste-based segregation in prisons, recognised a "right to overcome caste

<sup>483</sup> *Samayal Ravi v. State*, *supra* note 26.

<sup>484</sup> *PUCL v. State of Maharashtra*, (2014) 10 SCC 635; *Extra Judicial Execution Victim Families Association v. Union of India*, (2016) (regarding fake encounters).

<sup>485</sup> *State of U.P. v. Ram Swarup*, 1974 AIR 1570.

<sup>486</sup> Navin Kumar, *supra* note 1; See also K. Sharma, "Symbiotic Justice: Hate Crimes, Police Humiliation, and Layered Discrimination", 13(4) *SAGE Open* 1 (2023).

<sup>487</sup> Ash et al., "Do Judges Favour Defendants Like Themselves? Evidence from Indian Courts", *VoxDev* (2025).

prejudice" under Article 21. This jurisprudential development has profound implications for private defence. It suggests that courts must account for the power dynamics of caste when evaluating "reasonable apprehension." A Dalit person facing a mob may have a *reasonable* apprehension of death earlier than a privileged person, given the history of caste violence, and thus the "commencement" of their right to defence should be interpreted through this lens.<sup>488</sup>

### 1.7.2. Gender Bias and Battered Women Syndrome (BWS)

The limitations of Section 99, specifically the requirements of "imminence" and "proportionality", pose a unique challenge for women in abusive relationships.

- **The Problem of Imminence:** Traditional self-defence requires an immediate, present threat. A battered woman who kills her husband while he is sleeping (to prevent future violence) technically fails the "imminence" test under a strict interpretation of Section 99. The threat is viewed as "future" or "past," not "present."
- **Manju Lakra v. State of Assam (2013):** The Gauhati High Court broke new ground by recognising the "Nallathangal syndrome" (an Indian equivalent of Battered Woman Syndrome) as a factor in private defence. The Court acknowledged that for a battered woman, the "apprehension" is continuous and cumulative, not episodic. It allowed the plea even though the act (hitting the husband) occurred during a lull in violence. However, this remains a High Court exception; the Supreme Court has yet to fully integrate BWS into Section 99's "imminence"

requirement, leaving a significant gap in the protection afforded to women.<sup>489</sup>

- **Patriarchal "Reasonableness":** The "reasonable man" standard often fails to account for the physical power disparity between men and women. A woman using a weapon (poison, knife) against an unarmed male attacker is often viewed as using "disproportionate force," ignoring that her physical disadvantage necessitates a force multiplier. Legal scholars argue that the "Reasonable Person" test must be reformulated as the "Reasonable Woman" test in such contexts.<sup>490</sup>

### 1.7.3. Illegal Arrest and the "Recourse" Paradox

The prohibition on resisting public servants is increasingly contentious in the context of unlawful arrests.

- **Mihir Rajesh Shah v. State of Maharashtra (2025):** In a significant 2025 ruling, the Supreme Court held that providing written grounds of arrest is a mandatory constitutional safeguard under Article 22(1). This judgment implies that an arrest made without furnishing grounds is fundamentally illegal.<sup>491</sup>
- **Implication for Private Defence:** If an arrest is unconstitutional (illegal), does the "good faith" protection of Section 99 still apply to the officer? While *Puran Singh* suggests that patent illegality triggers the right of defence, courts have been hesitant to authorise resistance to the police explicitly. However, *Mihir Rajesh Shah* strengthens the argument that a citizen has the right to resist arrest that violates fundamental rights, thereby potentially narrowing the scope of the

<sup>488</sup> *Sukanya Shantba v. Union of India*, 2024 INSC (W.P. (C) No. 1404/2023).

<sup>489</sup> *Manju Lakra v. State of Assam*, (2013) 4 GLT 333; See also Shreyas Gupta, "The Right to Kill: The Case of the Battered Women" (discussing *Manju Lakra* and BWS).

<sup>490</sup> Anjali Dhingra, "To What Extent Can You Exercise Your Right of Private Defence?", *iLeaders* (discussing gender dimensions).

<sup>491</sup> *Mihir Rajesh Shah v. State of Maharashtra*, 2025 INSC (Criminal Appeal Arising out of SLP (Crl.) No. 10214 of 2024).

"public servant" restriction in Section 99 (37).

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### 1.8. Conclusion

The right of private defence in India exists in a state of dynamic tension between the statutory text and judicial interpretation. Section 99 IPC (Section 37 BNS) provides the rigid statutory skeleton: the immunity of public servants, the necessity of recourse to authorities, and the requirement of proportionality. However, the judiciary has provided the flesh and blood, often softening these rigidities to serve the ends of justice.

The evolution from *Deo Narain* (1973) to *Darshan Singh* (2010) and finally to *Rakesh Dutt Sharma* (2025) demonstrates a clear judicial trajectory: a rejection of the "golden scale" of proportionality and an embrace of a realistic, subjective assessment of human conduct under stress. The courts have increasingly prioritised the "instinct of self-preservation" over technical legalism.

Yet, this liberal interpretation is not evenly distributed. The "policy gaps" reveal that the limitations of "reasonableness" and "recourse to authorities" are often weaponised against marginalised communities. The Dalit seeking to defend land, the battered woman seeking to end abuse, and the citizen facing illegal police action usually find the "shield" of private defence unavailable to them due to systemic biases in how "apprehension" and "good faith" are adjudicated.

As India advances with the *Bharatiya Nyaya Sanhita*, the judiciary will face the challenge of integrating the sociological realities of caste and gender into the "reasonable person" test, ensuring that the right of private defence serves its true purpose: the protection of the innocent against the unlawful, without distinction.

### Statutes and Constitutional Provisions

- *Bharatiya Nyaya Sanhita, 2023* (specifically Sections 2(11), 36, 37, and 40).
- *Bharatiya Sakshya Adhinyam, 2023*.
- *Code of Criminal Procedure, 1973* (specifically Section 313).
- *Constitution of India* (specifically Articles 21 and 22(1)).
- *Indian Evidence Act, 1872* (specifically Section 105).
- *Indian Penal Code, 1860* (specifically Sections 52, 98, 99, and 102).
- *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*.

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