

# SUPREMO AMICUS

## INDIA'S FIRST AI INTEGRATED LAW JOURNAL

**Peer Reviewed, Refereed and Open access Journal**

- Available in 331+ International Libraries
- Indexed at 32 Databases



ISSN NO. 2456-9704  
**Volume 10 Issue 1**  
[www.supremoamicus.org](http://www.supremoamicus.org)



## DISCLAIMER

The information presented in this article is intended for general informational and educational purposes only. While every effort has been made to ensure that the content is accurate, up-to-date, and reliable at the time of publication, the editorial board and publisher make no representations or warranties of any kind, express or implied, regarding the completeness, accuracy, reliability, suitability, or availability of the information contained herein.

The views and opinions expressed in this article are those of the author and are based on personal research, experience, and interpretation. They do not necessarily reflect the official policy, position, or opinions of any affiliated organization, institution, or entity.

This article is not intended to serve as professional advice of any kind. The editorial board and publisher shall not be held liable for any errors or omissions in the content, nor for any losses, injuries, or damages arising from the use of or reliance on this information.



---

## ABOUT THE JOURNAL

Supremo Amicus is an online, peer-reviewed international journal devoted to the interdisciplinary fields of law and science. In an era marked by rapid technological progress and evolving legal frameworks, the journal seeks to bridge the gap between these two dynamic domains by offering comprehensive and critical insights into their various aspects. The journal places a strong emphasis on contemporary advancements, emerging trends, and the complex challenges faced by both the legal community.

The primary objective of the journal is to encourage and promote original, high-quality research. It is committed to publishing well-researched, analytically sound, and thought-provoking articles that adhere to rigorous academic standards. Each submission undergoes a thorough peer-review process to ensure authenticity, relevance, and scholarly integrity. In doing so, the journal maintains its commitment to excellence and credibility.

In addition to fostering research, the journal aims to make complex ideas accessible and engaging for a diverse readership. It strives to present content that is not only intellectually enriching but also clearly written and reader friendly.

Furthermore, the journal is committed to promoting interdisciplinary collaboration and global engagement. It welcomes diverse perspectives from contributors across different regions and backgrounds, thereby enriching the quality and scope of discussions presented within its pages.

With this vision we proudly present Supremo Amicus to our readers.

**-Editorial Team  
Supremo Amicus**



## A COMPARATIVE STUDY OF MODERN LEGAL SYSTEM AND DHARMSHASTRA WITH REFERENCE TO RIGHT OF PRIVATE DEFENCE

By *Dr Anand Kumar Tripathi*

**Associate Professor of Law & Chairperson, Centre for Post Graduate Legal Studies, School of Criminal Law and Military Law, Rashtriya Raksha University, Gandhinagar**

### Abstract:

Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.<sup>1</sup> This right is available to all against own self and others for the apprehension of causing death, unnatural lust, kidnapping, grievous hurt and wrongful confinement. The permissible injury should not be more than the requirement and if danger situation can be avoided by any means, the right of private defence is not justifiable.

The object is to ensure the well-being and safety of an individuals. The state's responsibility is to give protection to the citizens for the cause of social justice. This lofty ideals cannot be achieved always therefore, law permits to everyone to protect own self and others also through private defence. No right can be an absolute and certain restrictions are imposed on most of rights available under code book; such as fundamental rights, right of private defence etc.

In our Legal system there are various provisions in the code books that are directly or indirectly connected with our religious text, Dharmshastras and ancient

culture regarding the justice system. In this paper the researcher will compare modern legal system with vital points of 'dharmshastras' related to Right of private defence.

**Key Words:** IKS, Dharmshastras, Bhagwadgeeta, Private Defence

### 1. Introduction:

Recently, Government of India has revised the criminal laws<sup>2</sup> in tune with 'The vision and objective of the IKS Division is to rejuvenate and mainstream Indian Knowledge Systems for the contemporary world and to completely decolonize Indian mind by generating interest and healthy critical reverence for the unbroken knowledge traditions of Bharata for the welfare of the world'<sup>3</sup>. The legislative intention was to bring laws closer to the concept of Indianisation and to streamline the criminal laws in a way that reflects the taste (vision) of India. The National Education Policy 2020 integrates the Indian Knowledge System, a rich repository of traditional Indian knowledge, into the curriculum to foster a holistic education system.

It would be relevant to mention that various provisions of Modern Judicial System, especially the provisions of Bharatiya Nyaya Sanhita, which are directly or indirectly influenced by historical texts, commentaries and Dharmshastras. Such incidents will be proved to be very effective in attaining legal education through Indian Knowledge System. In this research paper; the vital points related to right of private defence is discussed in consonance with Indian Jurisprudence in comparison with various religious text.

<sup>1</sup> Darshan Singh Vs State of Punjab and Another, (2010)

<sup>2</sup> Bharatiya Nyaya Sanhita 2023 (erstwhile Indian Penal Code), Bharatiya Nagrik Suraksha Sanhita 2023 (erstwhile The Code of Criminal Procedure)

and Bharatiya Sakshya Adhiniyam 2023 (erstwhile Indian Evidence Act)

<sup>3</sup> <https://iksindia.org/vision.php> accessed on 02/10/2025



## 2. Right of Private Defence under Bharatiya Nyaya Sanhita:

Right of private defence is given U/s 34 to 44 of Bharatiya Nyaya Sanhita which talks about the conditions and restrictions for availing the right of defence. The said right is also available against own self and other's body or property to prevent any offence or imminent danger provided that the force used is not more than the necessary and it should be proportionate to the danger. There is not any golden scale to weigh the apprehension or imminent danger caused by the assailant. In this regard the apex court recently observed in a landmark judgment that "the right of private defence cannot be brushed aside and cannot be weighed in a golden scale."<sup>4</sup> It means that application of mind is one of the important element to invoke this tool as a private defence.

It is also noticeable that this right is not available against public servants acting in good faith, when there is time to seek public authority, or when excessive force is used. The right is also available against acts of unsound mind or intoxicated persons, and it continues till the commencement of the apprehended danger.

## 3. Right of Private Defence in Dharmshastras/Religious text:

In our religious text/Dharmshastras the researcher has observed that the religious text of our country is so enriched in terms of legal order prevalent during early age of civilisations. Right to private defence is boon

against the apprehension of property and body. The same idea resembles in Quran with a concept to fight back as 'The believers against whom war is waged are given permission to fight in response, for they have been wronged. Surely, God has full power to help them to victory.'<sup>5</sup> It means that right to private defence is available against the aggressor or wrongdoer but it should not be used as a revenge and not available to the aggressor. Therefore, 'An aggressor loses the right to private defence.'<sup>6</sup>

According to Bharatiya Nyaya Sanhita the right of private defence is available against everyone regardless of their status and relations.<sup>7</sup> The same concept is also elaborated by Dr Anand Kumar Tripathi in his book as given in following lines:<sup>8</sup>

चाहे हो किंवा स्थ या कोई विकारा, सबके विरुद्ध है यह अधिकारा II

On the same line the Shanti Parva of the Mahabharata gives an absolute right to self-defence against an active, deadly aggressor (Atatayee), regardless of their social or religious standing.<sup>10</sup> It is worth mentioning a case wherein 'it has been held that the right of private defence and property has been respected during all ages under all laws including ancient law of India. So much so that according to our ancient text of Vyavahara Mayukhas of Neelkantha and Manu's dictum was that one may certainly kill without hesitation a man who comes upon him as an *Atatayin*

<sup>4</sup> Rakesh Dutt Sharma v. State of Uttarakhand (2025)

<sup>5</sup> Quran- 22:39

<sup>6</sup> State of U.P. v. Ram Swarup

<sup>7</sup> Section 36 of Bharatiya Nyaya Sanhita; Right of private defence against act of a person of unsound mind, etc.- When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right

of private defence against that act which he would have if the act were that offence.

<sup>8</sup> भारतीय न्याय संहिता : एक काव्य खण्ड; प्रथम संस्करण (2025); एसएसबी प्रकाशन, नई दिल्ली

<sup>9</sup> चौपाई 120; पेज-46 (तत्रैव)

<sup>10</sup> गुरुं वा बालवृद्धौ वा ब्राह्मणं वा बहुश्रुतम्। आततायिनमयान्तं हन्यादेवाविचारयन्।। (One must kill an aggressor (*Atatayee*) immediately and without hesitation, even if that aggressor happens to be a teacher, a child, an elderly person, or a deeply learned scholar.)



whether he be the teacher or a child or an old man or a learned Brahmana.<sup>11</sup>

#### 4. Principles of Proportionality, Self-Help, and Righteous Force:

अश्वं नैव, गजं नैव, व्याघ्रं नैव च नैव च,  
अजापुत्रं बलिं दधातु देवो दुर्बलघातकः ॥

The meaning is that 'Not horse, not elephant, not tiger, but only the lamb is sacrificed in a ritual. God also does not protect weak.'<sup>12</sup> Compassion is protection of all living beings and destruction of the wicked elements.<sup>13</sup>

The above saying is well illustrated that God help those who help themselves. In this context a Sanskrit Shloka is very relevant to understand the concept of self-help or self-reliance in a difficult situation to protect the life of our own, failing which may cause serious injury to own life.

In one of the Shloka of Bhagvadgita<sup>14</sup> the concept of right of private defence is well elaborated and righteous force can be used as a 'dharma' to protect the life of the citizens of a state. Here, righteous force means appropriate or proportionate force which can be used to come out from the difficult situation. This concept is duly provisioned that 'The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.'<sup>15</sup>

There is a saying that it should be used as a shield not as a sword. The right to private defence is not available against right to private to private defence and necessary harm can be caused and not excessive.<sup>16</sup>

#### 5. Scriptural Analogies and Modern Legal Circumstances:

##### A. The Mahabharata and Section 38 of the BNS

An Interesting reference of Mahabharata is very relevant in context of self defence enshrined under section 38 of the Bharatiya Nyaya Sanhita wherein a ground is given against the apprehension of such an assault that the consequences be death<sup>17</sup>. 'After the Kurukshetra War, Ashwatthama, consumed by grief and rage over his father Drona's death, killed the Pandava sons and committed other atrocities. Pursued by Arjuna, a desperate Ashwatthama launched the deadly Brahmashira weapon to kill the Pandavas and end their lineage. As a countermeasure, Arjuna invoked his own Brahmashira astra, leading to a tense and dramatic confrontation.'<sup>18</sup>

Then, Vyasa asked to Arjuna that what have you done? Do you know the consequences of invoking Brahmashira astra? Lord Krishna replies 'Arjuna invoked the astra as a defence'. Vyasa said to withdraw the astra. Arjuna manages to retract his missile, but Ashvatthama cannot, lacking the ability. So, the act of Arjuna was only for the self defence but not for the retaliation.

<sup>11</sup> In Mana Vs State of Rajasthan also ibid:9

<sup>12</sup> <https://wiki.ekvastra.in/doku.php/subhashita> accessed on 25/09/2025

<sup>13</sup> Sant Tukarm a Marathi poet "Daya tiche nanwa bhutanche palan, aanik nirdalan kantkache", meaning compassion is not only the welfare of all living beings, but also includes protecting them from harm's way. *Sunil Ambekar (2019)* ; The RSS: Roadmaps for the 21<sup>st</sup> Century *New Delhi: Rupa. p.19*

<sup>14</sup> अहिंसा परमो धर्मः धर्म हिंसा तथैव च(महाभारत 13.117.37):The meaning of the Shloka is deeply rooted in our Indian culture and righteous action is permissible against dharma.

<sup>15</sup> Section 37 (2) of the Bharatiya Nyaya Sanhita;2023

<sup>16</sup> जो अपरिहार्य उतनी ही हानी ,ज्यादा हानि तो मुंह की खानी' चौपाई संख्या -124 ;डॉ आनंद कुमार त्रिपाठी;भारतीय न्याय संहिता : एक काव्यखंड; आईएसबीएन: 9789347500589;Publication, SSB New Delhi, पृष्ठ-47

<sup>17</sup> 38(a) BNS; Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.

<sup>18</sup> <https://en.wikipedia.org/wiki/Ashvatthama> accessed on 2/10/2025



God teaches in the Veda, “Rulers! Your implements of warfare, (such as, guns, rifles, bows, arrows, etc.) and war-materials (such as gun-powder) be worthy of praise, strong and durable to repel and conquer your enemies. Let your army be a glorious one, so that you may always be victorious. But the aforesaid things shall not be attainable to the contemptible, the despicable, and unjust.”<sup>19</sup>

### B. Vedic and Smriti Injunctions on Justifiable Killing:

‘Killing is permissible in six circumstances: to protect oneself from enemies who: set fire to one's property, try to poison one, plotted to murder, plundered their property, abducted or dishonored their women, or usurped their kingdom.’<sup>20</sup>This provision is also given u/s 38 of the Bharatiya Nyaya Sanhita wherein in seven circumstances right to private defence against body is available.<sup>21</sup> Manu Smriti (8.351) also states that killing an attacker in self-defence is not considered a sin.

### C. The Ramcharitmanas and Defense of a Third Person:

It would be interesting and relevant to discuss the reference to the verse from the Aranya Kanda of the

<sup>19</sup> स्थिरा वः सन्त्वायुधा पराणुदे वीळू उत प्रतिष्कभे ।

युष्माकमस्तु तविषी पनीयसी मा मर्त्यस्य मायिनः ॥ –

**Rigveda mantra 1.39.2**

<https://ancientscience.in/rigveda/rigveda1-39-2>  
accessed on 24/09/2025

<sup>20</sup> Vasishtha Smriti (verse 3.19)

<sup>21</sup> When right of private defence of body extends to causing death.—The right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely- (a) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; (b) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; (c) an assault with the

Ramcharitmanas, composed by Goswami Tulsidas. In this verse, the vulture king (Jatayu) hears Goddess Sita’s cries as she is helpless and unable to invoke the legal tool of her right to private defence of the body. He therefore fiercely attacks Ravana to protect her life. It is well-established that the right to private defence is available not only for oneself but also against threats to others. Therefore, the role of Jatayu is worth mentioning in protecting the life of Sita by invoking the right to private defence<sup>22</sup>.

Unfortunately, he died and could not protect her from the clutches of the demon Ravana, but he availed himself of the said right for the protection of another. In tune with the guidelines given by the Apex Court in landmark judgements<sup>23</sup>, this reference is highly relevant to understanding the concept of the Right to Private Defence.

Researcher would like to quote the relevant points from Ramcharitmanas as following:

सुनत गीध क्रोधतुर धावा, कह सुनु रावन मोर सिखावा ,  
तजि जानिकिहि कुसल गृह जाहू , नाहिं त अस होइहहि  
बहुबाहू ॥<sup>24</sup>

intention of committing rape; (d) an assault with the intention of gratifying unnatural lust; (e) an assault with the intention of kidnapping or abducting; (f) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release; (g) an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

<sup>22</sup> 35 (a) of BNS,2023 his own body, and the body of any other person, against any offence affecting the human body

<sup>23</sup> Darshan Singh Vs. State of Punjab and others

<sup>24</sup> Footnote 81;p.49 Bharatiya Nyaya Sanhita: Ek kavya Khand(1<sup>ST</sup> Ed.); Dr Anand Kumar Tripathi, SSB Publication, Delhi



The meaning of the above verse of is that ‘hearing the cries of Goddess of Sita, The Jatayu (Vulture King) rushed towards Ravana and said that O Ravana ! Listen to my advice. Leave Janki (Sita) and return to home safely. Otherwise, O twenty armed one, your fate will be such that..

Despite the warning given by the Vulture King, his suggestion was unheeded. This verse conveys the message that if a situation is avoidable, no injury should be inflicted. No more force should be used than necessary; however, the situation was such that the use of force was inevitable for the protection of Goddess Sita.

#### 6. Conclusion:

आततायिनि कूटस्थे सर्वलोकापकारिणि । न दोषो वधतस्तस्य  
धर्म एष सनातनः ।।<sup>25</sup>

“In killing an active aggressor (Atatayin) who is deeply rooted in deceit and bent on causing harm to society, there is absolutely no sin or legal guilt involved. Neutralizing such a threat is an eternal principle of law and righteousness (Sanatana Dharma).” The same concept is well depicted under the Bharatiya Nyaya Sanhita under ss. 34-4.

In conclusion, the right to private defense is justifiable against a wicked person or an *Atatayin* (aggressor). Most ancient Indian texts and epics strongly reflect legal philosophies that align closely with the modern legal system.

\*\*\*\*\*

<sup>25</sup> Valmiki Ramayana (Aranya Kanda, Sarga 29–30)