
SHIELDING JUSTICE: A COMPREHENSIVE ANALYSIS OF THE GENERAL EXCEPTIONS UNDER THE BHARATIYA NYAYA SANHITA, 2023

Anupal Goswami, Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur

ABSTRACT

Chapter III of the Bhartiya Nyaya Sanhita, 2023 (Sections 14 to 44) introduces comprehensive general exceptions that delineate circumstances where individuals may be exempted from criminal liability. Rooted in the cardinal legal maxim “*Actus non facit reum nisi mens sit rea*” (an act does not make one guilty unless the mind is also guilty), these provisions reflect a balanced approach between legal responsibility and moral culpability. This study provides a section-wise analysis of the exceptions, covering instances such as mistake of fact, judicial acts, accident, necessity, mental incapacity, intoxication, consent, trivial harm, and the right to private defense. A recurring theme is the emphasis on *good faith*, absence of *mens rea*, and proportionality in response. The BNS not only builds upon the foundational framework of the Indian Penal Code but also incorporates contemporary judicial reasoning and practical realities. By aligning with societal values and judicial interpretations, the provisions aim to ensure fairness and prevent misuse of criminal law, marking a significant evolution in India’s criminal jurisprudence.

Keywords: Bhartiya Nyaya Sanhita (BNS), 2023, Criminal Liability, Mens Rea, General Exceptions, Actus Reus, Good faith, Mistake of fact, Right to Private defense, Necessity in Criminal law, Legal unsoundness, Reasonable Apprehension, Burden of proof

Introduction

General exceptions are provided under chapter III, section 14 to 44 of the Bharatiya Nyaya Sanhita, 2023¹. These exceptions provide for circumstances under which individuals are exempted from criminal liability. This study undertakes a comprehensive analysis of these Exceptions. These exceptions represent “a significant overhaul of India’s criminal justice system, aiming to align legal provisions with societal values and judicial practices”².

Reason behind including the General Exceptions under BNS

The legal basis for General Exceptions is the well-established maxim: “*Actus Non Facit Reum Nisi Mens Sit Rea*”, there can be no guilty act without a guilty mind. This principle is foundational to criminal jurisprudence and emphasizes the necessity of *mens rea* in attributing liability. For instance, children under the age of seven years or person of unsound mind are considered incapable of forming such intent and hence are exempted from criminal responsibility under Sections 22 and 23 of the BNS.

However, there are situations where *mens rea* is present, yet the act falls within the scope of General Exceptions. For example, Section 19³ deals with *necessity*, Sections 25 to 30⁴ relate to *consent*, and Sections 33 to 44⁵ pertain to *private defence*. In a scenario where 'A' attempts to kill 'B' and 'B' retaliates in self-defence, 'B' may have *mens rea*, but the act is justified under the law.

Important Point to Note

A critical procedural aspect under the BNS is the mandatory presumption that general exceptions do not apply unless proved otherwise. This principle corresponds to Section 105 of the Indian Evidence Act, 1872, which states that “the burden of proving the applicability of exceptions lies on the accused”⁶.

¹ Bharatiya Nyaya Sanhita 2023, s 14-44

² Kush V Trivedi, “Bhartiya Nyaya Sanhita: India’s new transformative criminal law” (2025) 11(4) IJL < <https://www.lawjournals.org/assets/archives/2025/vol11issue4/10287.pdf> > accessed on 13 May 2025

³ Bharatiya Nyaya Sanhita 2023, s 19

⁴ Bharatiya Nyaya Sanhita 2023, s 25-30

⁵ Bharatiya Nyaya Sanhita 2023, s 33-44

⁶ Indian Evidence Act, 1872, s 105

Thus, the accused has a dual responsibility:

- To establish the existence of circumstances that fall under a general exception, and
- To disprove the mandatory presumption rule.

This defense is admissible only in the second stage of a criminal trial, i.e., after the prosecution evidence is recorded.

In *State of U.P. v. Ram Swarup*⁷, the Supreme Court held that general exceptions must be expressly pleaded and substantiated by the defense, “*the burden of proving the existence of circumstances which would bring the case within the general exception of the right of private defense is upon the respondents and the court must presume the absence of such circumstances*”.

Section wise Analysis

Chapter III of the BNS starts from Section 14⁸ - A person is not liable if he commits an act by “mistake of fact” or if he “believes himself to be bound by law”. It is noteworthy that there lies a thin line of difference between “bound by law” and “believing to bound by law”. “Bound by law” refers to strict adherence to the statute, but believing to be lawful might mean the act is actually unlawful but the person believes the act to be lawful by mistake, or the act is lawful, but the person believes the act to be unlawful by mistake. Section 14 can be pleaded under such circumstances. But the section can be pleaded only if mistake of fact happens in “good faith”, i.e. “with due care and attention” as defined under section 2(11) of BNS⁹. The test of Reasonable man is used to determine whether section 14 can be pleaded, that a reasonable man could have committed the same mistake if put in place in the same situation. It must be noted here that “Mistake of fact” might not give rise to a cause of action however, “Mistake of law” will. Sometimes Respondent Superior is also pleaded under this section, i.e., if act is done according to the order of a superior, it does not amount to offence if the servant acted out of good faith believing the order by the superior to be not illegal; however, if the subordinate knows the order is illegal or contrary to law, Section 14¹⁰ of BNS can’t be pleaded. “Acting out of Good faith” is the critical factor to be determined

⁷ *State of U.P. v. Ram Swarup* AIR 1974 SC 1570 (SC) [13]

⁸ Bharatiya Nyaya Sanhita 2023, s 14

⁹ Bharatiya Nyaya Sanhita 2023, s 2(11)

¹⁰ Bharatiya Nyaya Sanhita 2023, s 14

in order to determine if this section can be pleaded before the court.

Section 15¹¹ provides a judge is not liable for judicial acts “in the exercise of his power or if he believes in good faith is given to him by law”. The section protects a judge against the judgements pronounced by him. The chair of a judge is believed to shield justice and law at the highest possible level, hence, a rule to protect the judges who acted on behalf of the chair they hold is included under this Sanhita. This section establishes the wider responsibility of the Act of providing additional protection to the guardians of law such that justice is served better. Similarly, Section 16¹² provides judicial acts by a person in furtherance of a judgement or court order is not an offense if he believes in good faith, power is given to him by law. In both sections, interpretation of “in good faith” is important. “Good faith” means sincere intention without any intent to deceive, fraud or not contrary to law. There is no protection provided to people, including judicial guardians, not acting out of good faith but with an improper or frivolous intent. A person is not protected as such under sections 15 and 16 of BNS but the chair of a judge and orders emerging from that chair is protected. Hence, in good faith is provided as an essence of both the sections. It is naturally believed that the chair will always act in good faith even though the person residing in the chair might have frivolous or malicious intentions.

A person is protected if the committed act is “justified by law” or “believes himself to be justified by law” in doing the act. Here, “believes to be justified by law” means there is “a mistake of fact, but the offender acted out of good faith without any criminal intent. For example, A person ‘X’ hires a security guard to protect his house. ‘X’ returns late at night and the guard, mistaking the former to be a thief, hits him and causes injury to him. The latter, i.e., the guard is protected by law under Section 17¹³ of the Act.

Similarly, Section 18¹⁴ exempts accidents, acts of misfortune or acts without criminal intention or knowledge from criminal liability if act was done without negligence and in a lawful manner. It is important to note that accidents or acts of misfortune may lead to tortious claims per se, but for a criminal suit to arise, criminal intent must be established as prima facie evidence. The crux of a criminal suit is criminal intent. Section 18¹⁵ holds the importance of not accusing people devoid of criminal intent, even though damage or loss to the other party

¹¹ Bharatiya Nyaya Sanhita 2023, s 15

¹² Bharatiya Nyaya Sanhita 2023, s 16

¹³ Bharatiya Nyaya Sanhita 2023, s 17

¹⁴ Bharatiya Nyaya Sanhita 2023, s 18

¹⁵ Bharatiya Nyaya Sanhita 2023, s 18

may arise as a result of an accident or misfortune.

Section 19 of BNS¹⁶ is primarily based on two legal maxims:

- i. “*Quod Necessitas non-Habet Legum*”, i.e. necessity knows no law.
- ii. “*Necessitas Vincit Legum*” or necessity overcomes law.

However, to plead this section, some important points must be noted.

- There should not be criminal intent vide the act, and
- the act is done in “good faith” to avoid harm to other person or property.

There are a few differences between section 18 and section 19. The test of “knowledge of the accused” is used to determine if the section can be pleaded vide Section 18 and 19 of the Act. If there is no knowledge of the accused, i.e. the accused had no knowledge that his action would lead to the establishment of a criminal charge or the act was a result of accident or misfortune, section 18 can be pleaded. If the accused had a choice to prevent the act, section 19 could be a defense for committing the act. Note that, “In good faith” is also an essential condition under section 19. Consider two situations as to determine when section 18 will be applicable and when section 19.

- i. Situation 1: A ship sailing on water hits an iceberg, causing the ship to sink. The incident killed around 30 people. The family member of the dead sued the captain of the ship for acting out of negligence. The captain contends that the weather was very foggy, and the accident occurred at night. So, he couldn’t contemplate the presence of the iceberg on the path. The contentions of the captain were proved by evidence. In this situation, the captain can be saved under Section 18 of BNS the act was clearly an act of misfortune.
- ii. Situation 2: Consider the same incident where the ship sinks by hitting an iceberg. But the ship had a rescue boat fixed to the side of the ship which could fit only 20 people. The captain of the ship took a call to save the passengers and let them use the rescue boat. As a result of the captain’s decision, 30 crew members died. The family members of the

¹⁶ Bharatiya Nyaya Sanhita 2023, s 19

dead crew members sued the captain for culpable homicide. The captain seeks defense under Section 18 of BNS contending his actions were justified as the situation was unavoidable under the circumstances of absolute necessity and there was no criminal intent on his part. Here, the captain had the knowledge that his decision could kill the crew members but out of necessity he was compelled to take a harsh decision.

It is important to note that, necessity under section 19¹⁷ is public necessity and not private necessity. Private necessity refers to a situation where a criminal act is committed for one's own benefit, which is not permitted by this section. In short, "in order to save your own life, you cannot take the life of others" as established in *R v. Dudley and Stephens*¹⁸.

Section 20¹⁹ provides absolute immunity to an act by a child below 7 years of age. Section 21²⁰ provides partial immunity to the acts of a child between 7 to 12 years of age. BNS recognizes criminal responsibility a person implies according to their age threshold. A child below 7 years would be unlikely to develop maturity on the criminal liability of the acts committed by them. But a person above 7 years develops some understanding of acts involving criminal liability owing to their growth but not as an adult. Hence, the group between 7 to 12 years of age has been given partial immunity and not complete immunity.

Section 22²¹ of the Act relates to "Unsoundness of mind". More precisely, "legal unsoundness" is established under this section. According to the section, a person of unsound mind "incapable of knowing the natural of the act or what he is doing is wrong or contrary to law", shall not be liable for the act committed by him. Medical unsoundness of the mind must be established as a cause of legal unsoundness, i.e., there is cause and effect relationship between medical and legal unsoundness of the mind. Medical unsoundness of the mind can be examined through medical examination by a doctor, i.e., through objective test. However, determining legal unsoundness requires subjective test. The main point to be determined is, "if the person committing the offence was of unsound mind at the time of committing the illegal act". This sole test if satisfied shall give rise to legal unsoundness as ruled in *Amrit Bhusan v UOI*.²² To determine whether medical unsoundness is accompanied by legal unsoundness, House of Lords

¹⁷ Bharatiya Nyaya Sanhita 2023, s 19

¹⁸ *R v. Dudley and Stephens*, [1884] 14 QBD 273 (DC)

¹⁹ Bharatiya Nyaya Sanhita 2023, s 20

²⁰ Bharatiya Nyaya Sanhita 2023, s 21

²¹ Bharatiya Nyaya Sanhita 2023, s 22

²² *Amrit Bhusan vs UOI* [1977] AIR 608 (SC)

gave a five-step test in the case of *R. v M. Naughten*²³ (citation) known as the M. Naughten principles. Note that English law recognizes “insanity” as a ground of defense under the general exceptions, however, Indian standards are fixed with “unsoundness of mind” as under Section 22 of the BNS.

Section 23²⁴ provides that a person who is intoxicated against his will and commits a crime shall not be liable. The difference between section 22 and 23²⁵ is the source of legal unsoundness. As per section 22, legal unsoundness is related to medical unsoundness but for Section 23, the source of legal unsoundness is intoxication, and intoxication is not a mental disease. Two reasons for adding the section under the Sanhita,

- difficult to form “the guilty state of mind”, and
- difficult to determine mens rea by prosecution.

Section 24²⁶ is enacted more as a rule of presumption. It supports the prosecution in the conviction of the accused. If a person is intoxicated by his own will, shall be liable if he commits a crime in the intoxicated state. The trial under this section proceeds as if the person who commits the act in intoxicated, shall be liable as if he had committed the same act in sober state, without any external influences. Hence, legal fiction is created by the section presuming the person tried for committing the act in the intoxicated state did the act while he was not intoxicated. Note that under this section only the knowledge is presumed and not the intention. Intention can’t be presumed as it is always formed under a steady state of mind or in a reasonable state of mind.

Sections 25 to 30 are related to consent²⁷. It is a presumed rule under natural jurisprudence that acts in furtherance of consent of aggrieved party should not give rise to criminal liability.

Section 25²⁸ is a general section according to which no act is an offense if consent is obtained. For example, if a player gets hurt in a game of fencing, the opponent shall not be held liable.

²³ *R. vs M. Naughten* (1843) 8 E.R. 718

²⁴ Bharatiya Nyaya Sanhita 2023, s 23

²⁵ Bharatiya Nyaya Sanhita 2023, s 22-23

²⁶ Bharatiya Nyaya Sanhita 2023, s 24

²⁷ Bharatiya Nyaya Sanhita 2023, s 25-30

²⁸ Bharatiya Nyaya Sanhita 2023, s 25

Section 26²⁹ of the Act lays stress on “acting in good faith for a person's benefit”. For example, A person was medically ill and operated by a surgeon, but the patient died. No liability against the surgeon as he had no criminal intention and acted with good faith to save the patient.

Law under Section 27³⁰ puts forward that consent of a guardian is enough in case of an act against “a child or a person of unsound mind”. A child or a person of an unsound mind is not capable of making reasonable conclusions as to the effects of an act. Hence, a guardian is required to give consent for acts against a child or a person of an unsound mind. The consent of a guardian is enough in such cases as they are responsible for the care and protection of the people concerned.

Section 28 provides that consent is invalid if it is given under fear, misconception or intoxication by any person³¹. For consent to be availed as a defense, it must be in compliance with the “Free Consent Test” and not accompanied by external factors.

Section 29³² is an exception to sections 25, 26 and 27 and provides that these sections are not cannot be pleaded for independent offences, i.e., “acts which are offences in itself”. For example, Miscarriage of a child with consent shall still give rise to criminal liability as the act in itself is prohibited by law.

Section 30 rules out that even if consent is not obtained and the act was done for the person's benefit, no criminal liability shall exist³³. For ex. A person is critical due to an accident and there was no time to obtain consent. A doctor operated on him but couldn't save him. The doctor would not be liable as his actions were done in good faith.

“Communication made without any intent to commit a crime is not an offense”³⁴ – this statement is recognized under Section 31. For example, A doctor informs his patient that he shall die soon as a result of cancer, and the latter dies of shock. The doctor shall not be liable.

“a statement made in good faith, without malice or intent to harm, does not attract criminal liability, especially when made in discharge of professional or moral duty”³⁵.

²⁹ Bharatiya Nyaya Sanhita 2023, s 26

³⁰ Bharatiya Nyaya Sanhita 2023, s 27

³¹ Bharatiya Nyaya Sanhita 2023, s 28

³² Bharatiya Nyaya Sanhita 2023, s 29

³³ Bharatiya Nyaya Sanhita 2023, s 30

³⁴ Bharatiya Nyaya Sanhita 2023, s 31

³⁵ Indian Penal Code 1860, ss 52, 93

BNS also protects acts done under fear or misconception under Section 32 that such acts do not give rise to criminal liability³⁶. This is based on the maxim “*Actus me invito factus non est mens actus*”, i.e., “an act which is done by me against my will is not my act”. This section applies only if non-willingness to perform on part of the person is established vide the said act. The non-willingness will be established based on facts, circumstances and evidence recorded. If the person was willing to perform the act, criminal intent can be inferred per se, and no defense is available under Section 32 of BNS.

Section 33 - Nothing an offence if intention of harm is “slight harm”. The reason behind this section in BNS is there should be no wastage of resources on insignificant matters. This section is in consonance with the judgment of *Veeda Menezes v. Yusuf Khan*³⁷, where the word 'Harm' was interpreted, that “*harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm.*”

Sections 34 to 44 of the BNS recognizes the “right to private defense”.

Section 34³⁸ is a declaratory provision that an offence shall not be committed while exercising the right of private defense. The reasoning behind the right is that “it is the duty of the state to protect its citizens and non- citizens, however, in circumstances when the state is not able to fulfil that duty, then an individual has the right to defend himself”³⁹.

Section 35⁴⁰ – The section realizes that the right to private defense is available against all offenses affecting human body as well as offences against property, theft, robbery, criminal trespass or mischief. However, the right is subject to restrictions mentioned under Section 37 of the same Act.

Section 36⁴¹ is an extension of the right to private defense. Section 35 realizes private defense to be available only against offences as such. However, acts done by children or person of unsound mind do not amount to offences. Hence, Section 36 is provided under BNS as an exception that private defense would be available even if the act is not an offence, provided

³⁶ Bharatiya Nyaya Sanhita 2023, s 32

³⁷ *Veeda Menezes v. Yusuf Khan* 1966 SCR 123 (SC) [4]

³⁸ Bharatiya Nyaya Sanhita 2023, s 34

³⁹ K.D. Gaur, *Textbook on Indian Penal Code*, (7th edn., Universal Law Publishing 2020) 228

⁴⁰ Bharatiya Nyaya Sanhita 2023, s 35

⁴¹ Bharatiya Nyaya Sanhita 2023, s 36

the act is done by a child or a person of unsound mind.

Section 37⁴² consists of two clauses. The first clause provides insights into when the right to private defense cannot be exercised, i.e., against a public servant or person serving under his order if there is no apprehension of grievous hurt or if there is time to call for help.

The second clause of section 37 establishes private defense is not a punitive right but rather a preventive right⁴³. The force used in defense must be “reasonable force” and if it extends to inflict more harm than what is required or necessary, then he can be said to use “excessive force”. For example. A person kills a weak old woman for stealing at night. The person cannot claim the right to defend himself.

The Right of private defense is also not available against one private defense. For example, consider two persons ‘A’ and ‘B’. A at night mistakes B’s house to be his own and enters it. B thinking A to be a thief hits him and A retaliates. Now, B can be said to use the right to private defense, but A shall use the defense of mistake of fact and not private defense.

Two tests, are used to determine whether the right of private defense can be exercised are the “test of Reasonable Apprehension”, i.e., The defender must have reasonable belief that the attacker intended to inflict serious harm based on the available evidence and situation at that time; and “Intention Specific test”, i.e., The accused must demonstrate reasonable apprehension that the attacker was acting with the “intent to cause serious harm”. The right of private defense can be claimed by a person only if these two tests are satisfied.

Section 38⁴⁴ – This section provides for certain situations in which “death or grievous harm” can be caused while exercising the right of private defense. BNS recognizes for grievous offences such as rape, murder etc. death and grievous harm can be caused to the opposite party in private defense.

Section 39⁴⁵ provides that for offences against body other than mentioned in section 38, death could not be caused.

⁴² Bharatiya Nyaya Sanhita 2023, s 37

⁴³ K. M. Sharma, “*Right of Private Defence: Defensive or Punitive?*”, (1990) 32 JILI 438

⁴⁴ Bharatiya Nyaya Sanhita 2023, s 38

⁴⁵ Bharatiya Nyaya Sanhita 2023, s 39

Section 40⁴⁶ states “the right of private defense starts as soon as there is an apprehension of threat of an imminent danger to the body and continues as long as the apprehension of the threat prevails”. It should be noted that reasonable apprehension of danger and not actual commission of offence, is enough to claim defense under sections 34 to 44 of BNS.

Section 41 to 44⁴⁷ provides exceptions and restrictions while exercising the right to private defense against property.

Section 41⁴⁸ recognizes for certain offences such as robbery, house breaking after sunset and before sunrise, etc. death or grievous harm can be caused to the opposite party while defending the property of the individual. However, the conditions are subject to restrictions under Section 37.

Section 42⁴⁹. With respect to offences of thief, mischief or criminal trespass, any harm other than death can be caused by private defense, subject to restrictions under section 37.

Section 43⁵⁰ recognizes the right to private defense against property commences as soon as there is an apprehension of reasonable danger and continues till the danger prevails.

Section 44⁵¹. This section clarifies that if there is a reasonable apprehension of death, and a person uses the right to private defense and an innocent is harmed in furtherance, the former would not be liable. Consider an example of mob lynching, where a person is attacked by a mob and the aggrieved person fires at the mob to disperse the crowd and an innocent child is dead by the act. The person firing would not be held liable.

Conclusion

Chapter III of BNS provides for provisions where individuals should be exempted from criminal liability due to factors such as intent, good faith, or unavoidable circumstances. While many of these provisions find parallels in the Indian Penal Code, the BNS offers a more detailed and contextually relevant approach, particularly with its emphasis on modern concepts like

⁴⁶ Bharatiya Nyaya Sanhita 2023, s 40

⁴⁷ Bharatiya Nyaya Sanhita 2023, s 41-44

⁴⁸ Bharatiya Nyaya Sanhita 2023, s 41

⁴⁹ Bharatiya Nyaya Sanhita 2023, s 42

⁵⁰ Bharatiya Nyaya Sanhita 2023, s 43

⁵¹ Bharatiya Nyaya Sanhita 2023, s 44

necessity and expanded protections for actions taken in good faith⁵².

⁵² Rohit Ranjan, “General Exceptions and the Evolution of Criminal Liability under the Bhartiya Nyaya Sanhita, 2023,” (2024) 66 (1) JILI 123